

Chapter No. 924
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HOUSE BILL NO. 1728

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1728

AN ACT TO CREATE THE CIVIL SERVICE COMMISSION FOR THE HARRISON COUNTY SHERIFF'S DEPARTMENT; TO PROVIDE THE POLICIES AND PROCEDURES OF SUCH COMMISSION; TO PROVIDE FOR THE MEMBERSHIP OF SUCH COMMISSION; TO PROVIDE THE TIME THAT SUCH COMMISSION SHALL MEET; TO PROVIDE THE DUTIES OF SUCH COMMISSION AND THEIR COMPENSATION; TO PROVIDE THAT ANY EMPLOYEE SUBJECT TO PERSONNEL ACTION MAY HAVE A HEARING; TO REQUIRE SUCH COMMISSION TO MAINTAIN A ROSTER OF ALL PERSONNEL EMPLOYED BY SUCH COMMISSION; AND FOR RELATED PURPOSES.

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

SECTION 1. The Civil Service Commission of the Harrison County Sheriff's Department is hereby created pursuant to the authority of the Harrison County Board of Supervisors (hereinafter "supervisors") as expressly determined and created by them, and as amended from time to time by them. All full-time paid employees of the Harrison County Sheriff's Department who have served continuously in such position for a period of at least twelve (12) months, with the exception of the sheriff, chief deputy, captains, majors, officer in charge of internal affairs, warden and deputy warden, are subject to the provisions and protections of these rules pursuant to this act.

SECTION 2. (1) The membership of the Civil Service Commission (hereinafter "commission") is established and shall at all times be composed of three (3) individuals, who shall all be residents of Harrison County, shall be at least twenty-one (21) years in age, who shall not be related to the sheriff by blood or marriage, a citizen of the United States, and who shall have been a resident citizen of Harrison County for at least five (5) years.

(2) All members of the commission shall serve for calendar year terms of six (6) years, and such terms shall be staggered

such that only one (1) member's term shall expire every two (2) calendar years. The Sheriff of Harrison County shall appoint or reappoint members of the commission as terms on the commission expire. Members of the commission may succeed themselves upon reappointment by the sheriff, and there are no limits upon the successive terms that a member of the commission can serve.

Any appointment or reappointment of a commission member, as authorized under this subsection, must receive a majority vote of approval of the supervisors before he or she may serve as a member of the commission.

(3) Members of the commission may be removed from the commission by the supervisors for incompetency, incompatibility, dereliction of duty, or such other cause as may be determined by the supervisors. Any member so removed shall be entitled to a hearing by the supervisors upon reasons or charges being stated, in writing, setting out the basis for removal and a hearing conducted before the full supervisors which may be in executive session at the option of the member, for the purpose of determining the existence of justification for the member's removal. If the supervisors determine justification for the removal of the member, then such member's unexpired term shall be filled by the supervisors, and may be considered for reappointment by the sheriff upon expiration of the term. Any member removed pursuant to this subsection (3) shall have the right of an appeal to the Circuit Court of Harrison County, First Judicial District, within thirty (30) days of any decision of the supervisors. The circuit court shall have jurisdiction only to determine whether the decision of the supervisors was for "good cause" and shall extend appropriate administrative deference to the supervisors in their decision.

(4) Members of the commission shall be expected to attend all scheduled meetings of the commission as determined by the chairman of the commission. Commission members shall be entitled

to compensation of One Hundred Dollars (\$100.00) per month for their service on the commission, or such other amount, which shall not exceed Two Hundred Dollars (\$200.00) per month, as may be determined from time to time by the supervisors which shall be paid from an account established by the supervisors expressly for the purpose of the operation of the commission and to be administered by a designee of the sheriff's department. The commission shall meet a minimum of one time per month to receive a report by the sheriff (or his authorized representative) on personnel matters and policies that may be subject to the oversight of the commission and to schedule hearings concerning employee matters that will come before the commission. Absence of any member of the commission for three (3) consecutive meetings as called by the commission chairman, without notification to the chair, shall constitute an "abandonment" of the position by the absenting member. The sheriff shall appoint a new member to fill the unexpired term abandoned by the absenting member upon notification of the vacancy by the chairman.

(5) The commission chairman shall be elected by the members of the commission. The commission chairman shall be elected to serve a term of one (1) year, and may succeed him/herself as commission chairman throughout his/her term of office and any successive terms. The chairman shall be the primary spokesperson of the commission, and shall direct and supervise the duties of the secretary to the extent that the secretary is engaged in the performance of commission responsibilities.

(6) The commission shall maintain a secretary, who is appointed by the sheriff and who may be a full-time employee of the Harrison County Sheriff's Department. The salary of the secretary shall be the responsibility of the sheriff. The sheriff shall provide such accommodations as may be necessary to administratively maintain the secretary and the commission in the maintenance of its records, documents and information. The

sheriff shall have the responsibility and prerogative to direct the activity of the secretary, as a full-time employee of the sheriff's department, to the extent that the secretary is not engaged in responsibility for the commission. In addition, the sheriff may appoint an attorney for the commission whose payment shall be the responsibility of the sheriff.

