

- SUBJECT:** Requiring investigation before disciplining a peace officer or fire fighter
- COMMITTEE:** Urban Affairs — favorable, without amendment
- VOTE:** 6 ayes — Talton, Wong, A. Allen, Bailey, Blake, Rodriguez
0 nays
1 absent — Menendez
- WITNESSES:** For — Ronald DeLord, Combined Law Enforcement Associations of Texas; Russell Travis, Williamson County Sheriff's Association
Against — None
On — James Jones, Houston Police Department
- BACKGROUND:** Government Code, chap. 614, subchap. B states that when a complaint is filed against a police officer or fire fighter, the police officer or fire fighter in question must receive a written copy of the complaint signed by the complainant before disciplinary action may be taken against him. The subchapter applies to state law enforcement officers and local police officers and fire fighters who are at-will employees not covered by a civil service statute.
- DIGEST:** HB 639 would require that after the filing of a complaint, a state or local law enforcement agency or local fire department would have to conduct an investigation and sufficient evidence would have to be introduced to prove the alleged misconduct before disciplinary action could be taken. The bill also would expand subchapter B to cover not just fire fighters and *police* officers, but fire fighters and *peace* officers. Further, the subchapter would apply to all state and local peace officers and fire fighters.
- The bill would take effect September 1, 2005, and would apply only to a complaint filed on or after this date.

SUPPORTERS
SAY:

HB 639 would close a loophole that allows peace officers and fire fighters to be disciplined — even fired — as the result of a complaint without any investigation. HB 639 would do nothing more than ensure that peace officers and fire fighters receive an investigation after a complaint so they are not at risk of being disciplined over a baseless accusation. The bill would not affect the ability to suspend an officer pending an investigation and would continue to allow departments to remove potentially dangerous officers from the streets. Neither would the bill affect a department's ability to give an informal verbal reprimand to an officer, thereby preserving an effective way to handle complaints.

The bill's silence on the matter of what constitutes sufficient evidence to prove an allegation of misconduct would leave the discretion to decide what is sufficient in the hands of state and local departments, where it lies already. Therefore, state and local agencies would lose no authority by the requirement of a sufficient evidence standard.

Current law allows politically powerful people to have an officer fired simply by filing a complaint. Therefore, the only people who might be deterred by this bill from filing a complaint are those who intend to file baseless complaints for their own personal benefit. Those who file legitimate claims, which are the majority of complainants, would not be hindered by this bill.

A planned floor amendment would clarify the bill by limiting to indefinite suspension or termination from employment the disciplinary actions that could not occur before investigation of a complaint. There would have to be "evidence" to prove the complaint, rather than "sufficient evidence." Also, as amended the bill would not supersede existing meet-and-confer or collective bargaining agreements covering peace officers or fire fighters that already include provisions for investigating complaints involving potential disciplinary action.

OPPONENTS
SAY:

This bill is vague on two major points. Because it does not specify what would constitute disciplinary action, it might not be possible under the bill to suspend an officer without pay pending an investigation. This could allow potentially dangerous officers to remain on the streets. Nor is it clear whether disciplinary action could include verbally reprimanding an officer. For less serious matters, it can be more convenient and cost effective simply to reprimand the officer verbally rather than launch an investigation, and the bill might preclude this measure.

Neither does the bill define the standard of sufficient evidence. Because of this ambiguity, it is unclear whether a mere preponderance of the evidence would be sufficient to support the veracity of the complaint or whether the evidence would have to prove the truth of the allegation by the stricter standard of "beyond a reasonable doubt." This ambiguity could create confusion in departments in deciding when an officer could be disciplined.

Additionally, the bill could deter citizens from filing legitimate complaints. People already are more hesitant about filing complaints against police officers than they are against most other government employees because people often fear that their complaints will not seriously be considered. By raising the standard under which an officer may be disciplined following a complaint, people may be even more reluctant to file complaints than is already the case.

Finally, this bill could conflict with the many collective bargaining agreements already in place in several cities across the state.

NOTES:

Rep. Bailey plans to offer a floor amendment that would limit to indefinite suspension or termination from employment the disciplinary actions that could not occur before investigation of a complaint. Before any indefinite suspension or termination could occur based on a complaint, the complaint would have to be investigated and there would have to be "evidence," rather than "sufficient evidence" as in the original bill, to prove any allegation of misconduct. As amended, the bill would not supersede existing meet-and-confer or collective bargaining agreements covering peace officers or fire fighters that already include provisions for investigating complaints involving potential disciplinary action. Also, the amendment would add detention officers and county jailers to those covered by the bill.