

## BILL ANALYSIS

Senate Research Center  
81R18663 ESH-F

S.B. 1368  
By: Shapleigh  
International Relations & Trade  
9/9/2009  
Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, El Paso County is authorized to establish an ethics board but without enabling legislation a county cannot authorize its ethics board to impose effective penalties against those who violate ethics standards. An ethics board can censure a public official, make a referral to a law enforcement agency or, if the violator is a county employee, recommend disciplinary action. An ethics board is prohibited from imposing a civil penalty and can take little action when an elected official, lobbyist, or vendor violates ethics standards.

S.B. 1368 amends current law relating to the creation of a county ethics commission in certain counties; providing civil and criminal penalties.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the county ethics commission in SECTION 1 (Sections 161.101 and 161.166, Local Government Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Local Government Code, by adding Chapter 161, as follows:

#### CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. **APPLICABILITY OF CHAPTER.** Provides that this chapter applies only to a county that has a population of 650,000 or more, is located on the international border, and before September 1, 2009, had a county ethics board appointed by the commissioners court.

Sec. 161.002. **DEFINITIONS.** Defines "commission," "commission staff," "communicates directly with," "county affiliate," "county employee," "county office," "county officer," "county public servant," and "lobbyist."

Sec. 161.003. **CONFLICT WITH CIVIL SERVICE AGREEMENT.** (a) Provides that this chapter may not be construed to affect the terms of an agreement authorized by Chapter 174 between the county and county employees or any provision of a civil service statute applicable to a county employee.

(b) Provides that if an agreement authorized by Chapter 174 or a civil service statute applicable to a county employee conflicts with this chapter or an ethics code adopted or enforced under this chapter, the agreement or civil service statute prevails.

[Reserves Sections 161.004-161.050 for expansion.]

##### SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION MEMBERS

Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) Authorizes the commissioners court of a county, by an order adopted by a majority of the court's full membership, to create a county ethics commission (commission).

(b) Requires that a copy of an order adopted under this section be placed in the minutes of the court's proceedings. Provides that the copy of the order is public information.

Sec. 161.052. CREATION OF COMMISSION BY ELECTION. (a) Authorizes a commission to be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) Authorizes the commissioners court by order to call an election on the question of the creation of a commission.

(c) Requires the commissioners court to hold the election called under this section on the first authorized uniform election date prescribed by Chapter 41 (Election Dates and Hours for Voting), Election Code, that allows sufficient time for publication of the notice required by Subsection (d) and for compliance with any other requirements established by law.

(d) Requires the commissioners court, in addition to the notice required by Chapter 4 (Notice of Election), Election Code, to publish in a newspaper of general circulation in the county, and on the home page of the county's Internet website, a substantial copy of the order calling the election. Requires that the first newspaper publication be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks. Requires that the notice on the county's Internet website remain on the home page each day beginning not later than the 16th day before the election and ending on the date of the election.

Sec. 161.053. BALLOT. Requires the commissioners court to order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county ethics commission."

Sec. 161.054. RESULT OF ELECTION. Requires the commissioners court, if the proposition is approved, to declare the result and by order create the commission. Requires that a copy of the order creating the commission be placed in the minutes of the court's proceedings.

Sec. 161.055. APPOINTMENT OF COMMISSION. (a) Sets forth the composition of the commission.

(a-1) Requires the commissioners court to designate the entities described by Subsections (a)(2)(B) (relating to one member being appointed from the bar association of the county), (D) (relating to one member being appointed from the sheriff's civil service commission), and (E) (relating to one member being appointed from a human resources management association in the county) that may submit nominees for membership on the commission. Requires the commissioners court, if a designated entity does not wish to submit nominees, to select a similar entity that has experience with grievance or mediation structures or processes.

(b) Requires the county judge and each county commissioner, not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or 161.054, to each appoint one member of the commission and requires each entity described by Subsection (a)(2) or alternate entity designated under Subsection (a-1), not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or 161.054, to deliver to the commissioners court the entity's nominees for membership on the commission.

