By:  Menéndez S.B. No. 2060

A BILL TO BE ENTITLED

AN ACT

relating to creating an independent ombudsman within the Texas Military Department.

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

SECTION 1.  Section 437.003, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  The governor, with the advice and consent of the senate, shall appoint an ombudsman to a two-year term expiring February 1 of each odd-numbered year. The ombudsman acts independently of the department in the performance of the ombudsman's powers and duties under this chapter and is subordinate only to the governor in matters related to those duties.

SECTION 2.  Subchapter B, Chapter 437, Government Code, is amended by adding Sections 437.064, 437.065, and 437.066 to read as follows:

Sec. 437.064.  OMBUDSMAN: ADMINISTRATIVE ATTACHMENT; POWERS AND DUTIES. (a) The ombudsman is administratively attached to the department. The department shall provide office space and administrative support services to the ombudsman.

(b)  The department shall establish procedures to allow a service member or department employee to communicate with the ombudsman regarding a power or duty of the ombudsman. The communication is confidential and privileged.

(c)  The ombudsman may:

(1)  receive complaints, including anonymous complaints, alleging sexual harassment, sexual assault, assault, and other wrongful conduct by a service member or department employee;

(2)  investigate a submitted complaint;

(3)  access department records and facilities related to a submitted complaint;

(4)  subpoena the records of a private entity related to a submitted complaint;

(5)  as the ombudsman determines appropriate, refer a complaint for investigation as a criminal charge or specification under Chapter 432;

(6)  track complaints through any disciplinary or criminal process against the respondent and provide assistance to the complainant through the process; and

(7)  review a criminal investigation conducted by the department to:

(A)  ensure the investigation was conducted in an accurate, unbiased, and thorough manner; and

(B)  determine whether a pattern of complaints exists suggesting that an issue affects more than one service member or department employee.

(d)  A complaint submitted to the ombudsman and any investigation conducted by the ombudsman under this chapter are independent of the system established under Chapter 432.

(e)  Notwithstanding Subsection (c), the ombudsman may not conduct an investigation of a complaint that is subject to an ongoing investigation under Chapter 432.

Sec. 437.065.  CONFIDENTIALITY OF INFORMATION SUBMITTED TO OMBUDSMAN. (a) Except as provided by Subsection (b), the name, address, and other personally identifiable information of a person who files a complaint with the ombudsman, information generated in the course of an investigation of a complaint, and confidential records obtained by the ombudsman are confidential and not subject to disclosure under Chapter 552.

(b)  Information and records, other than confidential information and records concerning a pending investigation or criminal action under Chapter 432 or other law, may be disclosed to an appropriate person if the ombudsman determines that disclosure is:

(1)  in the public interest;

(2)  necessary to enable the ombudsman to perform a duty under this chapter; or

(3)  necessary to prevent an assault or sexual assault of a service member or department employee.

Sec. 437.066.  PARTNERSHIP WITH THE TEXAS DEPARTMENT OF PUBLIC SAFETY. At the request of the service member the Texas Military Department shall work with the Texas Rangers Division of the Texas Department of Public Safety in referring the case to the jurisdiction of the United States Department of Justice, Office of the United States Attorney. The department shall establish procedures of the referral process between the department, the Texas Rangers, and the United States Department of Justice, Office of the United States Attorney.

Sec. 437.067.  OMBUDSMAN ANNUAL REPORT. Not later than February 1 of each year, the ombudsman shall prepare and submit to the governor, the lieutenant governor, the state auditor, and each member of the legislature an annual report on the work of the ombudsman during the preceding calendar year. The report must include:

(1)  the results of any review or investigation undertaken by the ombudsman, subject to the confidentiality provisions of this subchapter; and

(2)  any recommendations of the ombudsman regarding the duties of the ombudsman or the operations of the department.

SECTION 3.  As soon as practicable after the effective date of this Act, the governor shall appoint an initial ombudsman for the Texas Military Department as required by Section 437.003(a-1), Government Code, as added by this Act, to a term expiring February 1, 2023.

SECTION 4.  This Act takes effect September 1, 2021.