

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 1690  
By: King, Phil et al. (Huffman)  
State Affairs  
5/22/2015  
Committee Report (Substituted)

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

Currently, certain criminal investigations of public officials are conducted by a single agency in Travis County, even though most often the public official under investigation is elected to office in a county other than Travis County and the acts alleged occur outside of Travis County. Interested parties assert that transferring the responsibility for investigations into allegations of criminal conduct against a public official to a law enforcement agency with statewide jurisdiction and statewide personnel would mitigate the possibility of political intervention in this criminal justice process. C.S.H.B. 1690 seeks to ensure appropriate accountability in this process.

C.S.H.B. 1690 amends the Government Code to require the investigation of a formal or informal complaint alleging an offense against public administration specified under the bill's provisions to be conducted by an officer of the Texas Rangers. The bill requires an officer of the Texas Rangers conducting an investigation of such a complaint that demonstrates a reasonable suspicion that the offense alleged in the complaint occurred to refer the complaint to the appropriate prosecutor of the county in which venue is proper as established by the bill.

C.S.H.B. 1690 authorizes a prosecutor to whom such a complaint has been referred to request that the court with jurisdiction over the complaint permit the prosecutor to be recused from the case for good cause and establishes that the prosecutor is considered disqualified if the court approves the request. The bill requires the presiding judges of the administrative judicial regions, following the recusal of such a prosecutor, to select the replacement prosecutor by a majority vote. The bill authorizes the replacement prosecutor to pursue a waiver to extend the statute of limitations for the offense.

The bill authorizes an officer of the Texas Rangers to investigate offenses against public administration and authorizes the Texas Rangers to refer the investigation of a complaint alleging such an offense involving a person who is a member of the executive branch to the local law enforcement agency that would otherwise have authority to investigate the complaint, if a conflict of interest arises from the conduct of an investigation by the officers of the Texas Rangers. The bill requires local law enforcement to comply with all of the bill's requirements regarding public integrity prosecutions in conducting an investigation of a complaint alleging an offense against public administration.

C.S.H.B. 1690 establishes venue for a public integrity prosecution in the county in which the defendant resides, if the defendant is a natural person, or, if the defendant holds an office of the executive branch subject to a constitutional residency requirement, in the county in which the defendant resided at the time of election to that office or another executive branch office subject to that residency requirement that the defendant held immediately before election to the office being held by the defendant. The bill prohibits its provisions regarding public integrity prosecution from being construed as limiting the attorney general's authority to prosecute Election Code offenses.

C.S.H.B. 1690 changes from the Travis County district attorney to the appropriate prosecuting attorney as provided under the bill's public integrity prosecution provisions the entity to which the president of the senate or speaker of the house of representatives must certify a statement of facts relating to a prosecution for contempt of the legislature by failing to cooperate with an applicable legislative committee. The bill transfers from the Travis County district attorney to the

prosecuting attorney to whom such a statement of facts is certified or the prosecutor selected under the bill's provisions by the presiding judges of the administrative judicial regions following recusal, if applicable, the requirement to bring the matter relating to a prosecution for contempt of the legislature before the grand jury for action and the requirement to prosecute any such indictment returned by the grand jury.

C.S.H.B. 1690 amends current law relating to the investigation and prosecution of offenses against public administration, including ethics offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 411, Government Code, by adding Subchapter B-1, as follows:

#### **SUBCHAPTER B-1. PUBLIC INTEGRITY UNIT**

Sec. 411.0251. DEFINITIONS. Defines "offense" and "prosecuting attorney."

Sec. 411.0252. OFFENSES AGAINST PUBLIC ADMINISTRATION. Provides that for purposes of this subchapter, the following are offenses against public administration:

- (1) an offense under Title 8 (Offenses Against Public Administration), Penal Code, committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment;
- (2) an offense under Chapter 301 (Legislative Organization), 302 (Speaker of the House of Representatives), 305 (Registration of Lobbyists), 571 (Texas Ethics Commission), 572 (Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest), or 2004 (Representation Before State Agencies);
- (3) an offense under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions) committed by a state officer in connection with the powers and duties of the state office; and
- (4) an offense under Title 15 (Regulating Political Funds and Campaigns), Election Code, committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

Sec. 411.0253. PUBLIC INTEGRITY UNIT. (a) Requires the Texas Rangers division of the Department of Public Safety of the State of Texas (DPS) to establish and support a public integrity unit.

(b) Authorizes the public integrity unit, on receiving a formal or informal complaint regarding an offense against public administration or on request of a prosecuting attorney or law enforcement agency, to perform an initial investigation into whether a person has committed an offense against public administration.

(c) Provides that the Texas Rangers have authority to investigate an offense against public administration, any lesser included offense, and any other offense arising from conduct that constitutes an offense against public administration.

(d) Requires that the matter, if an initial investigation by the public integrity unit demonstrates a reasonable suspicion that an offense against public administration occurred, be referred to the prosecuting attorney of the county in which venue is

proper under Section 411.0256 or Chapter 13 (Venue), Code of Criminal Procedure, as applicable.

(e) Requires the public integrity unit, on request of the prosecuting attorney described by Subsection (d), to assist the attorney in the investigation of an offense against public administration.

