

By: Thierry

H.B. No. 4005

A BILL TO BE ENTITLED

AN ACT

relating to civilian complaint review boards in certain municipalities and counties.

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

SECTION 1. Subtitle C, Title 5, Local Government Code, is amended by adding Chapter 179 to read as follows:

CHAPTER 179. CIVILIAN COMPLAINT REVIEW BOARDS IN CERTAIN MUNICIPALITIES AND COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 179.001. APPLICABILITY. This chapter applies only to:

(1) a municipality with a population of two million or more; and

(2) a county with a population of 3.3 million or more.

Sec. 179.002. DEFINITIONS. In this chapter:

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

(2) "Peace officer" means an individual appointed or employed to serve as a peace officer for a municipality or county under Article 2.12, Code of Criminal Procedure, or other law.

Sec. 179.003. CIVILIAN COMPLAINT REVIEW BOARD. A board is established in each municipality and in each county subject to this chapter to investigate allegations of peace officer misconduct as provided by this chapter.

SUBCHAPTER B. CIVILIAN COMPLAINT REVIEW BOARD

Sec. 179.051. COMPOSITION OF BOARD. (a) A municipal board

consists of five public members appointed as follows:

(1) two members appointed by the presiding officer of the governing body of the municipality, one of whom must be appointed from a list of municipal residents submitted to the presiding officer by the governing body of the municipality;

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

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

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

(b) A county board consists of five public members appointed as follows:

(1) two members appointed by the county judge of the county;

(2) one member appointed by the sheriff of the county; and

(3) two members appointed by the commissioners court of the county.

Sec. 179.052. INELIGIBILITY. A board member may not:

(1) be a municipal or county employee;

(2) hold any public office; or

(3) have any experience as a law enforcement professional, including as a peace officer, a criminal investigator, a special agent, or a managerial or supervisory employee with substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency,

1 other than as an attorney in a prosecutorial agency.

2 Sec. 179.053. TERMS. A board member is appointed for a  
3 two-year term.

4 Sec. 179.054. PRESIDING OFFICER. The presiding officer of  
5 the governing body of the municipality or county judge of the  
6 county, as applicable, shall designate a board member as the  
7 presiding officer of the board to serve in that capacity at the  
8 pleasure of the presiding officer of the governing body of the  
9 municipality or county judge of the county, as applicable.

10 Sec. 179.055. GROUNDS FOR REMOVAL OF BOARD MEMBER. (a) A  
11 board member may be removed from a board if the member:

12 (1) is ineligible for membership under Section  
13 179.052;

14 (2) cannot discharge the member's duties for a  
15 substantial part of the member's term because of illness or  
16 disability; or

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

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

23 (c) If the executive director of a board or another board  
24 member has knowledge that a potential ground for removal exists,  
25 the executive director or board member shall notify the presiding  
26 officer of the board of the potential ground. The presiding officer  
27 shall then notify the presiding officer of the governing body of the

1 municipality or county judge of the county, as applicable, that a  
2 potential ground for removal exists. If the potential ground for  
3 removal involves the presiding officer of the board, the executive  
4 director or board member shall notify the next highest ranking  
5 officer of the board, who shall then notify the presiding officer of  
6 the governing body of the municipality or county judge of the  
7 county, as applicable, that a potential ground for removal exists.

8 Sec. 179.056. VACANCY. A vacancy on a board shall be filled  
9 for the unexpired term in the same manner as the original  
10 appointment.

11 Sec. 179.057. COMPENSATION; EXPENSES. (a) A board member  
12 is entitled to a per diem of \$150 for each day the member engages in  
13 board business. The total per diem a board member may receive  
14 during a fiscal year may not exceed \$5,000.

15 (b) A board member is entitled to reimbursement for actual  
16 and necessary expenses incurred in performing the official duties  
17 of the board.

18 SUBCHAPTER C. GENERAL POWERS AND DUTIES

19 Sec. 179.101. EXECUTIVE DIRECTOR. A board shall employ an  
20 executive director if necessary to administer the policies of the  
21 board.

22 Sec. 179.102. PERSONNEL. A board may employ personnel as  
23 necessary to exercise its powers and fulfill its duties under this  
24 chapter.

