

**SUBJECT:** Mediation procedures for the Houston Police Department

**COMMITTEE:** Urban Affairs — favorable, without amendment

**VOTE:** 5 ayes — Van Arsdale, Bailey, Edwards, Hunter, Wong  
0 nays  
2 absent — Talton, Menendez

**WITNESSES:** For — Mark Clark, Houston Police Officers’ Union; Craig Ferrell Jr., City of Houston and Houston Police Department  
Against — None

**BACKGROUND:** Local Government Code, Chapter 143, subchapter G, governs the municipal civil service in a city with a population of 1.5 million or more (currently only Houston). Under this section, Houston is authorized to enter into a “meet and confer” agreement with its police department.

**DIGEST:** HB 1189 would amend Local Government Code, Chapter 143, subchapter G, to authorize the head of the Houston Police Department to develop and implement an alternative dispute-resolution program to refer to mediation certain disputes regarding police officers.

The bill would establish deadlines for steps in the mediation process. The conduct and demeanor of the mediator and the parties during mediation would be confidential. Letters, memoranda, documents, notes, or other communications relevant to the dispute and made between the mediator and parties or between the parties would be confidential and could not be disclosed unless all parties agreed, and would be admissible and discoverable in a separate proceeding only if they were admissible and discoverable independent of the mediation.

These restrictions would not apply to a final written agreement resulting from the mediation to which the police department or the city was a signatory. Information in the final written agreement would be subject to required

disclosure, excepted from disclosure, or confidential in accordance with the Open Records Act and other law.

If HB 1189 conflicted with other legal requirements for disclosure of communications or materials, the issue of confidentiality could be presented to a district court to determine whether the communications or materials warranted a court's protective order or whether they were subject to disclosure. Mediators could not be required to testify in a proceeding concerning information arising out of the mediation.

Except for any conflict with the bill, alternative dispute-resolution procedures in the Civil Practice and Remedies Code and police department rules would apply to a mediation conducted under HB 1189. Except for any conflict with the bill, alternative dispute-resolution procedures for use by governmental bodies in the Government Code would apply to the communications, records, conduct, and demeanor of the mediator and the parties. Local Government Code notice requirements about certain meetings or hearings would not apply to meetings or hearings conducted under HB 1189.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 1189 would allow Houston and the city's police department to statutorily expand and formalize its mediation programs. The police department has been using mediation successfully as an option in disputes between department employees and would like to expand its use. HB 1189 would facilitate mediation in appropriate situations, such as citizen-officer disputes. This would give the department an additional tool to handle complaints and the flexibility to address each situation as needed. Mediation can save time and money and lead to greater satisfaction with the resolution of complaints.

Placing the mediation procedures in statute would enable the public and police officers to know how the process would work. No citizen would have to enter the mediation process, and no one would have to accept its decisions. If a citizen did not want to go to mediation or both parties did not agree to a proposed resolution, a complaint would return to the standard complaint process used by the department.

The restrictions that HB 1189 would place on information from mediation are standard procedures and should not raise concerns about inhibiting the ability of the department's administration to make promotion decisions. During a mediation, it is standard practice not to make information public during the intermediate stages but to allow the final resolutions to be public.

Currently, these provisions of HB 1189 are present in the "meet and confer" agreement between the City of Houston and the Houston Police Department, and both parties agree to these policies. Unless HB 1189 is enacted, there is a danger that these reasonable and mutually agreed-upon provisions could be left out of a future "meet and confer" agreement.

**OPPONENTS  
SAY:**

HB 1189 would codify a process that is unnecessary and gives too much protection to Houston's police officers. When disputes arise about officers' performance, the officers already have several avenues of appeals unavailable to other public or private employees. Mediation is best used for disputes that otherwise would end in litigation, and it could be inappropriate and expensive for employment disputes.

HB 1189 also is unnecessary because a mediation procedure has been approved as part of an agreement between the city's administration, the police department's administration, and the officers' unions, so there is no need to codify it.

The restrictions that HB 1189 would place on mediators and information from mediation could make it more difficult for the public to get information about complaints and more difficult for the police department's administration to sustain a case that an officer deserved to be passed over for promotion.

**NOTES:**

A companion bill, SB 1692 by Gallegos, has been referred to the Senate Intergovernmental Relations Committee.

In 2001, an identical bill, SB 1179 by Gallegos and Whitmire, was passed by the Senate, reported favorably by the House Urban Affairs Committee, and placed on the General State Calendar in the House, where it remained pending until the end of session.