

## **BILL ANALYSIS**

H.B. 3357  
By: Miles  
Urban Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

As the population of Texas metropolitan areas grow, the tension between the lack of well-trained law enforcement officers and the rise in population has increased. Metropolitan areas have seen an increase in police complaints (substantiated and unsubstantiated) and numerous incidents of police brutality. In addition, police departments find it hard maintaining order within their departments while truly investigating allegations of police misconduct.

H.B.3357 amends the Local Government Code and adds a new chapter entitled Municipal Civilian Complaint Review Board to establish an independent review board in order to review complaints lodged against peace officers. This bill will allow the board to investigate allegations of excessive force and abuse of authority by peace officers employed by that municipality. Also, the board will have the authority to obtain statements from complainants, interview witnesses, and issue subpoenas.

Furthermore, the review board will be able to mediate complaints as an alternative to an investigation. The board will ultimately determine whether the complaints were substantiated, exonerated, unfounded, unsubstantiated or miscellaneous. If the determination of the board is substantiated the findings will be communicated to the peace officers employer along with recommendations of an appropriate disciplinary action.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Municipal Civilian Complaint Review Board in SECTION 1, under Section 143A.103 of this bill.

### **ANALYSIS**

**SECTION 1.** Subtitle A, Title 5, Local Government Code, is amended by adding Chapter 143A to read as follows:

#### **CHAPTER 143A. MUNICIPAL CIVILIAN COMPLAINT REVIEW BOARDS**

Sec. 143A.001. **APPLICABILITY.** This chapter applies only to a municipality with a population of two million or more. Sec. 143A.002. **DEFINITIONS.** In this chapter: (1) "Board" means a municipal civilian complaint review board. (2) "Peace officer" means an individual appointed or employed to serve as a peace officer for a municipality under Article 2.12, Code of Criminal Procedure, or other law.

Sec. 143A.003. **MUNICIPAL CIVILIAN COMPLAINT REVIEW BOARD.** A board is established in a municipality subject to this chapter to investigate allegations of peace officer misconduct as provided by this chapter.

#### **SUBCHAPTER B. MUNICIPAL CIVILIAN COMPLAINT REVIEW BOARD**

Sec. 143A.051. **COMPOSITION OF BOARD.** A board consists of five public members appointed as follows: (1) two members appointed by the presiding officer of the governing body of the municipality, one of whom must be appointed from a list of municipal residents submitted to the presiding officer by the governing body of the municipality; (2) one member appointed by the county judge of the county in which the municipality is primarily located; (3) one member appointed by the police chief of the municipal police department; and (4) one member appointed by the commissioners court of the county in which the municipality is primarily located.

Sec. 143A.052. **INELIGIBILITY.** A board member may not: (1) be a municipal employee; (2) hold any public office; or (3) have any experience as a law enforcement professional, including experience as a peace officer, a criminal investigator, a special agent, or a managerial

or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.

Sec. 143A.053. TERMS. Board members are appointed for two-year terms.

Sec. 143A.054. PRESIDING OFFICER. The presiding officer of the governing body of the municipality shall designate a board member as the presiding officer of the board to serve in that capacity at the pleasure of the presiding officer of the governing body of the municipality.

Sec. 143A.055. GROUNDS FOR REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from a board that a member: (1) is ineligible for membership under Section 143A.052; (2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or (3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of a board is not affected by the fact that it is taken when a ground for removal of a board member exists. (c) If the executive director of a board or another board member has knowledge that a potential ground for removal exists, the executive director or board member shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the presiding officer of the governing body of the municipality that a potential ground for removal exists. If the potential ground for removal involves the presiding officer of the board, the executive director or board member shall notify the next highest ranking officer of the board, who shall then notify the presiding officer of the governing body of the municipality that a potential ground for removal exists.

Sec. 143A.056. VACANCY. A vacancy on a board shall be filled for the unexpired term in the same manner as the original appointment.

Sec. 143A.057. COMPENSATION; EXPENSES. (a) A board member is entitled to a per diem of \$150 for each day the member engages in board business. The total per diem a board member may receive during a fiscal year may not exceed \$5,000. (b) A board member is entitled to reimbursement for actual and necessary expenses incurred in performing the official duties of the board.

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 143A.101. EXECUTIVE DIRECTOR. A board shall employ an executive director if necessary to administer the policies of the board.

Sec. 143A.102. PERSONNEL. A board may employ personnel as necessary to exercise its powers and fulfill its duties under this chapter.

Sec. 143A.103. RULES. A board may adopt rules as necessary to implement this chapter.

#### SUBCHAPTER D. INVESTIGATION OF COMPLAINTS

Sec. 143A.151. INVESTIGATION OF COMPLAINTS. (a) A board may investigate a complaint that alleges peace officer misconduct involving: (1) excessive use of force; or (2) abuse of authority, including the improper use of powers to threaten, intimidate, or otherwise mistreat a member of the public, threats of force, and unlawful acts, searches, and seizures. (b) A complaint may be filed under Section 143A.152 or initiated by a majority vote of the board.

