

## **BILL ANALYSIS**

C.S.H.B. 3682  
By: Geren  
General Investigating & Ethics  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the Texas Ethics Commission should resolve violations in a form that corresponds to the seriousness of the violation. The parties further explain that the appropriate form for resolving an inquiry or motion alleging a serious violation is a notice of violation. C.S.H.B. 3682 seeks to address this need by setting out requirements relating to such resolution.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Ethics Commission in SECTION 4 of this bill.

### **ANALYSIS**

C.S.H.B. 3682 repeals a Government Code provision setting out the categorization of violations applicable to complaint procedures and hearings under provisions governing the Texas Ethics Commission. The bill amends the Government Code to require the commission staff to categorize, in ascending order of seriousness, each violation of law alleged in a sworn complaint or on a motion of the commission as: a technical, clerical, or de minimis violation; an administrative or filing violation; or a more serious violation. The bill requires the commission to adopt rules defining what violations of law are included in each category of violation. The bill requires the commission staff and the commission to resolve the complaint or motion in the form corresponding to the most serious category of violation alleged in the complaint or motion as provided by the bill's provisions. The bill requires a complaint or motion alleging a technical, clerical, or de minimis violation to be resolved in a letter of acknowledgment; requires a complaint or motion alleging an administrative or filing violation in a notice of administrative or filing error to be resolved in a notice of administrative or filing error; and requires a complaint or motion alleging a more serious violation to be resolved in a notice of violation.

C.S.H.B. 3682 removes a provision establishing that an order issued after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential and instead establishes that a notice of administrative or filing error or a notice of violation issued by the commission after the completion of a preliminary review or hearing is not confidential but makes confidential a letter of acknowledgment issued by the commission after the completion of a preliminary review or hearing. The bill removes provisions requiring the commission to make a copy of the commission's order stating the determination or a summary of the commission's order available on the Internet and instead requires the commission to make a copy of the notice of

administrative or filing error or notice of violation issued by the commission or a summary of the notice so available. The bill establishes that this requirement does not apply to a letter of acknowledgement instead of not applying to a determination of a violation that is technical or de minimis. The bill applies statutory provisions relating to liability for respondent's costs in defending against a complaint to a sworn complaint that alleges an administrative or filing violation or a more serious violation and removes a provision applying such provisions to a sworn complaint that alleges a violation other than a technical or clerical violation.

C.S.H.B. 3682 applies provisions in the Administrative Procedure Act relating to contested cases and court enforcement to a final decision of the commission, instead of a final order of the commission, only to the extent consistent with provisions relating to the powers of the commission. The bill expands the adopted matters for which the commission is authorized to contract with persons to administer and carry out statutory provisions governing the commission to include adopted decisions and includes adopted decisions among the matters for which the commission is authorized to impose a civil penalty for a delay in compliance.

C.S.H.B. 3682 requires the commission, not later than December 1, 2015, to adopt any rules necessary to implement the bill's provisions. The bill applies only to a sworn complaint filed with the commission or a motion adopted by the commission on or after December 1, 2015.

C.S.H.B. 3682 repeals Section 571.1212, Government Code.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3682 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

No equivalent provision.

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 571.073, Government Code, is amended to read as follows:

Sec. 571.073. REPORT. On or before December 31 of each even-numbered year, the commission shall report to the governor and legislature. The report must include:

- (1) each advisory opinion issued by the commission under Subchapter D in the preceding two years;
- (2) a summary of commission activities in the preceding two years, including:
  - (A) the number of sworn complaints filed with the commission;
  - (B) the number of sworn complaints dismissed for noncompliance with statutory form requirements;
  - (C) the number of sworn complaints dismissed for lack of jurisdiction;
  - (D) the number of sworn complaints dismissed after a finding of no credible evidence of a violation;

