

By: Reynolds

H.B. No. 44

A BILL TO BE ENTITLED

AN ACT

relating to municipal civilian complaint review boards in certain municipalities.

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 IN CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 143A.001. APPLICABILITY. This chapter applies only to a municipality with a population of 500,000 or more.

Sec. 143A.002. DEFINITIONS. In this chapter:

(1) "Board" means a municipal civilian complaint review board.

(2) "Peace officer" means a peace officer described by Article 2.12, Code of Criminal Procedure, appointed or employed to serve as a peace officer for a municipality.

Sec. 143A.003. MUNICIPAL CIVILIAN COMPLAINT REVIEW BOARD.

A board is established in each municipality subject to this chapter to investigate complaints alleging peace officer misconduct.

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 wholly or 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 wholly or primarily
10 located.

11 Sec. 143A.052. INELIGIBILITY. A person is ineligible to
12 serve as a board member if the person:

13 (1) is a municipal employee;

14 (2) holds a public office; or

15 (3) has experience as a law enforcement professional,

16 including as:

17 (A) a peace officer;

18 (B) a criminal investigator;

19 (C) a special agent; or

20 (D) a managerial or supervisory employee with

21 substantial policy discretion on law enforcement matters in a
22 federal, state, or local law enforcement agency, other than as an
23 attorney in a prosecutorial agency.

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

26 Sec. 143A.054. PRESIDING OFFICER. The presiding officer of
27 the governing body of the municipality shall designate a board

1 member to serve as the presiding officer of the board at the
2 pleasure of the presiding officer of the governing body of the
3 municipality.

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

6 (1) is ineligible for membership under Section
7 143A.052;

8 (2) cannot discharge the member's duties for a
9 substantial part of the member's term because of illness or
10 disability; or

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

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

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

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

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

8 (b) A board member is entitled to reimbursement for actual
9 and necessary expenses incurred in performing the duties of the
10 board.

11 SUBCHAPTER C. GENERAL POWERS AND DUTIES

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

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

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

20 SUBCHAPTER D. INVESTIGATION OF COMPLAINTS

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

24 (1) excessive use of force;
25 (2) improper use of power to threaten, intimidate, or
26 otherwise mistreat a member of the public;

27 (3) a threat of force;

1 (4) an unlawful act, search, or seizure; or

2 (5) other abuses of authority.

3 Sec. 143A.152. FILING OR BOARD INITIATION OF COMPLAINT. A
4 complaint may be:

5 (1) filed under Section 143A.153; or

6 (2) initiated by a majority vote of the board.

7 Sec. 143A.153. COMPLAINT ALLEGING MISCONDUCT. (a) A person
8 may file a complaint with a board alleging peace officer
9 misconduct.

10 (b) A complaint must:

11 (1) be in writing;

12 (2) allege the peace officer engaged in misconduct
13 described by Section 143A.151; and

14 (3) describe the alleged misconduct.

15 (c) A person may file a complaint regardless of whether the
16 person is the alleged victim of the misconduct.

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

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

20 (2) maintain information regarding:

21 (A) the parties to each complaint;

22 (B) the subject matter of each complaint;

23 (C) the results of the investigation of a
24 complaint; and

25 (D) the disposition of each complaint;

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

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

3 (5) periodically notify the parties to the complaint
4 in writing of the status of the complaint; and

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

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

13 (b) If a person refuses to comply with a subpoena issued
14 under this section, the board may apply to a court for an order to
15 compel the person to comply with the subpoena. Failure to comply
16 with the court order is punishable as contempt.

17 Sec. 143A.156. DISMISSAL OF COMPLAINT; GROUNDS FOR CLOSING
18 INVESTIGATION. A board may dismiss a complaint and close an
19 investigation without reaching a final determination if the person
20 who filed the complaint or the alleged victim of misconduct
21 requests that the board dismiss the complaint.

22 Sec. 143A.157. INVESTIGATION OF COMPLAINT BY MUNICIPAL
23 ATTORNEY. (a) A board shall forward each complaint filed with the
24 board to the municipal attorney.

25 (b) The municipal attorney shall investigate the complaint
26 by:

27 (1) interviewing and obtaining a statement from:

- 1 (A) the complainant;
- 2 (B) each peace officer who is the subject of the
- 3 complaint; and
- 4 (C) each witness to the alleged misconduct; and
- 5 (2) obtaining any documentary or other evidence
- 6 relevant to the investigation.

7 (c) The municipal attorney shall complete the investigation

8 of a complaint not later than the 120th day after the date the

9 municipal attorney receives the complaint from the board.

10 Sec. 143A.158. COMPLAINT DETERMINATION AFTER

11 INVESTIGATION. (a) After an investigation of a complaint is

12 complete, the municipal attorney shall forward the results of the

13 investigation to the board or a panel of at least three board

14 members. The board or panel shall review the case and make a

15 determination on each allegation in the complaint that has not been

16 dismissed by the board. The determination of the board or panel

17 must be made not later than the 180th day after the date the board

18 receives the complaint.

19 (b) The board shall state the board's determination

20 regarding each allegation in a complaint as:

21 (1) substantiated if the board finds by a

22 preponderance of the evidence that the person who is the subject of

23 the complaint committed the alleged misconduct;

24 (2) exonerated if the board finds by a preponderance

25 of the evidence that the person who is the subject of the complaint

26 engaged in the action alleged in the complaint but the action was

27 not misconduct because the action was lawful and proper;

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

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

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

11 Sec. 143A.159. NOTICE OF BOARD'S DETERMINATION. (a) A
12 board shall notify the parties to the complaint of the board's
13 determination.

14 (b) The board shall notify the employer of the peace officer
15 who is the subject of the complaint of the board's determination.
16 If the board finds that a complaint is substantiated, the board may
17 recommend an appropriate disciplinary action to the employer. If
18 the employer fails to take disciplinary action against the peace
19 officer before the 30th day after the date the board notifies the
20 employer of the board's determination, the board shall forward the
21 case to the attorney representing the state or to the appropriate
22 United States attorney.

23 SECTION 2. The initial members of a municipal civilian
24 complaint review board shall be appointed as provided by Section
25 143A.051, Local Government Code, as added by this Act, not later
26 than January 1, 2022.

27 SECTION 3. The change in law made by Chapter 143A, Local

1 Government Code, as added by this Act, applies only to misconduct
2 that occurs on or after January 1, 2022. Misconduct that occurs
3 before January 1, 2022, is covered by the law in effect when the
4 misconduct occurred, and the former law is continued in effect for
5 that purpose.

6 SECTION 4. This Act takes effect December 1, 2021.