(c) Requires the commissioners court to set the date for the first meeting of the initial members. Requires that the first meeting be set not earlier than the 60th day after the date of the order creating the commission and not later than the 90th day after the date of that order.

Sec. 161.056. ELIGIBILITY. (a) Requires a person, to be eligible for appointment to the commission, to be at least 18 years old, be a property taxpayer in the county, and have resided in the county for the two years immediately preceding the date on which the person's term will begin.

(b) Provides that a person is not eligible for appointment to the commission if the person is an elected officer; a county employee; a county affiliate; a person employed as a lobbyist; a person convicted of a misdemeanor involving moral turpitude or a felony; or a person who is delinquent in payment of local, state, or federal taxes.

Sec. 161.057. TERMS. Provides that members of the commission serve terms of two years beginning on February 1 of each odd-numbered year and authorizes a member to serve more than one year.

Sec. 161.058. VACANCIES. (a) Requires that a vacancy on the commission be filled for the remainder of the unexpired term in a certain manner.

(b) Authorizes the commission to fill the vacancy by a majority vote of the remaining members if the county judge or county commissioner, as applicable, does not fill the vacancy before the 60th day after the date the position becomes vacant.

Sec. 161.059. MEETINGS. (a) Requires the commission to meet on a regular basis.

(b) Provides that the commission is a governmental body for purposes of Chapter 551 (Open Meetings), Government Code.

(c) Provides that except as otherwise provided by this chapter, a majority of the commission constitutes a quorum.

Sec. 161.0591. CHAIR. (a) Provides that the position of chair alternates every six months between members appointed under Section 161.055(a)(1) and members appointed under Section 161.055(a)(2) and rotates in a certain manner so that each position on the commission serves as chair.

(b) Prohibits the member serving as chair from voting on a matter before the commission except to break a tie vote.

Sec. 161.060. REMOVAL OF COMMISSION MEMBER. Provides that a member of the commission is a county officer described by Section 87.012(15) (relating to a county officer whose office is created under the constitution or other law of this state) and is authorized to be removed as provided by Chapter 87 (Removal of County Officers from Office; Filling of Vacancies) if, after trial, the jury finds good cause for removal, including failure to pay local, state, or federal taxes when due; violation of the ethics code adopted by the commission; conviction of a felony or misdemeanor; excessive absenteeism as determined by the commission; and official misconduct.

Sec. 161.061. LEGAL REPRESENTATION. Requires the county attorney, or district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters to represent the commission in all legal matters.

[Reserves Sections 161.062-161.100 for expansion.]

#### SUBCHAPTER C. POWERS

Sec. 161.101. GENERAL POWERS. (a) Requires the commission to adopt, publish, and enforce an ethics code governing county public servants.

(b) Authorizes the commission to adopt or use as a guide any ethics law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county. Requires the commission, for purposes of Section 161.002(9) (relating to the definition of lobbyist) , in determining the applicable amount of compensation of a person who communicates directly with a county officer or employee to influence official action and engages in such communication as part of the person's regular employment, to adopt rules that are substantially similar to the rules or interpretations of the Texas Ethics Commission under Chapter 305 (Registration of Lobbyists), Government Code, to calculate the compensation.

(c) Authorizes the commission to adopt bylaws, rules, forms, policies, or procedures to assist in the administration of the commission's duties under this chapter. Authorizes the commission to be guided by Robert's Rules of Order to the extent that it does not conflict with the constitution and laws of the United States and this state or conflict with other guidelines adopted by the commission.

(d) Requires the commission to be assigned staff by the county and provided access to county resources to assist in its duties.

(e) Requires the commission to develop and implement policies that provide the public with information on the commission and the ethics code.

(f) Requires the commission to enforce the provisions of the ethics code by issuing appropriate orders or recommendations or by imposing appropriate penalties.

