

By: Miles

H.B. No. 3357

A BILL TO BE ENTITLED

AN ACT

relating to municipal civilian complaint review boards.

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

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

SUBCHAPTER A. GENERAL PROVISIONS

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.

[Sections 143A.004-143A.050 reserved for expansion]

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

1 the governing body of the municipality, one of whom must be  
2 appointed from a list of municipal residents submitted to the  
3 presiding officer by the governing body of the municipality;

4 (2) one member appointed by the county judge of the  
5 county in which the municipality is primarily located;

6 (3) one member appointed by the police chief of the  
7 municipal police department; and

8 (4) one member appointed by the commissioners court of  
9 the county in which the municipality is primarily located.

10 Sec. 143A.052. INELIGIBILITY. A board member may not:

11 (1) be a municipal employee;

12 (2) hold any public office; or

13 (3) have any experience as a law enforcement  
14 professional, including experience as a peace officer, a criminal  
15 investigator, a special agent, or a managerial or supervisory  
16 employee who exercised substantial policy discretion on law  
17 enforcement matters, in a federal, state, or local law enforcement  
18 agency, other than experience as an attorney in a prosecutorial  
19 agency.

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

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

27 Sec. 143A.055. GROUNDS FOR REMOVAL OF BOARD MEMBER. (a) It

1 is a ground for removal from a board that a member:

2 (1) is ineligible for membership under Section  
3 143A.052;

4 (2) cannot, because of illness or disability,  
5 discharge the member's duties for a substantial part of the member's  
6 term; or

7 (3) is absent from more than half of the regularly  
8 scheduled board meetings that the member is eligible to attend  
9 during a calendar year without an excuse approved by a majority  
10 vote of the board.

11 (b) The validity of an action of a board is not affected by  
12 the fact that it is taken when a ground for removal of a board member  
13 exists.

14 (c) If the executive director of a board or another board  
15 member has knowledge that a potential ground for removal exists,  
16 the executive director or board member shall notify the presiding  
17 officer of the board of the potential ground. The presiding officer  
18 shall then notify the presiding officer of the governing body of the  
19 municipality that a potential ground for removal exists. If the  
20 potential ground for removal involves the presiding officer of the  
21 board, the executive director or board member shall notify the next  
22 highest ranking officer of the board, who shall then notify the  
23 presiding officer of the governing body of the municipality that a  
24 potential ground for removal exists.

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

1       Sec. 143A.057. COMPENSATION; EXPENSES. (a) A board member  
2 is entitled to a per diem of \$150 for each day the member engages in  
3 board business. The total per diem a board member may receive  
4 during a fiscal year may not exceed \$5,000.

5       (b) A board member is entitled to reimbursement for actual  
6 and necessary expenses incurred in performing the official duties  
7 of the board.

8       [Sections 143A.058-143A.100 reserved for expansion]

9               SUBCHAPTER C. GENERAL POWERS AND DUTIES

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

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

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

18       [Sections 143A.104-143A.150 reserved for expansion]

19               SUBCHAPTER D. INVESTIGATION OF COMPLAINTS

20       Sec. 143A.151. INVESTIGATION OF COMPLAINTS. (a) A board  
21 may investigate a complaint that alleges peace officer misconduct  
22 involving:

23               (1) excessive use of force; or

24               (2) abuse of authority, including the improper use of  
25 powers to threaten, intimidate, or otherwise mistreat a member of  
26 the public, threats of force, and unlawful acts, searches, and  
27 seizures.

1        (b) A complaint may be filed under Section 143A.152 or  
2 initiated by a majority vote of the board.

3        Sec. 143A.152. REQUIREMENTS FOR COMPLAINT. (a) A complaint  
4 filed with a board under this chapter must:

5            (1) be in writing;

6            (2) allege the peace officer engaged in misconduct  
7 described by Section 143A.151(a); and

8            (3) describe the alleged misconduct.

9        (b) A person who files a complaint is not required to be the  
10 alleged victim of the misconduct.