Sec. 143A.152. REQUIREMENTS FOR COMPLAINT. (a) A complaint filed with a board under this chapter must: (1) be in writing; (2) allege the peace officer engaged in misconduct described by Section 143A.151(a); and (3) describe the alleged misconduct. (b) A person who files a complaint is not required to be the alleged victim of the misconduct.

Sec. 143A.153. INVESTIGATION OF COMPLAINT. A board shall forward each complaint filed with the board to the municipal attorney's office. The municipal attorney's office shall take such steps as are necessary to investigate the complaint, including: (1) obtaining a statement from the complainant, witness statements, and documentary evidence; and (2) interviewing witnesses and any peace officer who is the subject of the complaint.

Sec. 143A.154. COMPLAINT REVIEW PROCEDURE. A board shall: (1) develop a system to promptly and efficiently act on complaints filed with the board; (2) maintain information regarding: (A) the parties to a complaint; (B) the subject matter of the complaint; (C) the results of the investigation of the complaint; and (D) the disposition of the complaint; (3) make information available describing its procedures for complaint investigation and resolution; (4) take reasonable measures to ensure the confidentiality of all complainants; (5) periodically notify the parties to the complaint in writing of the status of the complaint until final disposition; and (6) provide the parties to the complaint a name, address, and telephone number of an individual to contact in order to give or obtain information regarding the complaint.

Sec. 143A.155. SUBPOENAS. (a) A board may issue a subpoena to compel the attendance of a witness or the production of any book, record, or other document reasonably necessary to

conduct an investigation under this chapter. A subpoena must relate to a matter under investigation by the board.

(b) If a person refuses to obey a subpoena issued under this section, the board may apply to a court for an order requiring that the person obey the subpoena. Failure to obey the court order is punishable as contempt.

Sec. 143A.156. **MEDIATION OF COMPLAINTS.** (a) As an alternative to an investigation and proposed disciplinary action, a board may offer to mediate a complaint filed with the board using a trained, experienced mediator. (b) The board shall establish procedures for mediating a complaint and guidelines for determining which complaints are appropriate for mediation.

Sec. 143A.157. **DISMISSAL OF COMPLAINT; GROUNDS FOR CLOSING INVESTIGATION.** A board may dismiss a complaint and close an investigation without reaching a final determination when the person who filed the complaint or the alleged victim of misconduct asks the office to withdraw the complaint.

Sec. 143A.158. **COMPLAINT DETERMINATION AFTER INVESTIGATION.** (a) After an investigation of a complaint is complete, the municipal attorney's office shall forward the investigation to the board or a panel of at least three board members. The board or panel shall review the case, including all evidence, and make a determination on each allegation in the complaint that has not been dismissed by the board or mediated. The board's determination must be made not later than six months after the date the board receives the complaint. (b) Except as provided by Subsection (c), the determination for each allegation in the complaint must be: (1) substantiated; (2) exonerated; (3) unfounded; (4) unsubstantiated; or (5) miscellaneous.

(c) The board must determine that "the person complained about remains unidentified" if the person's identity has not been discovered after the investigation. (d) In this section, a "substantiated" determination means that a preponderance of the evidence shows that the person who is the subject of the complaint committed the alleged misconduct. (e) In this section, an "exonerated" determination means that a preponderance of the evidence shows that the person who is the subject of the complaint engaged in the actions alleged in the complaint but that the actions were not misconduct because the person's actions were lawful and proper. (f) In this section, an "unfounded" determination means that a preponderance of the evidence shows that the person who is the subject of the complaint did not commit the alleged misconduct. (g) In this section, an "unsubstantiated" determination means that the available evidence was insufficient to reach a determination on a preponderance of the evidence of substantiated, exonerated, or unfounded. (h) In this section, "miscellaneous" means that a preponderance of the evidence shows that the person who is the subject of the complaint is no longer a peace officer.

Sec. 143A.159. **NOTICE OF BOARD'S DETERMINATION.** (a) The board shall notify the person who filed the complaint and each person who is the subject of the complaint of the board's determination.

(b) The board shall also notify the employer of the peace officer who is the subject of the complaint of the board's determination. If the board finds that a complaint is substantiated, the board may recommend an appropriate disciplinary action to the employer. If the peace officer's employer fails to take disciplinary action against the peace officer before the 30th day after the date the board notifies the employer of its determination, the board shall forward the case to the attorney representing the state in the prosecution of felonies for the jurisdiction in which the misconduct occurred.

**SECTION 2.** The initial members of a municipal civilian complaint review board shall be appointed as provided by Section 143A.051, Local Government Code, as added by this Act, not later than October 1, 2011.

**SECTION 3.** This Act takes effect September 1, 2011.

#### **EFFECTIVE DATE**

September 1, 2011