Sec. 161.102. ADVISORY OPINIONS. Authorizes the commission, on the request of any person covered by the ethics code adopted by the commission, to issue a written ethics advisory opinion regarding the application of the ethics code to a specified existing or hypothetical factual situation. Prohibits the commission from issuing an opinion that includes the name of any person who may be affected by the opinion. Requires that the name of a person requesting the opinion be deemed confidential.

Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) Requires the commission to develop plain-language materials as described by this section. Requires the commission to post the information on the county's Internet website and requires the commission to make the information otherwise available to the public.

(b) Requires that the materials include:

(1) a description of the commission's responsibilities, the types of conduct that constitute a violation of the ethics code adopted by the commission, the types of sanctions the commission may impose, the commission's policies and procedures relating to complaint investigation and resolution, and the duties of a person filing a complaint with the commission; and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(c) Requires the commission to provide the materials described by this section to each complainant and respondent.

(d) Requires the commission to adopt a policy to effectively distribute materials as required by this section.

Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING. (a) Requires a person appointed to the commission to complete training on certain topics not later than the 60th day after the date of appointment.

(b) Requires a member of the commission to complete subsequent training programs on the ethics code adopted by the commission and the procedural rules adopted by the commission.

(c) Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE. (a) Requires the commission and commission staff to provide periodic training for persons covered by the ethics code adopted by the commission on at least a quarterly basis.

(b) Requires that the training program provide information regarding the ethics code, the role and functions of the commission, and plain-language materials as further described by Section 161.103.

(c) Requires an officer, principal, or other person with the authority to bind the vendor, in addition to the qualifications under Subchapter C (Competitive Bidding in General), Chapter 262 (Purchasing and Contracting Authority of Counties) before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, to complete training on the ethics code.

(d) Requires a lobbyist intending to meet with a person covered by the ethics code to complete training on the ethics code.

Sec. 161.106. CERTAIN DISCUSSIONS OF PENDING COMPLAINTS PROHIBITED. Prohibits a member of the commission, until a sworn complaint alleging a violation of the ethics code is resolved, from discussing the complaint with a member of the commissioners court.

[Reserves Sections 161.107-161.150 for expansion.]

#### SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

Sec. 161.151. DEFINITIONS. Defines "Category One violation" and "Category Two violation."

Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. Requires the commission to adopt the complaint procedures and hearings set forth in this subchapter. Authorizes the commission to adopt additional procedures not in conflict with this subchapter.

Sec. 161.153. HEARINGS AND SETTLEMENT. (a) Authorizes the commission to hold a hearing on a sworn complaint and render a decision on a complaint or report of a violation as provided by this chapter and agree to the settlement of issues.

(b) Prohibits the commission from considering a complaint or voting to investigate a matter outside the commission's jurisdiction or investigating any matter except in response to a sworn complaint.

Sec. 161.154. CATEGORIZATION OF VIOLATIONS. Requires that an allegation of a violation listed as a Category One violation be treated as a Category Two violation if the commission at any time determines that the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or the facts and law

related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 161.159(a).

Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) Authorizes an individual to file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. Requires the commission to make the complaint form available on the county website.

(b) Requires that a complaint filed under this section be in writing, under oath, and set forth in simple, concise, and direct statements certain complainant and respondent information and documentation.

(c) Requires that the complaint be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred. Requires that the complaint, if the complaint is based on information and belief, state the source and basis of the information and belief. Authorizes the complainant to swear to the facts by oath before a notary public or other authorized official.

(d) Requires that the complaint state on its face an allegation that, if true, constitutes a violation of the ethics code.

Sec. 161.1551. STANDING PRELIMINARY REVIEW COMMITTEE. (a) Requires the standing preliminary review committee to perform the actions prescribed by this subchapter in conducting a preliminary review of each sworn complaint filed with the commission.

(b) Provides that the standing preliminary review committee consists of two members of the commission, determined as provided by Subsection (c) and a review officer selected and retained by the commission.

(c) Provides that the initial standing preliminary review committee consists of one commission member, chosen by lot, from the members of the commission appointed under Section 161.055(a)(1), and one commission member, chosen by lot, from the members appointed under Section 161.055(a)(2).