25 Sec. 179.103. RULES. A board may adopt rules as necessary  
26 to implement this chapter.

27 SUBCHAPTER D. INVESTIGATION OF COMPLAINTS

1       Sec. 179.151. INVESTIGATION OF COMPLAINTS. (a) A board may  
2 investigate a complaint that alleges peace officer misconduct  
3 involving:

4               (1) excessive use of force; or  
5               (2) abuse of authority, including the improper use of  
6 power to threaten, intimidate, or otherwise mistreat a member of  
7 the public, threats of force, and unlawful acts, searches, and  
8 seizures.

9       (b) A complaint may be filed under Section 179.152 or  
10 initiated by a majority vote of the board.

11       Sec. 179.152. COMPLAINT ALLEGING MISCONDUCT. (a) A person  
12 may file a complaint with a board alleging peace officer  
13 misconduct.

14       (b) A complaint must:  
15               (1) be in writing;  
16               (2) allege the peace officer engaged in misconduct  
17 described by Section 179.151(a); and  
18               (3) describe the alleged misconduct.

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

21       Sec. 179.153. INVESTIGATION OF COMPLAINT. (a) A board  
22 shall forward each complaint filed with the board to the municipal  
23 attorney or county attorney, as applicable. The municipal attorney  
24 or county attorney, as applicable, shall investigate the complaint  
25 as necessary, including by:

26               (1) interviewing and obtaining a statement from the  
27 complainant, each peace officer who is the subject of the

1 complaint, and each witness to the alleged misconduct; and

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

4 (b) The municipal attorney or county attorney, as  
5 applicable, shall complete the investigation of a complaint not  
6 later than the 120th day after the date the municipal attorney or  
7 county attorney received the complaint from the board.

8 Sec. 179.154. COMPLAINT REVIEW PROCEDURE. A board shall:

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

11 (2) maintain information regarding:

12 (A) the parties to each complaint;

13 (B) the subject matter of each complaint;

14 (C) the results of the investigation of each  
15 complaint; and

16 (D) the disposition of each complaint;

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

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

21 (5) periodically notify the parties to the complaint  
22 in writing of the status of the complaint; and

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

26 Sec. 179.155. SUBPOENAS. (a) A board may issue a subpoena  
27 to compel the attendance of a witness or the production of any book,

1 record, or other document reasonably necessary to conduct an  
2 investigation. A subpoena must relate to a matter under  
3 investigation by the board.

4 (b) If a person refuses to comply with a subpoena issued  
5 under this section, the board may apply to a court for an order  
6 requiring the person to comply with the subpoena. Failure to comply  
7 with the court order is punishable as contempt.

8 Sec. 179.156. DISMISSAL OF COMPLAINT; GROUNDS FOR CLOSING  
9 INVESTIGATION. A board may dismiss a complaint and close an  
10 investigation without reaching a final determination if the person  
11 who filed the complaint or the alleged victim of misconduct  
12 requests that the board dismiss the complaint.

13 Sec. 179.157. COMPLAINT DETERMINATION AFTER INVESTIGATION.  
14 (a) After an investigation of a complaint is complete, the  
15 municipal attorney or county attorney, as applicable, shall forward  
16 the investigation to the board or a panel of at least three board  
17 members. The board or panel shall review the case, including all  
18 evidence, and make a determination on each allegation in the  
19 complaint that has not been dismissed by the board. The  
20 determination of the board or panel must be made not later than the  
21 180th day after the date the board received the complaint.

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

24 (1) substantiated if the board finds by a  
25 preponderance of the evidence that the person who is the subject of  
26 the complaint committed the alleged misconduct;

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

1 of the evidence that the person who is the subject of the complaint  
2 engaged in the action alleged in the complaint but the action was  
3 not misconduct because the action was lawful and proper;

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

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

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

14 Sec. 179.158. NOTICE OF BOARD'S DETERMINATION. (a) A board  
15 shall notify the parties to the complaint of the board's  
16 determination.

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

26 SECTION 2. (a) The initial members of a civilian complaint  
27 review board shall be appointed as provided by Section 179.051,



1 Local Government Code, as added by this Act, not later than October  
2 1, 2017.

3 (b) The change in law made by Chapter 179, Local Government  
4 Code, as added by this Act, applies only to misconduct that occurs  
5 on or after October 1, 2017. Misconduct that occurs before October  
6 1, 2017, is covered by the law in effect when the misconduct  
7 occurred, and the former law is continued in effect for that  
8 purpose.

9 SECTION 3. This Act takes effect September 1, 2017.