- (E) the number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the commission has occurred;
- (F) the number of sworn complaints resolved by the commission through an agreed decision [~~order~~];
- (G) the number of sworn complaints in which the commission issued a decision [~~an order~~] finding a violation and the resulting penalties, if any; and
- (H) the number and amount of civil penalties imposed for failure to timely file a statement or report, the number and amount of those civil penalties fully paid, the number and amount of those civil penalties partially paid, and the number and amount of those civil penalties no part of which has been paid, for each of the following category of statements and reports, listed separately:
  - (i) financial statements required to be filed under Chapter 572;
  - (ii) political contribution and expenditure reports required to be filed under Section 254.063, 254.093, 254.123, 254.153, or 254.157, Election Code;
  - (iii) political contribution and expenditure reports required to be filed under Section 254.064(b), 254.124(b), or 254.154(b), Election Code;
  - (iv) political contribution and expenditure reports required to be filed under Section 254.064(c), 254.124(c), or 254.154(c), Election Code;
  - (v) political contribution and expenditure reports required to be filed under Section 254.038 or 254.039, Election Code; and
  - (vi) political contribution and expenditure reports required to be filed under Section 254.0391, Election Code; and
- (3) recommendations for any necessary statutory changes.

No equivalent provision.

SECTION 2. Section 571.076, Government Code, is amended to read as follows:  
 Sec. 571.076. CONTRACT FOR ADMINISTRATION. The commission may contract with persons to administer and carry out this chapter and rules, standards, [~~and~~] orders, and decisions adopted under this chapter, excluding any enforcement authority.

No equivalent provision.

SECTION 3. Section 571.1211, Government Code, is amended to read as follows:

Sec. 571.1211. DEFINITIONS. In this subchapter, "campaign" [:

~~[(1) "Campaign] communication" and "political advertising" have the meanings assigned by Section 251.001, Election Code.~~

~~[(2) "Category One violation" means a violation of a law within jurisdiction of the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:~~

~~[(A) the failure by a person required to file a statement or report to:~~

~~[(i) file the required statement or report in a manner that complies with applicable requirements; or~~

~~[(ii) timely file the required statement or report;~~

~~[(B) a violation of Section 255.001, Election Code;~~

~~[(C) a misrepresentation in political advertising or a campaign communication relating to the office held by a person in violation of Section 255.006, Election Code;~~

~~[(D) a failure to include in any written political advertising intended to be seen from a road the right-of-way notice in violation of Section 255.007, Election Code; or~~

~~[(E) a failure to timely respond to a written notice under Section 571.123(b).~~

~~[(3) "Category Two violation" means a violation of a law within the jurisdiction of the commission that is not a Category One violation.]~~

No equivalent provision.

SECTION 4. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1213 to read as follows:

Sec. 571.1213. CATEGORIZATION OF VIOLATIONS. (a) The commission staff shall categorize, in ascending order of seriousness, each violation of law alleged in a sworn complaint or on a motion of the commission as:

(1) a technical, clerical, or de minimis violation;

(2) an administrative or filing violation; or

(3) a more serious violation.

(b) The commission shall adopt rules

defining what violations of law are included in each category of violation.

SECTION 1. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1214 to read as follows:

Sec. 571.1214. RESOLUTION OF VIOLATIONS. (a) The commission staff and the commission shall resolve an inquiry or motion in the form corresponding to the most serious category of violation alleged in the inquiry or motion as provided in this section.

(b) An inquiry or motion alleging a technical, clerical, or de minimis violation must be resolved in a letter of acknowledgment.

(c) An inquiry or motion alleging an administrative or filing violation must be resolved in a notice of administrative or filing error.

(d) An inquiry or motion alleging a more serious violation must be resolved in a notice of violation.

No equivalent provision.

SECTION 5. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1214 to read as follows:

Sec. 571.1214. RESOLUTION OF VIOLATIONS. (a) The commission staff and the commission shall resolve a sworn complaint or motion in the form corresponding to the most serious category of violation alleged in the complaint or motion as provided in this section.

(b) A complaint or motion alleging a technical, clerical, or de minimis violation must be resolved in a letter of acknowledgment.

(c) A complaint or motion alleging an administrative or filing violation must be resolved in a notice of administrative or filing error.

(d) A complaint or motion alleging a more serious violation must be resolved in a notice of violation.