SECTION 3. The commission shall meet at least one time per month at a place and time determined by the chairman. The chairman, through the commission secretary, shall notify each member of the commission at least ten (10) days before the meeting in order to give adequate notice to the members of the meeting. Business of the commission may take place upon the presence of two (2) members of the commission at any meeting, and two (2) members of the commission shall constitute a quorum. The secretary of the commission shall be in attendance at each meeting of the commission in order to document the action of the commission, shall maintain all records of the commission, and shall perform such other duties as may be prescribed by the commission.

SECTION 4. (1) It shall be the duty of the commission to oversee and approve the creation and administration of all personnel rules, regulations and policies of the Harrison County Sheriff's Department. Such rules, regulations and policies shall provide for the details in the manner of conducting examinations of applicants, appointments and promotions of officers, transfers, reinstatements, demotions, suspensions, discharges, and may also provide for any other matter connected with the general subject of personnel administration which may be considered desirable to further carry out the general purposes of the commission as constituted and empowered by the supervisors and Mississippi law. The commission shall further have such authority and oversight over the manner and method of the employment examination of all applicants of the department subject to commission protection as outlined in policies and procedures of the department. Such

authority shall include, but not be limited to, the policies and provisions by which applicants are examined for positions with the sheriff's department, the method of conducting interviews and testing of applicants, and the process by which applicants are selected, maintained in employment and disciplined.

(2) The commission shall conduct such hearings and examinations as may be necessary to enforce the provisions of the employment and personnel rules, regulations, policies and procedures promulgated by them for the Harrison County Sheriff's Department. The commission shall provide for such policies and procedures that permit an appellate hearing of any personnel decisions of the sheriff subject to the provision of this act. The commission shall, upon a timely and appropriate request of an applicant or employee, and may, upon its own initiative, investigate and conduct a hearing of personnel action, discipline, demotion, transfer or discharge. The commission may take testimony under oath from the employee and any individual that it determines may be necessary to review the actions of the sheriff. Any hearing so conducted by the commission shall take place upon timely and verifiable notice to the employee pursuant to the personnel policies of the department, and all hearings conducted shall follow the procedures hereinafter set out.

(3) The commission shall further assure, in the formulation of rules, regulations and policies of the sheriff's department, that the following behavior will be disciplined appropriately and objectively upon complete and independent review: incompetency, inefficiency, inattention to duty, dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or fellow employees, or any other act or omission or commission tending to injure the public service.

(4) It is the duty of the commission to assure that no employee of the department is disciplined for religious or political reasons, and that all employee action taken against an

employee is for "good cause" and "good faith." "Good cause" and "good faith" shall be given a broad meaning that will include, but not be limited to, assuring that discipline of the department is not discriminatory or arbitrary in nature, but is fair, balanced, measured to consider the unique and individual circumstances of each matter, and is otherwise equitable for both the employee, the sheriff's department and the public.

(5) No person holding any office, place, position or employment in the Harrison County Sheriff's Department, which is under civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing to do so. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation for any person in the sheriff's department under civil service, or promise or threaten to do so, for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

If any person holding any office, place, position or employment in the sheriff's department, which is under civil service, actively participates in political activity in any primary or election in Harrison County, such participation shall be deemed cause for removal.

(6) The commission shall ensure that an applicant for any position in the sheriff's department, which is under civil service, must be a citizen of the United States and must meet bona fide occupational residency requirements as may be prescribed by the sheriff.

SECTION 5. (1) A hearing shall be initiated by the timely request, in writing, of any employee who has been subject to

personnel action by the sheriff pursuant to the policies and procedures of the sheriff's department.

(2) Hearings shall be set by the commission giving the employee and the sheriff at least fourteen (14) days' notice of any hearing. All notices setting hearings shall be given to the petitioner employee and the sheriff in writing. All hearings shall be conducted within thirty (30) days of the written request of an employee for an appeal of the decision of the sheriff concerning the discipline of the employee, unless the commission chairman grants a continuance to either party.

(3) Hearings of the commission shall be conducted generally following the Mississippi Rules of Evidence and Civil Procedure, except that no discovery under the Rules of Civil Procedure shall be allowed. The commission shall retain the authority to establish an appropriate timetable by which the parties submit materials to the commission in contemplation and preparation for any hearing conducted under the provisions of this section.

(4) Upon request for a hearing and at least fourteen (14) days before the date set for hearing by the commission, the sheriff will provide the employee with a specific reason(s) for any employment action, and will provide the employee with any documents or material relied upon by the sheriff in support of his disciplinary decision.

(5) The decision of the sheriff shall be given deference upon any personnel action. Decisions, however, that are contrary to the policies and procedures instituted and adopted for the sheriff's department by the commission, shall be reviewed by the commission and may be affirmed, modified or reversed, with or without pay, to the extent that it is determined that the sheriff did not adhere to those policies.

