

CHAPTER 118**(HB 109)**

AN ACT relating to police merit boards in a consolidated local government and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67C.301 is amended to read as follows:

As used in KRS 67C.301 to 67C.327, unless the context otherwise requires:

- (1) "Board" means the consolidated local government police force merit board or boards hereinafter created.
- (2) "Chief" means a chief of a consolidated local government police force affected by KRS 67C.301 to 67C.327.
- (3) "Assistant chief" means the next in command to the chiefs of the consolidated local government police force or forces affected by KRS 67C.301 to 67C.327.
- (4) "Secretary" means the executive secretary ~~and examiner~~ employed by the consolidated local government police force merit board or boards created as provided by KRS 67C.301 to 67C.327.
- (5) "Officer" means any member of the consolidated local government police forces affected by KRS 67C.301 to 67C.327, including *police*~~chiefs, assistant chiefs, and patrol~~ officers, corporals, sergeants, lieutenants, and captains ~~unless specifically excluded~~.

Section 2. KRS 67C.305 is amended to read as follows:

- (1) The mayor, subject to the approval of the legislative council of the consolidated local government, shall appoint *five (5)*~~four (4)~~ persons, who shall constitute the consolidated local government police force merit board of the consolidated local government. The members of the board shall serve without compensation. Each board appointee shall be at least thirty (30) years of age, a resident of the consolidated local government, and not related by either blood or marriage to either the mayor or any member of the legislative council of the consolidated local government. The first members of the board shall be appointed within thirty (30) days of the effective date of the ordinance creating a consolidated local government police force merit system and merit board. One (1) member of the board shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, *two (2)*~~one (1)~~ for a term of three (3) years, and one (1) for a term of four (4) years. Thereafter, all appointments shall be for four (4) years except that an appointment to fill a vacancy on the board shall be made only for the unexpired term of the vacated position. Any board member may be removed by resolution of the legislative council of the consolidated local government for neglect, incapacity, misfeasance, or malfeasance on the part of a board member. No appointed board member shall hold any other public office, elective or appointive, during his or her term as a member of the board, and shall not receive any money, gift, or consideration of any type from any person, directly or indirectly, for or on account of any recommendation, proposal, or suggestion bearing upon the business of the board or the consolidated local government police force. Not more than *three (3)*~~two (2)~~ members shall be members of the same political party.

- (2) Each appointee, before entering upon the discharge of his or her duties, shall qualify by subscribing, taking, and filling an oath of office as required by law.
- (3) The *officers*~~[members]~~ of the consolidated local government police forces shall elect, for a two (2) year term, two (2) *police*~~[patrol]~~ officers of the consolidated police forces with a minimum of five (5) or more years' service who shall serve as members of the board for the purpose of deciding discipline cases only, and who may vote in these cases. In case of a vacancy in a position held by a *police*~~[patrol]~~ officer, a new election shall be held within sixty (60) days of the date the vacancy occurs and the person elected shall fill the remainder of the original unexpired term.

Section 3. KRS 67C.307 is amended to read as follows:

- (1) The board shall meet within thirty (30) days of the creation of the board and the members shall select from among themselves a chairman and vice chairman and adopt such rules, regulations, and bylaws not inconsistent with KRS 67C.301 to 67C.327 for the necessary operation of the board. In all *nondisciplinary* matters requiring a vote, a majority of the board members present and voting shall determine any questions, provided that at least three (3) board members are present to constitute a quorum.
- (2) In cases of discipline, four (4) members of the board shall be present to constitute a quorum, one (1) of which shall be a police officer as defined in KRS 67C.305(3).

Section 4. KRS 67C.309 is amended to read as follows:

- (1) The board shall meet at least once every two (2) calendar months and minutes of each meeting shall be kept.
- (2) The board, *with the approval of the mayor*, shall employ a secretary who shall also conduct~~[all]~~ examinations, prepare eligible lists, keep all records of the board's business, keep and maintain all minutes of all board meetings, and perform such other duties in connection with the business of the board as may be required. The secretary may be employed on either a part-time or full-time basis, and the secretary shall receive compensation as may be recommended by the board and approved by the legislative council. All orders and minutes of the board shall be signed by the chairman who shall be elected by the board members, and the minutes shall be countersigned by the secretary.
- (3) All records and meetings of the board shall comply with KRS 61.805 to 61.884.