Sec. 411.0254. NOTIFICATION REGARDING DISPOSITION OF CASE. Requires the prosecuting attorney to notify the public integrity unit of:

- (1) the termination of a case investigated by the public integrity unit; or
- (2) the results of the final disposition of a case investigated by the public integrity unit, including the final adjudication or entry of a plea.

Sec. 411.0255. RECUSAL OF PROSECUTING ATTORNEY; SELECTION OF PROSECUTING ATTORNEY BY PRESIDING JUDGE OF ADMINISTRATIVE JUDICIAL REGION. (a) Authorizes a prosecuting attorney to request that the presiding judge of the administrative judicial region containing the county served by that attorney permit the attorney to recuse himself or herself for good cause in a case investigated under this subchapter, and provides that on submitting the notice of recusal, the attorney is disqualified.

(b) Requires the presiding judge of the administrative judicial region containing the county served by that attorney on recusal of a prosecuting attorney under Subsection (a) to appoint a prosecuting attorney from another county in that administrative judicial region. Provides that a prosecuting attorney appointed under this subsection has the authority to represent the state in the prosecution of the offense.

Sec. 411.0256. VENUE. Provides that, notwithstanding Chapter 13, Code of Criminal Procedure, or other law, if the defendant is a natural person, venue for prosecution of an offense against public administration and lesser included offenses arising from the same transaction is the county in which the defendant resides.

Sec. 411.0257. RESIDENCE. Provides that for the purposes of this subchapter, a person resides in the county where that person:

- (1) claims a residence homestead under Chapter 41 (Interests in Land), Property Code, if that person is a member of the legislature;
- (2) claimed to be a resident before being subject to residency requirements under Article IV (Executive Department), Texas Constitution, if that person is a member of the executive branch of this state;
- (3) claims a residence homestead under Chapter 41, Property Code, if that person is a justice on the supreme court or judge on the court of criminal appeals; or
- (4) otherwise claims residence if no other provision of this section applies.

Sec. 411.0258. COOPERATION OF STATE AGENCIES AND LOCAL LAW ENFORCEMENT AGENCIES. (a) Requires a state agency or local law enforcement agency, to the extent allowed by law, to cooperate with the public integrity unit by providing resources and information requested by the unit as necessary to carry out the purposes of this subchapter.

(b) Provides that information disclosed under this section is confidential and not subject to disclosure under Chapter 552 (Public Information).

Sec. 411.0259. SUBPOENAS. (a) Authorizes the public integrity unit, in connection with an investigation of an alleged offense against public administration, to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) Provides that a subpoena may be served personally or by certified mail.

(c) Authorizes the public integrity unit, acting through the general counsel of DPS, if a person fails to comply with a subpoena, to file suit to enforce the subpoena in a district court in this state. Requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena. Authorizes the court to punish a person who fails to obey the court order.

SECTION 2. Amends Chapter 41, Government Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. PAYMENTS FOR PUBLIC INTEGRITY PROSECUTIONS

Sec. 41.351. DEFINITIONS. Defines "offenses against public administration" and "prosecuting attorney."

Sec. 41.352. PAYMENT FOR EXTRAORDINARY COSTS OF PROSECUTION. Requires the comptroller of public accounts of the State of Texas to pay from funds appropriated to the comptroller's judiciary section, from appropriations made specifically for enforcement of this section, reasonable amounts incurred by a prosecuting attorney for extraordinary costs of prosecution of an offense against public administration.

SECTION 3. Amends Sections 301.027(b) and (c), Government Code, as follows:

(b) Requires the president of the senate or speaker, if the president of the senate or speaker receives a report or statement of facts as provided by Subsection (a) (providing that if a person is summoned by either house or legislative committee and fails to show up, the fact of the failing may be reported to either house), to certify the statement of facts to the appropriate prosecuting attorney, rather than to the Travis County district attorney, as provided under Section 411.0253(d) under the seal of the senate or house of representatives, as appropriate.

(c) Requires the prosecuting attorney, rather than the Travis County district attorney, to whom a statement of facts is certified under Subsection (a) or the prosecutor selected under Section 411.0255, if applicable, to bring the matter before the grand jury for action. Requires the prosecuting attorney, rather than district attorney, if the grand jury returns an indictment, to prosecute the indictment.

SECTION 4. Amends Section 411.022, Government Code, by adding Subsection (c), to provide that an officer of the Texas Rangers has the authority to investigate offenses against public administration prosecuted under Subchapter B-1.

SECTION 5. (a) Requires DPS, not later than three months after the effective date of this Act, to establish the public integrity unit under Subchapter B-1, Chapter 411, Government Code, as added by this Act.

(b) Provides that Subchapter B-1, Chapter 411, Government Code, as added by this Act, applies only to the investigation and prosecution of an offense under Subchapter B-1, Chapter 411, Government Code, committed on or after the date that DPS establishes the public integrity unit. Provides that for purposes of this subsection, an offense is committed if any element of the offense occurs before the date described by this subsection.

(c) Provides that the prosecution of an offense committed before the date described in Subsection (b) of this section is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: upon passage or September 1, 2015.