11        Sec. 143A.153. INVESTIGATION OF COMPLAINT. A board shall  
12 forward each complaint filed with the board to the municipal  
13 attorney's office. The municipal attorney's office shall take such  
14 steps as are necessary to investigate the complaint, including:

15            (1) obtaining a statement from the complainant,  
16 witness statements, and documentary evidence; and

17            (2) interviewing witnesses and any peace officer who  
18 is the subject of the complaint.

19        Sec. 143A.154. COMPLAINT REVIEW PROCEDURE. A board shall:

20            (1) develop a system to promptly and efficiently act  
21 on complaints filed with the board;

22            (2) maintain information regarding:

23                    (A) the parties to a complaint;

24                    (B) the subject matter of the complaint;

25                    (C) the results of the investigation of the  
26 complaint; and

27                    (D) the disposition of the complaint;

1           (3) make information available describing its  
2 procedures for complaint investigation and resolution;

3           (4) take reasonable measures to ensure the  
4 confidentiality of all complainants;

5           (5) periodically notify the parties to the complaint  
6 in writing of the status of the complaint until final disposition;  
7 and

8           (6) provide the parties to the complaint a name,  
9 address, and telephone number of an individual to contact in order  
10 to give or obtain information regarding the complaint.

11           Sec. 143A.155. SUBPOENAS. (a) A board may issue a subpoena  
12 to compel the attendance of a witness or the production of any book,  
13 record, or other document reasonably necessary to conduct an  
14 investigation under this chapter. A subpoena must relate to a  
15 matter under investigation by the board.

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

20           Sec. 143A.156. MEDIATION OF COMPLAINTS. (a) As an  
21 alternative to an investigation and proposed disciplinary action, a  
22 board may offer to mediate a complaint filed with the board using a  
23 trained, experienced mediator.

24           (b) The board shall establish procedures for mediating a  
25 complaint and guidelines for determining which complaints are  
26 appropriate for mediation.

27           Sec. 143A.157. DISMISSAL OF COMPLAINT; GROUNDS FOR CLOSING

1 INVESTIGATION. A board may dismiss a complaint and close an  
2 investigation without reaching a final determination when the  
3 person who filed the complaint or the alleged victim of misconduct  
4 asks the office to withdraw the complaint.

5 Sec. 143A.158. COMPLAINT DETERMINATION AFTER

6 INVESTIGATION. (a) After an investigation of a complaint is  
7 complete, the municipal attorney's office shall forward the  
8 investigation to the board or a panel of at least three board  
9 members. The board or panel shall review the case, including all  
10 evidence, and make a determination on each allegation in the  
11 complaint that has not been dismissed by the board or mediated. The  
12 board's determination must be made not later than six months after  
13 the date the board receives the complaint.

14 (b) Except as provided by Subsection (c), the determination  
15 for each allegation in the complaint must be:

- 16 (1) substantiated;
- 17 (2) exonerated;
- 18 (3) unfounded;
- 19 (4) unsubstantiated; or
- 20 (5) miscellaneous.

21 (c) The board must determine that "the person complained  
22 about remains unidentified" if the person's identity has not been  
23 discovered after the investigation.

24 (d) In this section, a "substantiated" determination means  
25 that a preponderance of the evidence shows that the person who is  
26 the subject of the complaint committed the alleged misconduct.

27 (e) In this section, an "exonerated" determination means

1 that a preponderance of the evidence shows that the person who is  
2 the subject of the complaint engaged in the actions alleged in the  
3 complaint but that the actions were not misconduct because the  
4 person's actions were lawful and proper.

5 (f) In this section, an "unfounded" determination means  
6 that a preponderance of the evidence shows that the person who is  
7 the subject of the complaint did not commit the alleged misconduct.

8 (g) In this section, an "unsubstantiated" determination  
9 means that the available evidence was insufficient to reach a  
10 determination on a preponderance of the evidence of substantiated,  
11 exonerated, or unfounded.

12 (h) In this section, "miscellaneous" means that a  
13 preponderance of the evidence shows that the person who is the  
14 subject of the complaint is no longer a peace officer.

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

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

1 jurisdiction in which the misconduct occurred.

2           SECTION 2. The initial members of a municipal civilian  
3 complaint review board shall be appointed as provided by Section  
4 143A.051, Local Government Code, as added by this Act, not later  
5 than October 1, 2011.

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