Section 5. KRS 67C.313 is amended to read as follows:

- (1) All police officers of whatever rank and title of a consolidated local government police force shall be covered by the provisions of this section, except probationary officers. All officers of a consolidated local government police force on active duty or service as of the effective date of an ordinance creating a consolidated local government police merit system and board, shall be deemed fit and qualified to continue their respective duties of employment on or for the consolidated local government police force without examination or further qualification~~[, except and unless the chief of police shall, within sixty (60) days after the establishment of the board, certify to the board that any officer is physically unfit to continue his or her duties].~~
- (2) All personnel covered by the provisions of this section, except probationary officers, shall be deemed to be permanent employees subject to their ability to satisfactorily perform their respective duties and *further* subject to their good behavior.

- (3) A probationary officer shall not be included in the merit system until that officer has satisfactorily completed his or her initial probationary period which shall be one (1) year from his or her sworn date. The one (1) year probationary period may be extended for up to six (6) months upon showing of just cause by the chief and approved by the board.
- (4) Officers covered by the provisions of KRS 67C.303 and serving promotional probationary periods shall not be deemed excluded from the merit system during the promotional probationary periods.

Section 6. KRS 67C.315 is amended to read as follows:

- (1) The provisions of KRS 67C.303, 67C.305, 67C.307, 67C.309, and 67C.319 shall not apply to the chief of police, assistant chief, and any officers above the rank of captain of the consolidated local government police force. These officers shall be appointed by the mayor and shall not be considered covered under the employment protections of the merit board, except as provided in subsection (2) of this section.
- (2) Any officer originally covered by the provisions of KRS 67C.303, 67C.305, 67C.307, and 67C.309 who shall accept an appointment and qualify as chief of police, assistant chief of police, or officer above the rank of captain shall be deemed to have received a leave of absence from the classified service for and during his or her service in either of these respective positions. Should any chief of police, assistant chief of police, or officer above the rank of captain cease to serve in that capacity, he or she shall be restored to the same classification and rank which he or she held prior to the appointment ***without loss of seniority in grade***. Any person not covered by the provisions of KRS 67C.303, 67C.305, 67C.307, and 67C.309 when appointed to the position of chief of police, assistant chief of police, or officer above the rank of captain shall not be deemed to be part of the classified service and shall not be placed in any classification or rank in the classified service when he or she ceases to serve in that position unless he or she goes through the normal qualification and classification procedures required by the board.

Section 7. KRS 67C.317 is amended to read as follows:

- (1) No officer ***while on duty or in uniform*** covered by the provisions of KRS 67C.301 to 67C.327 shall directly or indirectly solicit or receive or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription, or contribution to or for any political party or candidate for public office.
- (2) No person shall use or promise to use his or her personal influence or official authority to secure any appointment or promotion to any position of employment covered by the provisions of KRS 67C.301 to 67C.327, as a reward or return for personal or partisan political service. No candidate applying for original appointment or promotion to any position of employment covered by KRS 67C.301 to 67C.327 shall sign or execute or promise to sign or execute a resignation dated or undated in advance of his or her appointment or promotion. No officer covered by the provisions of KRS 67C.301 to 67C.327 shall be suspended, laid off, demoted, promoted, ~~fined,~~ disciplined, or threatened, or in any way changed in rank, duty, or compensation for withholding or neglecting to pay or make any contribution of any sort, either in money, goods, services, or anything of value for any political purpose whatsoever.
- (3) No examination question on any examination given by the board shall relate to any political or religious opinion, belief, affiliation, or service and no appointment, promotion, demotion,

suspension, ~~fine,~~ or removal shall be brought about, ~~effected,~~ affected, or influenced by these opinions, beliefs, affiliations, or services.

- (4) No officer covered by the provisions of KRS 67C.301 to 67C.327 shall foster, promote, or be concerned with any actions involving political or religious controversies or prejudices while in uniform.
- (5) Nothing contained in KRS 67C.301 to 67C.327 shall be so construed as to abridge the rights of any officer with respect to his or her personal opinions, beliefs, and right to vote.

