

BILL ANALYSIS

Senate Research Center

S.B. 548
By: Birdwell et al.
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The intent of this legislation is to provide the Texas Ethics Commission (TEC) with clear direction on how to carry out their 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.

This bill will address issues at TEC having to do with issuing advisory opinions. Current law requires TEC to adopt an opinion within 60 days after the request is made, though TEC has the ability to grant itself two 30 day extensions. In practice, TEC frequently exceeds this time frame. The bill provides a person with a defense to prosecution/civil penalties if TEC doesn't adopt an advisory opinion regarding the facts after TEC has had 120 days to deliberate over it. This assists the regulated community, such that if TEC does not fulfill its statutory duty, the person requesting the opinion can't be held liable for not following the law if they requested an opinion for guidance on the law. The language also clarifies that the defense to prosecution only applies to potential violations of the law or rule that occur between the period starting after the opinion is required by law and the date TEC adopts the advisory opinion.

The bill 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. This bill also adds language that will require TEC to dismiss a complaint if the respondent has filed a corrected or amended statement prior to TEC accepting jurisdiction over the complaint and the corrected statement remedies the alleged violation of law or rule.

This bill allows for jurisdiction decisions to remain with the executive director, however, the bill gives the ability of a complainant or a respondent to appeal the executive director's decision to the full commission.

Current statute (Section 571.1242) already places limits on when the matter must be resolved by agreement between TEC and the respondent. If Category One, it's 30 business days after the respondent receives notice of the complaint; if Category Two, it's 75 business days. If the resolution has not occurred, TEC is supposed to set the matter for a preliminary review for the next TEC meeting. Currently, TEC is not following this statute. Rather than setting a hard deadline this proposal would require TEC to act within 120 days after receiving responses, either to the initial complaint or to written questions provided by TEC for further discovery of a matter relevant to the investigation, and if no resolution is proposed by TEC within that 120 days, the complaint is dismissed and cannot be refiled based on the same facts. This bill will also add language that would require the 120 day period to be tolled for the duration of any litigation brought by the respondent or TEC regarding the complaint at issue.

Lastly, this bill allows respondent, through counsel and in accordance with the rules of civil procedure, to subpoena witnesses to appear at a preliminary review hearing and at a formal hearing. (Original Author's/Sponsor's Statement of Intent)

S.B. 548 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 circumstances under which a statement, registration, or report is not considered late) does not apply to:

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

(2) a report required to be filed under Section 254.064(c) (relating to a requirement for a second report to be received by the authority with whom the report is required to be filed not later than the eighth day before election day), 254.124(c) (relating to a requirement for a second report to be received by the authority with whom the report is required to be filed not later than the eighth day before election day), or 254.154(c) (relating to a requirement for the second report to be received by the authority with whom the report is required to be filed not later than the eighth day before election day), rather than 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 254.154(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 and makes no further changes.

(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 the Texas Ethics Commission (TEC) relating to the application of that law to a specified existing fact situation involving the person that is the same fact situation or substantially similar to the fact situation that forms the basis of the alleged violation; and

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

(c) Provides that the defense to prosecution or imposition of a civil penalty under Subsection (b) applies only to acts giving rise to a potential violation of law occurring in the period beginning on the date the time prescribed by Section 571.092 expires and ending on the date TEC issues the requested opinion.

SECTION 3. Amends Section 571.1212, Government Code, as follows:

Sec. 571.1212. CATEGORIZATION OF VIOLATIONS. Requires an allegation of a violation listed as a Category One violation to be treated as a Category Two violation if the executive director of TEC (executive director) at any time determines that:

(1) makes no changes to this subdivision; or

(2) 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 571.1242, rather than 571.1242(a).

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 (Complaint Procedures and Hearings), to dismiss a complaint to the extent the complaint alleges a statement, registration, or report violates a law or rule if:

- (1) the respondent has filed a corrected or amended statement, registration, or report before TEC accepts jurisdiction over the complaint; and
- (2) 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, rather than the complainant, if the executive director determines that TEC does not have jurisdiction over the violation alleged in the complaint, to request that TEC review the determination. Requires the request for review under this section to be filed not later than the 30th day after the date the complainant or respondent, rather than the complainant, 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) Deletes existing text relating to a requirement that TEC, if a matter that is an alleged category one violation not resolved by agreement between TEC and the respondent before the 30th business day after the date the respondent receives the notice under Section 571.123(b) (relating to requiring TEC, after a complaint is filed, to immediately attempt to contact and notify the respondent of the complaint by telephone or electronic mail), set the matter for a preliminary review hearing to be held at the next TEC meeting for which notice has not yet been posted. Makes nonsubstantive changes.

(b) Deletes existing text relating to a requirement that TEC, if a matter that is an alleged category two violation is not resolved by agreement between TEC and the respondent before the 75th business day after the date the respondent receives the notice under Section 571.123(b), set the matter for a preliminary review hearing to be held at the next TEC meeting for which notice has not yet been posted. Makes nonsubstantive changes.

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

SECTION 9. Redesignates Section 571.1243, Government Code, as Section 571.1242(f) and amends it, as follows:

(f) Deletes existing designation as Section 571.1243 and deletes the heading of that section. Makes no further changes.

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), 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 may 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 the respondent to subpoena a witness to a formal hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court.

SECTION 13. Repealer: Section 571.1242(e) (relating to requiring TEC to send to the complainant and the respondent written notice of the date, time, and place of a preliminary review hearing set by TEC), Government Code.

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

SECTION 15. Effective date: September 1, 2019.