(d) Provides that a commission member serves on the standing preliminary review committee for six months. Provides that after the end of a commission member term on the standing preliminary review committee, service on the committee rotates as provided by Section 161.0591 for the rotation of the chair, except that the rotation begins with the initial members of the standing preliminary review committee chosen under Subsection (c).

(e) Requires the review officer to be a practicing attorney or former judge.

Sec. 161.156. PROCESSING OF COMPLAINT. (a) Requires the standing preliminary review committee to determine whether a sworn complaint filed with the commission complies with the form requirements of Section 161.155.

(b) Requires the standing preliminary review committee, not later than the 10th business day after the date a complaint is filed, to send written notice to the complainant and the respondent. Requires that the notice state whether the complaint complies with the form requirements of Section 161.155 and include the information required by Section 161.158(c).

(c) Requires the committee, if the standing preliminary review committee determines that the complaint does not comply with the form requirements, to send the complaint to the complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. Authorizes the complainant to resubmit the complaint not later

than the 21st day after the date the notice under Subsection (b) is mailed. Requires the committee, if the standing preliminary review committee determines that the complaint is not resubmitted within the 21-day period, to dismiss the complaint and not later than the 10th business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) Requires the committee, if the standing preliminary review committee determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, to send the notice required under Subsection (c), and authorizes the complainant to resubmit the complaint under that subsection.

(e) Requires the committee, if the standing preliminary review committee determines that the complaint returned to the complainant under Subsections (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, to send the written notice under Subsection (b).

(f) Requires the commission, if a complaint filed with the commission is within the jurisdiction of the commission but may also be brought under the provisions of a collective bargaining agreement authorized by Chapter 174 (Fire and Police Employee Relations), a civil service rule under Section 158.0025 (Creation of Sheriff's Department Civil Service System In Certain Counties Not Covered By Subchapter B), or a rule of the sheriff's department, to defer jurisdiction over the complaint to the sheriff for disposition. Authorizes the sheriff to return a complaint deferred under this subsection to the commission for additional proceedings as the commission determines appropriate if the sheriff determines that the conduct alleged in the complaint is not within the scope of the collective bargaining agreement, civil service rule, or sheriff's department rule. Prohibits the sheriff from returning a complaint deferred under this section if the sheriff meets certain requirements.

Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) Prohibits the county from suspending or terminating the employment of or taking other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.

(b) Prohibits the county from suspending or terminating the employment of or taking other adverse action against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.

(c) Provides that a commission created by a county under this chapter is a part of the "local government entity" for purposes of Section 554.002 (Retaliation Prohibited for Reporting Violation of Law), Government Code.

(d) Provides that an ethics code adopted by a commission pursuant to this chapter is a "law" as defined by Section 554.001 (Definitions), Government Code.

Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) Requires the standing preliminary review committee to promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 161.155.

(b) Requires the standing preliminary review committee to determine in writing whether the commission has jurisdiction over the violation of the ethics code provision alleged in a sworn complaint processed under Section 161.156.

(c) Requires the committee, if the standing preliminary review committee determines that the commission has jurisdiction, to issue a notice under Section

161.156(b) that is required to include a statement that the commission has jurisdiction over the violation alleged in the complaint; a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 161.154; the date by which the respondent is required to respond to the notice; a copy of the complaint and the rules of procedure of the commission; a statement of the rights of the respondent; a statement inviting the respondent to provide to the commission any information relevant to the complaint; and a statement that a failure to timely respond to the notice will be treated as a separate violation.

(d) Requires the committee, if the standing preliminary review committee determines that the commission does not have jurisdiction over the violation alleged in the complaint, to dismiss the complaint; and not later than the 10th business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT. (a) Provides that if the alleged violation is a Category One violation, the respondent is required to respond to the notice required by Section 161.156(b) not later than the 10th business day after the date the respondent receives the notice; and 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 161.156(b), the standing preliminary review committee is required to set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted.

