By:  Reynolds H.B. No. 61

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of law enforcement oversight.

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

SECTION 1.  Subtitle B, Title 4, Government Code, is amended by adding Chapter 426 to read as follows:

CHAPTER 426. OFFICE OF LAW ENFORCEMENT OVERSIGHT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 426.001.  DEFINITIONS. In this chapter:

(1)  "Director" means the individual appointed under this chapter as director for the office.

(2)  "Office" means the office of law enforcement oversight.

Sec. 426.002.  ESTABLISHMENT; PURPOSE. The office is a state agency established for the purpose of monitoring the operations of law enforcement agencies in this state and the use of force practices of those agencies.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 426.051.  APPOINTMENT OF DIRECTOR. (a) The governor shall appoint, with the advice and consent of the senate, a person to serve as director from a list of persons recommended by the standing committee of the house of representatives having primary jurisdiction over criminal justice matters.

(b)  The director serves a two-year term.

Sec. 426.052.  ASSISTANTS. The director may appoint assistants to perform, under the direction of the director, the same duties and to exercise the same powers as the director.

Sec. 426.053.  CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b)  A person may not be the director and may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1)  the person is an officer, employee, or paid consultant of a Texas trade association in the field of law enforcement; or

(2)  the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of law enforcement.

(c)  A person may not be the director or act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the office's operation.

Sec. 426.054.  REPORT. The director shall prepare and submit to the governor, the lieutenant governor, and each member of the legislature:

(1)  periodic reports that evaluate systemic issues affecting law enforcement agencies in this state; and

(2)  an annual report that describes:

(A)  the work of the director and office;

(B)  the results of any review or investigation undertaken by the office; and

(C)  any recommendations that the director has regarding:

(i)  the duties of the director; or

(ii)  the operations of law enforcement agencies in this state.

Sec. 426.055.  PROMOTION OF AWARENESS. The office shall promote awareness among the public regarding:

(1)  how the office may be contacted;

(2)  the purpose of the office; and

(3)  the services the office provides.

Sec. 426.056.  RULEMAKING AUTHORITY. The office by rule shall establish policies and procedures for the operations of the office, including procedures for receiving and reviewing complaints under this chapter.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 426.101.  POWERS AND DUTIES. (a) The director shall:

(1)  review the complaints received by the office regarding the use of force by peace officers of law enforcement agencies;

(2)  if the director determines that, based on complaints and other evidence, there is a pattern of excessive force at a law enforcement agency, conduct an investigation into the agency's use of force practices; and

(3)  if the investigation described by Subdivision (2) substantiates the alleged pattern of excessive force, request the appropriate district or county attorney to bring an action under this chapter to institute reforms to the agency's use of force practices.

(b)  In making the determination described by Subsection (a)(2), the director may contact or consult with an officer or employee of a law enforcement agency, a complainant, or any other individual.

Sec. 426.102.  ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL ENTITIES. A law enforcement agency shall allow the office access to the agency's records relating to an investigation conducted under this chapter. In allowing access to records under this section, the law enforcement agency shall fully cooperate and collaborate with the office in a prompt manner in order for the office to carry out its duties and improve the agency's operations and conditions.

Sec. 426.103.  ACCESS TO INFORMATION OF PRIVATE ENTITIES. (a) The director may subpoena the records of a private entity that relate to a complaint the office is investigating.

(b)  A subpoena issued under this section may be served personally or by certified mail and must specify a reasonable return date for providing the sought records.

(c)  If a person fails to comply with the subpoena, the office, acting through the appropriate district attorney or county attorney, may bring an action to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish for contempt a person who fails to obey the court order.

(d)  Before the return date specified by the subpoena, the person receiving the subpoena may, in a district court in Travis County, petition for an order to modify or quash the subpoena.

Sec. 426.104.  ACCESS TO FACILITIES, RECORDS, AND PERSONNEL. The office may inspect or review without notice any part of a facility of a law enforcement agency under investigation or any operation, policy, procedure, record, or log of the agency relating to:

(1)  a complaint received by the office;

(2)  the use of force against an individual;

(3)  the internal investigations process of the agency; and

(4)  employee or officer recruitment, training, supervision, or discipline.

SUBCHAPTER D. ENFORCEMENT

Sec. 426.151.  ACTION AGAINST LAW ENFORCEMENT AGENCY. (a) If after an investigation the director determines there is a pattern of excessive force at a law enforcement agency, the director shall request the appropriate district or county attorney to bring an action against the agency for:

(1)  appropriate equitable relief, including authority for the office to require and monitor any changes to policies, procedures, and other measures necessary to end, to the extent practicable, the use of excessive force by the peace officers of the law enforcement agency; or

(2)  the appointment of the office as receiver of the law enforcement agency for the purpose of instituting the changes described by Subdivision (1).

(b)  The office shall assist the district or county attorney in prosecuting the action, as requested by the district or county attorney.

(c)  Sovereign or governmental immunity, as applicable, is waived and abolished only to the extent necessary to enforce this chapter.

SECTION 2.  As soon as practicable after the effective date of this Act, the governor shall appoint the initial director of the office of law enforcement oversight under Chapter 426, Government Code, as added by this Act.

SECTION 3.  This Act takes effect on the 91st day after the last day of the legislative session.