

By: Menendez

H.B. No. 1648

A BILL TO BE ENTITLED

AN ACT

relating to the investigation of firefighters and police officers.

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

SECTION 1. Subchapter D, Chapter 143, Local Government Code, is amended by adding Section 143.0511 to read as follows:

Sec. 143.0511. INVESTIGATION OF FIRE FIGHTERS AND POLICE OFFICERS. (a) This section does not apply to a municipality to which Section 143.123 or 143.312 applies.

(b) In this section:

(1) "Complainant" means a person claiming to be the victim of misconduct by a fire fighter or police officer.

(2) "Investigation" means an administrative investigation, conducted by the municipality, of alleged misconduct by a fire fighter or police officer that could result in punitive action against that person.

(3) "Investigator" means an agent or employee of the municipality who is assigned to conduct an investigation.

(4) "Normally assigned working hours" includes those hours during which a fire fighter or police officer is actually at work or at the person's assigned place of work, but does not include any time when the person is off duty on authorized leave, including sick leave.

(5) "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, written

1 reprimand, or any combination of those actions.

2 (c) An investigator may interrogate a fire fighter or police
3 officer who is the subject of an investigation only during the fire
4 fighter's or police officer's normally assigned working hours
5 unless:

6 (1) the seriousness of the investigation, as
7 determined by the fire fighter's or police officer's department
8 head or the department head's designee, requires interrogation at
9 another time; and

10 (2) the fire fighter or police officer is compensated
11 for the interrogation time on an overtime basis.

12 (d) The department head may not consider work time missed
13 from regular duties by a fire fighter or police officer due to
14 participation in the conduct of an investigation in determining
15 whether to impose a punitive action or in determining the severity
16 of a punitive action.

17 (e) An investigator may not interrogate a fire fighter or
18 police officer who is the subject of an investigation or conduct any
19 part of the investigation at that person's home without that
20 person's permission.

21 (f) A person may not be assigned to conduct an investigation
22 if the person is the complainant, the ultimate decision-maker
23 regarding disciplinary action, or a person who has any personal
24 involvement regarding the alleged misconduct. A fire fighter or
25 police officer who is the subject of an investigation has the right
26 to inquire and, on inquiry, to be informed of the identities of each
27 investigator participating in an interrogation of the fire fighter

1 or police officer.

2 (g) Not less than 48 hours before an investigator begins the
3 initial interrogation of a fire fighter or police officer who is the
4 subject of an investigation, the investigator must inform the fire
5 fighter or police officer in writing of the allegations in the
6 complaint. An investigator may not interrogate a fire fighter or
7 police officer based on a complaint by a complainant who is not a
8 fire fighter or police officer unless the complainant verifies the
9 complaint in writing before a public officer who is authorized by
10 law to take statements under oath. In an investigation under this
11 subsection, an investigator may interrogate a fire fighter or
12 police officer about events or conduct reported by a witness who is
13 not a complainant without disclosing the name of the witness. An
14 interrogation may be based on a complaint from an anonymous
15 complainant if the departmental employee receiving the anonymous
16 complaint certifies in writing, under oath, that the complaint was
17 anonymous. This subsection does not apply to an on-the-scene
18 investigation that occurs immediately after an incident being
19 investigated, except that the fire fighter or police officer under
20 investigation must be furnished, as soon as practicable, a written
21 statement of the allegations in the complaint.

22 (h) An interrogation session of a fire fighter or police
23 officer who is the subject of an investigation may not be
24 unreasonably long. In determining reasonableness, the gravity and
25 complexity of the investigation must be considered. The
26 investigators shall allow reasonable interruptions to permit the
27 fire fighter or police officer to attend to personal physical

1 necessities.

2 (i) An investigator may not threaten a fire fighter or
3 police officer who is the subject of an investigation with punitive
4 action during an interrogation. An investigator may inform a fire
5 fighter or police officer that failure to answer truthfully
6 reasonable questions directly related to the investigation or to
7 cooperate fully in the conduct of the investigation may result in
8 punitive action.

9 (j) If prior notification of intent to record an
10 interrogation is given to the other party, either the investigator
11 or the fire fighter or police officer who is the subject of an
12 interrogation may record the interrogation.

13 (k) If an investigation does not result in punitive action
14 against a fire fighter or police officer but does result in a
15 written reprimand or an adverse finding or determination regarding
16 that person, the reprimand, finding, or determination may not be
17 placed in that person's personnel file unless the fire fighter or
18 police officer is first given an opportunity to read and sign the
19 document. If the fire fighter or police officer refuses to sign the
20 reprimand, finding, or determination, it may be placed in the
21 personnel file with a notation that the person refused to sign it.
22 A fire fighter or police officer may respond in writing to a
23 reprimand, finding, or determination that is placed in the person's
24 personnel file under this subsection by submitting a written
25 response to the department head not later than the 10th day after
26 the date the fire fighter or police officer is asked to sign the
27 document. The response shall be placed in the personnel file. A

1 fire fighter or police officer who receives a punitive action and
2 who elects not to appeal the action may file a written response as
3 prescribed by this subsection not later than the 10th day after the
4 date the person is given written notice of the punitive action from
5 the department head.

6 (1) A violation of this section may be considered by the
7 commission or hearing examiner during a disciplinary appeal hearing
8 if the violation substantially impaired the fire fighter's or
9 police officer's ability to defend against the allegations of
10 misconduct.

11 SECTION 2. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2009.