

## **BILL ANALYSIS**

Senate Research Center  
85R10023 ATP-D

C.S.S.B. 612  
By: Birdwell; Whitmire  
State Affairs  
3/31/2017  
Committee Report (Substituted)

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

On November 5, 1991, Texas voters approved an amendment that added a new provision, Article III, Section 24a, to the Texas Constitution. The constitutional amendment created the Texas Ethics Commission (TEC). The Texas Constitution provides that TEC may recommend the salary of members of the legislature, the lieutenant governor, and the speaker of the house of representatives, subject to approval by the voters at the subsequent general election for state and county officers. Also, TEC must set the per diem of members of the legislature and of the lieutenant governor. The legislature is to determine the other powers and duties of TEC.

S.B. 612 seeks to implement several necessary reforms at TEC. The legislature determines the powers and duties of TEC, and the intent of S.B. 612 is to provide TEC with clear direction on how to carry out these duties and to help ensure elected officials and political action committees are in compliance with the laws passed by the legislature, as well as providing a due process standard to protect those against whom a complaint is filed.

### **PROVISIONS**

Filing errors: Allows for a statement, registration, or report to be corrected or amended within a 14-day period without a late filing penalty regardless of whether the filer or another person has filed a sworn complaint pertaining to the statement.

Jurisdiction: Requires TEC, rather than the executive director, to decide on jurisdiction.

Allows for either the respondent or the complainant to, within 30 days, file a challenge to the jurisdiction of TEC which must be ruled on by TEC within 30 days.

Respondent ability to subpoena: Allows respondent, through counsel and in accordance with the rules of civil procedure, to subpoena witnesses to appear at a preliminary review hearing.

Allows respondent, through counsel and in accordance with the Texas Rules of Civil Procedure, to subpoena witnesses to appear at a formal hearing.

Speedy trial: Requires TEC to finally adjudicate a complaint processed as a category 1 violation within 12 months and a complaint processed as a category 2 violation within 18 months. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 612 amends current law relating to complaints filed with and certain other filings submitted to the Texas Ethics Commission.

### **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 Section 571.0771(b) , Government Code, as follows:

(b) Provides that Subsection (a) (relating to a required statement, registration, or report filed with the Texas Ethics Commission (TEC) not being considered late under certain circumstances) does not apply to:

(1) a penalty imposed under Section 571.069 (Review of Statements and Reports; Audits) or Subchapter F (Enforcement), rather than Subchapter E (Complaint Procedures and Hearings) or F; or

(2) a report required to be filed under Section 254.064(c) (relating to an authority receiving the report by a certain date), 254.124(c) (relating to an authority receiving certain committee reports by a certain date), or 254.154(c) (relating to the authority receiving a report from a general-purpose committee by a certain date), Election Code, rather than under 254.038 (Special Report Near Election by Certain Candidates and Political Committees), 254.039 (Special Report Near Election by Certain General-Purpose Committees), 254.064(c), 254.124(c), or 254.152(c), Election Code.

SECTION 2. Amends Section 571.097, Government Code, as follows:

Sec. 571.097. New heading: DEFENSES: RELIANCE ON ADVISORY OPINION; COMMISSION'S FAILURE TO ISSUE OPINION. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that it is a defense to prosecution or to imposition of a civil penalty for the violation of a law that:

(1) the person requested a written advisory opinion from TEC relating to a certain application of that law; and

(2) TEC did not issue the opinion within the time prescribed by Section 571.092 (Deadline for Opinion; Extension).

SECTION 3. Amends Section 571.1212, Government Code, by changing a reference to Section 571.1242(a) to Section 571.1242.

SECTION 4. Amends Subchapter E, Chapter 571, Government Code, by adding Section 571.1223, as follows:

Sec. 571.1223. DISMISSAL OF COMPLAINT FOLLOWING CORRECTED OR AMENDED STATEMENT, REGISTRATION, OR REPORT. Requires TEC, at any stage of a proceeding under this subchapter, to dismiss a complaint to the extent the complaint alleges a statement, registration, or report violates a law or rule if the respondent has filed a corrected or amended statement, registration, or report before TEC accepts jurisdiction over the complaint and if the corrected or amended statement, registration, or report remedies the alleged violation.