(b) Requires the respondent, if the alleged violation is a Category Two violation, to respond to the notice required by Section 161.156(b) not later than the 25th business day after the date the respondent receives the notice under Section 161.156(b); and requires the standing preliminary review committee, 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 161.156(b), to set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted.

(c) Provides that a respondent's failure to timely respond as required by Subsection (a)(1) (relating to requiring the respondent to respond to the notice required if the alleged violation is a Category One violation) or (b)(1) (relating to requiring the respondent to respond to the notice required if the alleged violation is a Category Two violation) is a Category One violation.

(d) Requires that the response required by Subsection (a) or (b) include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. Authorizes the respondent to acknowledge the occurrence or commission of a violation; deny the allegations contained in the complaint and provide evidence supporting the denial; or agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) Requires the committee, if the standing preliminary review committee sets the matter for a preliminary review hearing, to promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS. Authorizes the commission staff, during a preliminary review, to submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. Requires the commission to adopt procedures for the conduct of

preliminary reviews and preliminary review hearings. Requires that the procedures include a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and the tolling or extension of otherwise applicable deadlines where the commission issues a subpoena and the standing preliminary review committee's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines or the commission determines that, despite the standing preliminary review committee's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the committee's investigation or the rights of the respondent.

Sec. 161.162. PRELIMINARY REVIEW HEARING: PROCEDURE. (a) Requires the standing preliminary review committee to conduct a preliminary review hearing if following the preliminary review, the standing preliminary review committee and the respondent cannot agree to the disposition of the complaint or the respondent in writing requests a hearing.

(b) Requires the standing preliminary review committee to provide written notice to the complainant and the respondent of the date, time, and place the commission will conduct the preliminary review hearing.

(c) Authorizes the committee, at or after the time the standing preliminary review committee provides notice of a preliminary review hearing, to submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. Requires the committee, after receiving answers to any questions submitted to the complainant under this subsection and before the preliminary review hearing, to provide the respondent both the questions and the answers to the questions submitted by the complainant. Prohibits this subsection from being construed to require a person to give evidence that violates the person's right against self-incrimination under the United States Constitution or the Texas Constitution.

(d) Requires the standing preliminary review committee, on the request of the respondent, to request that any information in the possession or control of the complainant, including exculpatory information, that is directly related to the complaint be provided the respondent and the committee.

(e) Provides that the standing preliminary review committee, during a preliminary review hearing, is authorized to consider all submitted evidence related to the complaint, is authorized to review any documents or material related to the complaint, and is required to determine whether there is credible evidence that provides cause for the committee to conclude that a violation within the jurisdiction of the commission has occurred. Requires the commission, during a preliminary review hearing, to determine whether there is credible evidence that provides cause for the commission to conclude that the violation within the jurisdiction of the commission has occurred.

(f) Authorizes the respondent, during a preliminary review hearing, to appear before the standing preliminary review committee with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION. (a) Requires the standing preliminary review committee by vote, as soon as practicable after the completion of a preliminary review hearing, to issue a decision stating whether there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis or that there is insufficient evidence for the committee to determine whether a violation within the jurisdiction of the commission has occurred.

(b) Requires the committee, if the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation has occurred, to resolve and settle the complaint or motion to the extent possible. Requires the committee, if the committee successfully resolves or settles the complaint not later than the 10th business day after the date of the final resolution of the complaint to send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the resolution and the terms of the resolution. Requires the committee, if the committee is unsuccessful in resolving and settling the complaint to order a formal hearing to be held in accordance with Sections 161.164 through 161.167; and not later than the 10th business day after the date of the order, send to the complainant and the respondent certain documents.

(c) Requires the committee, if the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has not occurred, to dismiss the complaint; and, not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the dismissal and the grounds for dismissal.

(d) Authorizes the commission, if the standing preliminary review committee determines that there is insufficient credible evidence for the committee to determine that the violation within the jurisdiction of the commission has occurred, to dismiss the complaint or order a formal hearing under Sections 161.164 through 161.167. Requires the committee, not later than the fifth business day after the date of the committee's determination under this subsection, to send to the complainant and the respondent a copy of the decision stating the committee's determination and written notice of the grounds for the determination.

Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE. Requires the commission, during a formal hearing, to determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES. (a) Requires that a subpoena or other request to testify be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Authorizes the commission, except as provided by Section 161.166(a)(1) (relating to requiring the commission to provide to the respondent a list of proposed witnesses to be called at the hearing), to order that a person is prohibited, except as specifically authorized by the presiding officer, from making public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) Authorizes a witness to read a written statement or present a brief oral opening statement at a formal hearing, subject to the rules of evidence applicable to a contested case under Section 2001.081 (Rules of Evidence), Government Code.

(d) Authorizes a person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, commission staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation to request to appear personally before the commission to testify in the person's own behalf or file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) Requires a witness who testifies at a formal hearing to be sworn.

Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Requires the commission, not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, to provide to the respondent a list of proposed witnesses to be called at the hearing, copies of all documents expected to be introduced as exhibits at the hearing, and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) Prohibits the respondent from being compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) Requires the commission to adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001 (Administrative Procedure), Government Code.

Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) Requires the commission, not later than the 30th business day after the date of the formal hearing, to convene a meeting and by motion issue a final decision stating the resolution of the formal hearing; and a written report stating the commission's findings of fact, conclusions of law, and recommendation of imposition of a civil penalty, if any.

(b) Requires six members of the commission for a quorum at a formal hearing.

(c) Requires the commission, not later than the 10th business day after the date the commission issues the final decision and written report, to send a copy of the decision and report to the complainant and to the respondent; and make a copy of the decision and report available to the public during reasonable business hours.

Sec. 161.168. STATUS OF COMPLAINT. (a) Requires the commission to keep an information file about each sworn or other complaint filed with the commission. Requires that the file include certain information.

(b) Requires the commission to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) Requires the commission, in addition to the notice required by Sections 161.156 and 161.167, at least quarterly until final disposition of a complaint, to notify the person who filed the complaint and each person who is a subject of the complaint of the status of the sworn complaint.

(d) Requires the commission to resolve a complaint within six months of its receipt unless it makes a determination that additional time is required to resolve the matter. Authorizes the commission, on a determination that additional time is required, to extend the investigation in three-month increments. Provides that each extension requires separate approval by the commission.

(e) Requires that the complaint, if the commission does not resolve the matter within six months or within an authorized extension, be deemed to have been dismissed without prejudice.

Sec. 161.169. EXTENSION OF DEADLINE. Authorizes the commission, on its own motion or on the reasonable request of a respondent, to extend any deadline for action relating to a sworn complaint, preliminary review hearing, or formal hearing.

Sec. 161.170. SUBPOENA. (a) Authorizes the commission, in connection with a formal hearing, as authorized by this chapter, to subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(b) Authorizes the commission, in connection with a preliminary review, for good cause and as authorized by this chapter, to subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least five members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information is likely to be determinative as to whether the subject of an investigation has violated a provision of the ethics code, can be determined from the documents or is known by the witnesses; and is not reasonably available through a less intrusive means.

(c) Requires the commission to adopt procedures for the issuance of subpoenas under this section.

(d) Provides that Section 2001.089 (Issuance of Subpoena), Government Code, applies to a subpoena issued under this subchapter. Requires the commission, on the request of the respondent, to subpoena any information in the possession or control of any person identified in the request, including exculpatory information, that is directly related to the complaint and provide the information to the respondent.

(e) Requires that a copy of a subpoena issued under this section be delivered to the respondent.

(f) Requires a peace officer, at the written request of at least five members of the commission, to serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(g) Requires the commission, if a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, to report that fact to a district court in the county. Requires the district court to enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(h) Provides that a respondent has the right to quash a subpoena in a district court in the county as provided by law.