Section 8. KRS 67C.319 is amended to read as follows:

- (1) Every consolidated local government police force merit system board created shall make, promulgate, and when necessary, amend rules for the qualifications, original appointment, probation, promotion, demotion, transfer, lay-off, reinstatement, suspension, and removal of the officers covered by KRS 67C.303, 67C.305, 67C.307, and 67C.309. No rule or regulation made, promulgated, or amended by any consolidated local government police force merit system board shall be inconsistent with the express provisions of this chapter. The board shall publish its rules and any amendments and shall supply certified copies to the mayor, legislative council, and the police chief and shall post a copy conspicuously in the office or place where the headquarters of the consolidated local government police is maintained. The copies of the rules and amendments shall be distributed and posted in the manner prescribed within three (3) days after adoption.
- (2) The rules in addition to other matters shall specifically provide for and cover the following:
 - (a) Physical, mental, educational, citizenship, and age requirements for new officers;
 - (b) Physical, mental, educational, citizenship, age, and length of service requirements for promotion from lower to higher rank or classification;
 - (c) A requirement that *police*~~patrol~~ officers have five (5) years of service as *police*~~patrol~~ officers before being eligible for promotion to the rank of sergeant;
 - (d) Provision for open, competitive, written, oral, **and other mental** and physical examinations to determine the relative fitness of all candidates for original appointment and for promotion;
 - (e) A requirement of public notice of all examinations to be given by the merit board;
 - (f) Organization and meetings of the board; and
 - (g) Procedure and conduct of public hearings.
- (3) The board, **with the approval of the mayor**, shall employ a chief examiner who shall be professionally qualified and experienced in the field of testing and who shall formulate, give, grade, and administer all written **or other examinations**~~tests~~ as required by the board.~~The chief examiner shall report to the board the results of all tests given by him or her and the examiners shall be solely responsible to the board. The chief examiner shall compile the grades of all applicants in strict compliance with procedures and percentages as set out in this section and shall deliver the scores of all applicants for promotion to the chairman of the board, in a sealed envelope. The chief examiner shall not reveal to anyone the results of test scores for promotions other than in this manner.~~
- (4) Physical fitness for promotion shall be presumed unless certified to the contrary by the chief of police who shall supply the board with medical records of the disability.

- (5) At least ninety (90) days' notice shall be given before a promotional examination is conducted.
- (6) Promotional tests shall be graded, as determined by the board, to include~~[both]~~ written,~~[and]~~ oral, **and other** examination scores. In addition, seniority in grade, not to exceed ten percent (10%), shall be awarded for each year of service after five (5) full years of service. The results of the written,~~[and]~~ oral **and other** examinations shall be combined **with seniority** to determine the applicant's final evaluated rating.
- (7) Promotional eligibility lists shall contain the names of successful candidates in the order of their standing through examination. **An individual's results and ratings are subject to review by the individual candidate but are otherwise confidential.**
- (8) **The chief examiner shall compile the results of all examinations. Upon completion of grading of examinations, candidates shall be informed by mail of the final evaluated rating attained and their individual ranking on the eligibility list. An applicant may, by appointment, discuss his or her examination results within the offices of the chief examiner during business hours at any time when such review will not interfere with the work of the board. Such review must be requested within ten (10) calendar days following the establishment of the eligibility list.**~~[An applicant may file with the board a written challenge to the applicant's score on the written or oral examination within ten (10) days of notification of examination scores.]~~ The board shall make examination questions and answers available for inspection by the applicant upon the filing of a written challenge.
- (9) In filling promotional vacancies, the chief of police shall select from not more than five (5) candidates graded highest on the appropriate eligibility list. The board shall determine the justification for not promoting a candidate **with the higher evaluated rating** who has been certified for promotion four (4) times. If the board determines that the candidate's nonpromotion is unjustified or unsupported by the evidence, the candidate shall be promoted. The certified rank list for promotions shall be valid for two (2) years and shall not be extended. All promotional vacancies shall be filled within sixty (60) days of the vacancy.