(6) The employee shall be considered to be the petitioner at any hearing, and shall bear the burden of demonstrating the lack

of justification, factually or legally, for the decision of the sheriff by the preponderance of the credible evidence.

(7) The commission shall have the power to subpoena witnesses in furtherance of the development of the proof and testimony, and a request for all witnesses requested by the petitioner and sheriff shall be made, in writing to the commission, no less than seven (7) days before the date set for the hearing.

(8) The petitioner shall provide the commission with a short and plain statement of the specifics of his or her grievance no less than seven (7) days prior to the hearing. The sheriff shall provide any response or rebuttal no later than three (3) days before the hearing. The failure of the petitioner or the sheriff to provide the required statement may result in postponement of the hearing at the discretion of the commission, or provide such other relief as may be appropriate in the interest of fairness.

(9) The petitioner and sheriff shall be entitled to counsel at any hearing scheduled and conducted under these rules. A court reporter will be present at any hearing, except upon notice to the petitioner. The Harrison County Sheriff's Department may, at its option, cause the hearing to be transcribed, at its own costs, or in the event of an appeal to circuit court, the costs of transcribing the hearing will be borne by the party requesting the transcript.

(10) The commission shall conduct the hearing until completed, which may if practicable extend over the course of several days, as may be necessary and practicable and in the interest of fairness.

(11) Any decision of the commission shall be in writing, and shall be provided to the petitioner and sheriff contemporaneously. Any decision of the commission shall be enforced immediately by the sheriff.

(12) Appeals of any decision of the commission may be taken within thirty (30) days, by filing, in writing, a notice of an appeal, which shall be taken before the Circuit Court of Harrison County, First Judicial District. Upon notification of a request for an appeal of the decision, the commission shall, within thirty (30) days, prepare and provide the papers, documents and evidence introduced and made a part of the record as taken before the commission. The transcript of the hearing proceedings shall be at the costs of the party appealing to the circuit court. The circuit court shall be limited to reviewing the action and decision of the commission to the extent that such decision is contrary to existing law or is otherwise in contravention of state or federal law, including the provisions of the United States and Mississippi Constitutions. Any appeal taken by the sheriff or employee shall not act as a supersedeas of any decision of the commission, and the decision of the commission shall be enforceable by the sheriff until such time as the circuit court, by judgment, may alter or amend the decision of the commission.

(13) Any hearing conducted by the commission shall be a public hearing. The commission may, if circumstances require, temporarily postpone any hearing in order to provide for sufficient accommodations for the public to the extent that members of the public exceed the capacity of the accommodations or impair the ability of the commission to properly conduct the hearing.

SECTION 6. The commission shall maintain a roster of all personnel employed with the Harrison County Sheriff's Department, and may from time to time make reasonable inquiry of department employees concerning personnel management as may be determined necessary, and shall make such modifications or amendments in the personnel policies and procedures to ensure proper personnel management. In maintaining the personnel roster, the commission shall assure that only the most qualified individuals are hired,

promoted and/or employment otherwise continued or maintained with the Harrison County Sheriff's Department, and that further, all personnel hired by the sheriff's department are afforded complete and objective review of any personnel decision of the sheriff and the supervisory staff of the department.

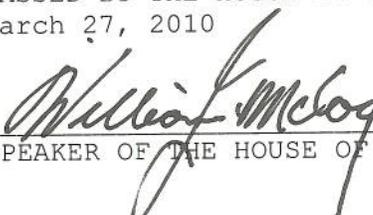
SECTION 7. The rules and regulations of the commission may be amended from time to time, as needed to the extent not inconsistent with the laws of the State of Mississippi, upon publication to the Harrison County Sheriff's Department through the secretary of the commission.

SECTION 8. Chapter 805, Local and Private Laws of 1990, is hereby repealed upon the effective date of House Bill No. 1728, 2010 Regular Session.

SECTION 9. This act shall be repealed from and after December 31, 2013.

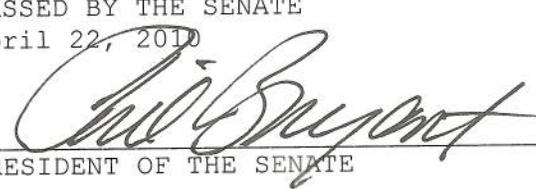
SECTION 10. This act shall take effect and be in force from and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 27, 2010



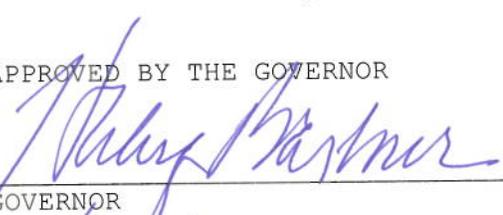
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 22, 2010



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

4/28/10 7:29am