(i) Entitles a subpoenaed witness who attends a commission hearing to the same mileage and per diem payments as a witness who appears before a grand jury. Entitles a person who provides subpoenaed documents to the commission to reimbursement from the commission for the person's reasonable cost of producing the documents.

**Sec. 161.171. STATUS OF COMPLAINANT.** Provides that the complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

**Sec. 161.172. APPLICABILITY OF OTHER ACTS.** (a) Provides that except as provided by Section 161.173(b), Chapter 552 (Public Information), Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint.

(b) Provides that Chapter 551 (Open Meetings), Government Code, does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint, but does apply to a formal hearing held under Sections 161.164 through 161.167.

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

Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Provides that, except as provided by Subsections (b), (c), or (m), proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint are confidential and are prohibited from being disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) Provides that 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.

(c) Authorizes commission staff, for the purpose of investigating a sworn complaint, to disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

(1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;

(2) the employee's determination under Subdivision (1) is objectively reasonable;

(3) the commission specifically authorizes the disclosure; and

(4) the employee discloses only the information necessary to conduct the investigation.

(d) Provides that a person commits an offense if the person intentionally destroys, mutilates, or alters information obtained under this chapter or removes information obtained under this chapter without permission as provided by this chapter.

(e) Provides that an offense under Subsection (d) is a misdemeanor punishable by a fine of not less than \$25 or more than \$4,000, confinement in the county jail for not less than three days or more than three months, or both the fine and confinement.

(f) Provides that a person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(g) Provides that a person who obtains access to confidential information under this chapter commits an offense if that person knowingly uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including solicitation of political contributions or solicitations of clients; permits inspection of the confidential information by a person who is not authorized to inspect the information; or discloses the confidential information to a person who is not authorized to receive the information.

(h) Provides that an offense under Subsection (f) or (g) is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and confinement.

(i) Authorizes the person, if conduct that constitutes an offense under this section also constitutes an offense under the Penal Code, including under Section 37.10 (Tampering with Governmental Record) or 39.06 (Misuse of Official Information) of that code, to be prosecuted under this section or the Penal Code, as applicable.

(j) Provides that a violation under this section constitutes official misconduct.

(k) Authorizes the respondent, in addition to other penalties, to commence a civil action for damages on the respondent's own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Requires that any action under this chapter be brought in a district court in the county. Authorizes the court to award costs and attorney's fees.

(l) Provides that a county employee is subject to discipline, including termination of employment, for disclosing confidential information under this chapter.

(m) Authorizes the commission to disclose confidential information in making a referral to a prosecuting attorney concerning an offense under this section.

(n) Provides that a county employee who discloses confidential information in compliance with Subsection (c) or (m) is not subject to Subsections (d)-(l).

Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON INTERNET. (a) Requires the commission, 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, to make available on the Internet a copy of the commissioner's order stating the determination, or a summary of the commission's order.

(b) Provides that this section does not apply to a determination of a violation that is technical or de minimis.

[Reserves Sections 161.175-161.200 for expansion.]

#### SUBCHAPTER E. ENFORCEMENT

Sec. 161.201. ORDER. Authorizes the commission to issue and enforce a cease and desist order to stop a violation, issue an affirmative order to require compliance with the laws administered and enforced by the commission, and issue an order of public censure with or without a civil penalty imposed under Section 161.202.

Sec. 161.202. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) Authorizes the commission to impose a civil penalty of not more than \$500 for each delay in complying with a commission order.

(b) Authorizes the commission to impose a civil penalty of not more than \$4,000 for a violation of the ethics code adopted by the commission.

(c) Requires that a penalty paid under this section be deposited to the credit of the general fund of the county.

(d) Provides that this section is cumulative of any other available sanctions under this chapter.

Sec. 161.203. WAIVER OR REDUCTION OF PENALTY. (a) Authorizes a person to request the waiver or reduction of a civil penalty by submitting an affidavit to the commission that states the filer's reasons for requesting a waiver or reduction.