SECTION 5. Amends the heading to Section 571.1241, Government Code, to read as follows:

Sec. 571.1241. REVIEW OF EXECUTIVE DIRECTOR'S DETERMINATION OF JURISDICTION.

SECTION 6. Amends Section 571.1241(a), Government Code, as follows:

(a) Authorizes the complainant or respondent, if the executive director of TEC (executive director) determines that TEC does not have jurisdiction over the violation alleged in the complaint, to request that TEC review the determination. Requires a request for review under this section to be filed not later than the 30th day after the date the complaint or respondent receives the executive director's determination.

SECTION 7. Amends the heading to Section 571.1242, Government Code, to read as follows:

Sec. 571.1242. PRELIMINARY REVIEW.

SECTION 8. Amends Sections 571.1242(a), (b), and (c), Government Code, as follows:

(a) Requires the respondent, if the alleged violation is a Category One violation, to respond to the notice required by Section 571.123(b) (relating to requiring TEC to immediately attempt to contact and notify the respondent of the complaint, after a complaint is filed) not later than the 10th business day after the date the respondent receives the notice. Deletes existing designation of Subdivision (1) and existing Subdivision (2), relating to setting a hearing for a certain unresolved matter. Makes nonsubstantive changes.

(b) Requires the respondent, if the alleged violation is a Category Two violation, to 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). Deletes existing designation of Subdivision (1) and existing Subdivision (2), relating to TEC procedures if a matter is not resolved by agreement between TEC and the respondent before a certain date.

(c) Provides that a respondent's failure to timely respond as required by Subsection (a) or (b), rather than Subsection (a)(1) or (b)(1) is a Category One violation.

SECTION 9. Redesignates existing Section 571.1243, Government Code, as Section 571.1242(f), Government Code, and amends it by deleting the heading of Section 571.1243.

SECTION 10. Amends Section 571.1242, Government Code, by adding Subsections (g), (h), (i), and (j), as follows:

(g) Requires TEC, not later than the 120th day after the later of the date TEC receives a respondent's response to notice as required by Subsection (a) or (b) or the respondent's response to written questions as required by Subsection (f) (relating to authorizing TEC staff to submit written questions to the complainant or respondent during a preliminary hearing), to propose an agreement to the respondent to settle the complaint without holding a preliminary hearing or to dismiss the complaint.

(h) Provides that the deadline under Subsection (g) is tolled for the duration of any litigation brought by the respondent or TEC regarding the complaint at issue.

(i) Requires the matter, if a respondent rejects a proposed settlement under Subsection (g), to be set for a preliminary review hearing at the next TEC meeting for which notice has not yet been posted.

(j) Requires TEC, if a complaint is dismissed under Subsection (g), to deny jurisdiction over any subsequent complaint against the respondent that alleges the respondent violated the same statutes or rules based on the same facts alleged in the dismissed complaint.

SECTION 11. Amends Section 571.125, Government Code, by adding Subsection (f), to authorize counsel for the respondent to subpoena a witness to a preliminary review hearing in the same manner as an attorney is authorized to issue a subpoena in a proceeding in a county or district court.

SECTION 12. Amends Section 571.130, Government Code, by adding Subsection (f), to authorize counsel for respondent to subpoena a witness to a formal hearing in the same manner as an attorney is authorized to issue a subpoena in a proceeding in a county or district court.

SECTION 13. Repealer: Section 571.1242(e) (relating to requiring TEC, if TEC sets the matter for a preliminary review hearing, to promptly send to the complainant and the respondent written notice of the preliminary hearing), Government Code.

SECTION 14. Makes application of Chapter 571, Government Code, as amended by this Act, prospective.

SECTION 15. Effective date: September 1, 2017.