Section 9. KRS 67C.321 is amended to read as follows:

- (1) Any officer may be removed, suspended for a period not to exceed **thirty (30)**~~[sixty (60)]~~ days, laid off, or reduced in grade by the chief for any cause which promotes the efficiency of the services, but before any such action is taken by the chief against any officer, the chief shall furnish the officer concerned with a written statement of the reasons why the described action is being taken. The officer may be reduced, removed, suspended for a period not to exceed **thirty (30)**~~[sixty (60)]~~ days, or laid off from the date the written statement of reasons is served upon her or him. Each officer removed, suspended for a period not to exceed **thirty (30)**~~[sixty (60)]~~ days, laid off, or reduced in grade shall be allowed a period of ten (10) days within which the officer may file a written answer to the charges and the reasons which caused her or his suspension, removal, or reduction. This answer shall be made a part of the official records of the police department. No trial or examination of witnesses shall be required in any such case except at the discretion of the chief. The chief shall likewise furnish a copy of the written charges and reasons for her or his action to the board.
- (2) Any citizen who makes written, sworn charges of misconduct concerning the actions of any police officer shall present the charges to the chief of police who shall investigate the charges. The chief of police shall determine what action, if any, shall be taken against the

officer, subject to the limitations set out in this chapter. The citizen may appeal the determination of the chief of police to the board.

Section 10. KRS 67C.323 is amended to read as follows:

In all cases provided for in KRS 67C.321, the action of the chief shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, or ***demotion of a nonprobationary officer***~~reduction~~ made by the chief~~,~~ shall be subject to review by the board at the request of any officer affected by KRS 67C.301 to 67C.327. ***An appeal to the board of a dismissal, demotion, or forty (40) hour or more suspension of a nonprobationary officer shall be heard by the full board.***~~, and~~ The board shall give notice and hold a public hearing. After the ~~public~~ hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. While in executive session, the board shall not receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board, and the board may impose the penalty or punishment it deems necessary and appropriate, if any; provided however, the board shall not impose a penalty or punishment in excess of the action of the chief. No officer shall be removed or dismissed except as provided for in this section.
- (2) ***An appeal to the board of a suspension of a nonprobationary officer of less than forty (40) hours may be heard by the full board or any hearing officer secured by the board. If the appeal is heard by a hearing officer, all rules established by the board relating to appeals of disciplinary actions shall be applicable. After the hearing, the hearing officer shall complete and submit to the board, no later than thirty (30) days after the hearing, a written recommended order which shall include his findings of fact, conclusions of law, and recommended disposition of the appeal, which may include recommended penalties. The recommended order shall also include a statement advising the appealing officer and chief fully of their exception and appeal rights. A copy of the hearing officer's recommended order shall be sent to the appealing officer and chief. Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall consider the record including the recommended order in any exceptions duly filed to a recommended order, and accept and adopt or reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The final order of the board shall be in writing. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The board shall render a final order in an administrative hearing within thirty (30) days after receipt of the hearing officer's recommended order.***
- (3) (a) Every action of a dismissal, suspension, or ***demotion***~~reduction~~ made by the board shall be final, except that any person aggrieved may, within thirty (30) days after the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the consolidated local government police force merit board, and service shall be had on the chairman of the board. The appeal taken to the

Circuit Court shall be docketed by the clerk as a civil action *with appropriate judicial review of an administrative action or decision* ~~and shall be tried anew, as if no action had been rendered by the board.~~

- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.

Section 11. KRS 67C.325 is amended to read as follows:

Procedural due process shall be afforded to any police officer brought before the board. The officer shall be given a prompt hearing by the board, have an opportunity to confront his or her accusers, and have the privilege of presenting the board with evidence. The board shall have the power to issue subpoenas attested in the name of its chairman, to compel the attendance of witnesses, to compel the production of documents and other documentary evidence, and so far as practicable, conduct the hearing within the Kentucky Rules of Civil Procedure. Upon a showing of proper need, the board shall issue subpoenas to compel the attendance of witnesses, or to compel the production of documents and other documentary evidence for the benefits of the officer or the chief at the request of the officer or the chief. ~~Any officer not given a hearing within sixty (60) days of being charged shall be reinstated in full.~~

Section 12. KRS 67C.327 is amended to read as follows:

Upon the establishment of a consolidated local government *merit board*, the existing *or currently promulgated* promotional lists of the merit and civil service boards of the previously existing county and city of the first class governments shall remain in effect until their normal expiration date, *or no longer than two (2) years after the effective date of the ordinance required to be enacted by KRS 67C.303.*

Section 13. Whereas it is imperative to have in place employment and disciplinary procedures for police departments which will merge after the formation of a consolidated local government, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 18, 2003