(b) Authorizes the commission to waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. Requires the commission to consider the following before acting to waive or reduce a civil penalty: the facts and circumstances supporting the person's request for a waiver or reduction; the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty; any history of previous violations by the person; the demonstrated good faith of the person, including actions taken to rectify the consequences of the violation; the penalty necessary to deter future violations; and any other matter that justice may require.

(c) Authorizes the commission, after hearing the waiver request, to affirm, reduce, or waive the civil penalty.

Sec. 161.204. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY. Authorizes the commission to notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, or the State Bar of Texas, of a violation of the ethics code adopted by the commission.

Sec. 161.205. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT. (a) Authorizes the commission to impose a civil penalty of not more than \$4,000 for the filing of a frivolous or bad-faith complaint. Defines "frivolous complaint."

(b) Authorizes the respondent, in addition to other penalties, to commence a civil action on the respondent's own behalf against any person who filed a frivolous complaint against the respondent. Requires that any action under this chapter be brought in a district court in the county. Authorizes the court to award costs and attorney's fees.

(c) Authorizes a person to file a sworn complaint with the commission, in accordance with Section 161.155, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. Authorizes a complaint to be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. Requires the commission to act on a complaint made under this subsection as provided by Subchapter D.

Sec. 161.206. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION. Requires the commission to consider the following factors in assessing a sanction: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; the history and extent of previous violations; the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation, the penalty necessary to deter future violations; and any other matters that justice may require.

Sec. 161.207. APPEALS. (a) Authorizes a respondent to appeal the decision by filing a petition in district court in the county within 30 days after the date of the decision.

(b) Provides that an appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. Requires that the action be determined by trial de novo. Requires the reviewing court to try all issues of fact and law in the manner applicable to other civil suits in this state but is prohibited from admitting in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. Provides that a party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

(c) Authorizes the court, if the district court renders judgment for the petitioner, and the petitioner is a county employee, to order reinstatement of the county employee, payment of back pay, or other appropriate relief.

(d) Authorizes the court, if the district court renders judgment for the petitioner, to order appropriate relief, including costs and attorney's fees.

Sec. 161.208. DELIVERY OF RECORD TO REVIEWING COURT. (a) Requires the commission, after service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, to send to the reviewing court the original or a certified copy of the entire record of the proceeding under review.

(b) Requires that the record be filed with the clerk of the court. Authorizes the record to be shortened by stipulation of all parties to the review proceedings. Authorizes the court to assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation.

(c) Authorizes the court to require or permit later corrections or additions to the record.

Sec. 161.209. COST OF PREPARING COMMISSION RECORD. (a) Authorizes the commission to require a party who appeals a final decision under Section 161.207 to pay one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) Provides that a charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Sec. 161.210. COLLECTIONS. Authorizes the county attorney to collect a fine or other penalty imposed by the commission under this chapter in the same manner as provided for the collection of a debt owed to the county.

[Reserves Sections 161.211-161.300 for expansion.]

#### SUBCHAPTER F. DISSOLUTION OF COMMISSION

Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. Requires the commissioners court, if after an ethics commission created pursuant to Section 161.052 has been in effect for at least one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the commission, to call an election to determine whether the commission will be dissolved.

Sec 161.302. DISSOLUTION ELECTION. (a) Requires that an election under this subchapter be held in the manner provided for an election to create a county ethics commission.

(b) Requires that the ballot for the election be printed to provide for voting for or against the proposition. Sets forth the language for the ballot.

Sec. 161.303. DISSOLUTION OF COMMISSION. Requires the commissioners court, if the proposition is approved by a majority of the qualified voters voting at the election, to declare the result and by order dissolve the ethics commission. Requires that a copy of the order dissolving the commission be placed in the minutes of the court's proceedings.

Sec. 161.304. SAVING PROVISIONS. Provides that the dissolution of a county ethics commission under this subchapter does not affect the prior operation of the ethics code adopted by the commission or any prior action taken under it or any penalty, forfeiture, or punishment incurred for a violation of the ethics code before the effective date of the dissolution.

SECTION 2. Effective date: September 1, 2009.