SECTION 6. Section 571.124(e), Government Code, is amended to read as follows:

(e) If the executive director determines that the commission has jurisdiction, the notice under Section 571.123(b) must include:

(1) a statement that the commission has jurisdiction over the violation of law alleged in the complaint;

(2) a statement of whether the complaint will be processed as a technical, clerical, or de minimis violation, an administrative or filing violation, or a more serious violation [~~Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 571.1212~~];

(3) the date by which the respondent is required to respond to the notice;

(4) a copy of the complaint and the rules of procedure of the commission;

(5) a statement of the rights of the respondent;

(6) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(7) a statement that a failure to timely respond to the notice will be treated as a separate violation.

No equivalent provision.

SECTION 7. Sections 571.1242(a), (b), (c), and (d), Government Code, are amended to read as follows:

(a) If the alleged violation is a technical, clerical, or de minimis [~~Category One~~] violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 10th business day after the date the respondent receives the notice; and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(b) If the alleged violation is an administrative or filing violation or a more serious [~~a Category Two~~] violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice under Section 571.123(b); and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(c) A respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a [~~Category One~~] violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed decision [~~order~~], which may include an agreement to immediately cease and desist.

No equivalent provision.

SECTION 8. Section 571.126(a), Government Code, is amended to read as follows:

(a) As soon as practicable after the completion of a preliminary review hearing, the commission by vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is a technical, clerical, or de minimis violation, an administrative or filing violation, or a more serious violation; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

No equivalent provision.

SECTION 9. Section 571.139(c), Government Code, is amended to read as follows:

(c) Subchapters C through H, Chapter 2001, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final decision [~~order~~] of the commission, and only to the extent consistent with this chapter.

No equivalent provision.

SECTION 10. Section 571.140(b), Government Code, is amended to read as follows:

(b) A notice of administrative or filing error or a notice of violation [~~An order~~] issued by the commission after the completion of a preliminary review or hearing [~~determining that a violation other than a technical or de minimis violation has occurred~~] is not confidential. A letter of acknowledgment issued by the commission after the completion of a preliminary review or hearing is confidential.

No equivalent provision.

SECTION 11. Section 571.141, Government Code, is amended to read as follows:

Sec. 571.141. AVAILABILITY OF NOTICES OF ADMINISTRATIVE OR FILING ERROR AND NOTICES OF VIOLATION [~~COMMISSION ORDERS~~]

ON INTERNET. (a) As soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet:

(1) a copy of the notice of administrative or filing error or notice of violation issued by the commission [~~commission's order stating the determination~~]; or

(2) a summary of the notice [~~commission's order~~].

(b) This section does not apply to a letter of acknowledgment [~~determination of a violation that is technical or de minimis~~].

No equivalent provision.

SECTION 12. Section 571.142(a), Government Code, is amended to read as follows:

(a) This section applies only to a sworn complaint if:

(1) the complaint was filed after the 30th day before the date of an election;

(2) the respondent is a candidate in the election; and

(3) the complaint alleges an administrative or filing [~~a~~] violation or a more serious violation [~~other than a technical or clerical violation~~].

No equivalent provision.

SECTION 13. Section 571.173, Government Code, is amended to read as follows:

Sec. 571.173. CIVIL PENALTY FOR DELAY OR VIOLATION. The commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the commission, whichever amount is more, for a delay in complying with a commission order or decision or for a violation of a law administered and enforced by the commission.

No equivalent provision.

SECTION 14. Section 571.1212, Government Code, is repealed.

No equivalent provision.

SECTION 15. (a) Not later than December 1, 2015, the Texas Ethics Commission shall adopt any rules necessary to implement the

changes in law made by this Act.

(b) The changes in law made by this Act apply only to a sworn complaint filed with the Texas Ethics Commission under Section 571.122, Government Code, or a motion adopted by the commission under Section 571.124(b), Government Code, on or after December 1, 2015. A sworn complaint filed with the Texas Ethics Commission under Section 571.122, Government Code, or a motion adopted by the commission under Section 571.124(b), Government Code, before that date is governed by the law in effect on the date the complaint is filed or the motion is adopted, and the former law is continued in effect for that purpose.

SECTION 2. This Act takes effect September 1, 2015.

SECTION 16. Same as introduced version.