

By: Miles

H.B. No. 267

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 each 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. The 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 as a peace officer, a criminal
15 investigator, a special agent, or a managerial or supervisory
16 employee with substantial policy discretion on law enforcement
17 matters, in a federal, state, or local law enforcement agency,
18 other than as an attorney in a prosecutorial agency.

19 Sec. 143A.053. TERMS. A board member is appointed for a
20 two-year term.

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

26 Sec. 143A.055. GROUNDS FOR REMOVAL OF BOARD MEMBER. (a) A
27 board member may be removed from a board if the member:

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

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

6 (3) is absent from more than half of the regularly
7 scheduled board meetings during a calendar year without an excuse
8 approved by a majority vote of the board.

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

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

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

26 Sec. 143A.057. COMPENSATION; EXPENSES. (a) A board member
27 is entitled to a per diem of \$150 for each day the member engages in

1 board business. The total per diem a board member may receive
2 during a fiscal year may not exceed \$5,000.

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

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

7 SUBCHAPTER C. GENERAL POWERS AND DUTIES

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

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

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

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

17 SUBCHAPTER D. INVESTIGATION OF COMPLAINTS

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

21 (1) excessive use of force; or

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

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

1 Sec. 143A.152. REQUIREMENTS FOR COMPLAINT. (a) A person
2 may file a complaint with a board.

3 (b) A complaint must:

4 (1) be in writing;

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

7 (3) describe the alleged misconduct.

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

10 Sec. 143A.153. INVESTIGATION OF COMPLAINT. (a) A board
11 shall forward each complaint filed with the board to the municipal
12 attorney. The municipal attorney shall investigate the complaint
13 as necessary, including by:

14 (1) interviewing and obtaining a statement from the
15 complainant, each peace officer who is the subject of the
16 complaint, and each witness to the alleged misconduct; and

17 (2) obtaining any documentary or other evidence
18 relevant to the investigation.

19 (b) The municipal attorney shall complete the investigation
20 of a complaint not later than the 120th day after the date the
21 municipal attorney received the complaint from the board.

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

23 (1) develop a system to promptly and efficiently act
24 on a complaint filed with the board;

25 (2) maintain information regarding:

26 (A) the parties to each complaint;

27 (B) the subject matter of each complaint;

1 (C) the results of the investigation of each
2 complaint; and

3 (D) the disposition of each complaint;

4 (3) make information available describing the board's
5 procedures for complaint investigation and resolution;

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

8 (5) periodically notify the parties to the complaint
9 in writing of the status of the complaint; and

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

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

18 (b) If a person refuses to comply with a subpoena issued
19 under this section, the board may apply to a court for an order
20 requiring the person to comply with the subpoena. Failure to comply
21 with the court order is punishable as contempt.

22 Sec. 143A.156. DISMISSAL OF COMPLAINT; GROUNDS FOR CLOSING
23 INVESTIGATION. A board may dismiss a complaint and close an
24 investigation without reaching a final determination if the person
25 who filed the complaint or the alleged victim of misconduct
26 requests that the board dismiss the complaint.

27 Sec. 143A.157. COMPLAINT DETERMINATION AFTER

1 INVESTIGATION. (a) After an investigation of a complaint is
2 complete, the municipal attorney shall forward the investigation to
3 the board or a panel of at least three board members. The board or
4 panel shall review the case, including all evidence, and make a
5 determination on each allegation in the complaint that has not been
6 dismissed by the board. The determination of the board or panel
7 must be made not later than the 180th day after the date the board
8 received the complaint.

9 (b) The board shall state the determination of the board
10 regarding each allegation in a complaint as:

11 (1) substantiated if the board finds by a
12 preponderance of the evidence that the person who is the subject of
13 the complaint committed the alleged misconduct;

14 (2) exonerated if the board finds by a preponderance
15 of the evidence that the person who is the subject of the complaint
16 engaged in the action alleged in the complaint but the action was
17 not misconduct because the action was lawful and proper;

18 (3) unfounded if the board finds by a preponderance of
19 the evidence that the person who is the subject of the complaint did
20 not commit the alleged misconduct;

21 (4) unsubstantiated if the board finds that the
22 available evidence is insufficient to make a finding by a
23 preponderance of the evidence under Subdivision (1), (2), or (3);
24 or

25 (5) nonactionable if the board finds that the person
26 who is the subject of the complaint is no longer a peace officer or
27 cannot be identified.

1 Sec. 143A.158. NOTICE OF BOARD'S DETERMINATION. (a) A
2 board shall notify the parties to the complaint of the board's
3 determination.

4 (b) The board shall notify the employer of the peace officer
5 who is the subject of the complaint of the board's determination.
6 If the board finds that a complaint is substantiated, the board may
7 recommend an appropriate disciplinary action to the employer. If
8 the employer fails to take disciplinary action against the peace
9 officer before the 30th day after the date the board notifies the
10 employer of the board's determination, the board shall forward the
11 case to the attorney representing the state or the appropriate
12 United States attorney.

13 SECTION 2. (a) The initial members of a municipal civilian
14 complaint review board shall be appointed as provided by Section
15 143A.051, Local Government Code, as added by this Act, not later
16 than October 1, 2013.

17 (b) The change in law made by Chapter 143A, Local Government
18 Code, as added by this Act, applies only to misconduct that occurs
19 on or after the effective date of this Act. Misconduct that occurs
20 before the effective date of this Act is covered by the law in
21 effect when the misconduct occurred, and the former law is
22 continued in effect for that purpose.

23 SECTION 3. This Act takes effect September 1, 2013.