By:  Muñoz, Jr., Frazier H.B. No. 993

A BILL TO BE ENTITLED

AN ACT

relating to sheriff's department civil service systems in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sec. 158.012, Local Government Code, is amended by amending Subsection (a) to read as follows:

APPEALS. (a) A county employee who, on a final decision by the commission, is demoted, suspended, or removed from the employee's position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision~~.~~ unless the employee chooses to appeal to a third-party hearing examiner.

(b)  An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c)  If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

SECTION 2: Chapter 158, Local Government Code is amended by adding Section 158.013 to read as follows:

Sec. 158.013.  HEARING EXAMINERS. (a) A written notice for a promotional bypass, demotion, or notice of disciplinary action, as applicable, issued to an employee must state that in an appeal of a termination, a suspension, a promotional bypass, or a recommended demotion, the appealing employee may elect to appeal to an independent third-party hearing examiner instead of to the commission. The letter must also state that if the employee elects to appeal to a hearing examiner, the employee waives all rights to appeal to a district court except as provided by Subsection (j).

(b)  To exercise the choice of appealing to a hearing examiner, the appealing employee must submit to the commission a written request as part of the original notice of appeal required under this subchapter stating the employee's decision to appeal to an independent third-party hearing examiner.

(c)  The hearing examiner's decision is final and binding on all parties. If the employee decides to appeal to an independent third-party hearing examiner, the employee waives all rights to appeal to a district court except as provided by Subsection (j).

(d)  If the employee chooses to appeal to a hearing examiner, the employee and the sheriff, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the commission shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The employee and the sheriff, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

(e)  The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the employee may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d).

(f)  In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g)  In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing ended.

(h)  In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

(i)  The hearing examiner's fees and expenses are shared equally by the appealing employee and by the department. The costs of a witness are paid by the party who calls the witness.

(j)  A district court may hear an appeal of a hearing examiner's award only on the grounds that the hearing examiner was without jurisdiction or exceeded the hearing examiner's jurisdiction or that the order was procured by fraud, collusion, or other unlawful means or the ruling was arbitrary or capricious. An appeal must be brought in the district court having jurisdiction in the county in which the department is located. An appeal under this Subsection is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases. An appeal to district court must:

Be filed with the district court with proper jurisdiction within 45 days after the hearing examiner issued their final ruling; and

State clearly the basis for the appeal.

(k)  The hearing examiner may uphold, reduce, or overturn the discipline imposed on the employee.

(l)  No evidence of lost compensation shall be required by the hearing examiner to award the employee compensation. If the suspension, termination, or demotion is overturned or reduced, the employee is entitled to:

(1)  full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the employee was suspended or terminated; restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the county shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems; and

(2)  In the case of an overturning of a demotion, the employee is entitled to the difference in compensation between the position they were demoted from and the position they held between the demotion and the ruling of the hearing examiners.

(m)  If an employee is owed a monetary award for backpay after the final decision of the hearing examiner is rendered, the county's obligations are the same as those provided by Section 158.0372.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.