

By: Menendez

H.B. No. 43

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, 2011.