

SUBJECT: Complaints to Texas Ethics Commission about bad faith complaints

COMMITTEE: Elections — favorable, without amendment

VOTE: 4 ayes — Denny, Bohac, Anderson, Hughes
0 nays
1 present not voting — Anchia
2 absent — J. Jones, T. Smith

WITNESSES: For — None
Against — Suzy Woodford, Common Cause Texas
On — Sarah Woelk, Texas Ethics Commission

BACKGROUND: Government Code, ch. 571, subchs. E and F govern complaint procedures, hearings and enforcement requirements for the Texas Ethics Commission regarding sworn complaints filed alleging that someone subject to a law administered by the commission has violated a rule or law. Under most circumstances, the commission can dismiss a complaint in 21 days. If the commission finds that a violation has occurred, current law prescribes specific timelines and procedures for resolving the complaint. The commission can impose a civil penalty of not more than \$10,000 for the filing of a frivolous or bad-faith complaint.

DIGEST: HB 2826 would amend sec. 571.176 to allow a person to file a sworn complaint with the commission alleging that a complaint filed with the commission was frivolous and in bad faith.

The bill would allow a complaint to be filed, even if the complaint alleged to be frivolous or brought in bad faith was pending before the commission or had been resolved. The complaint would have to comply with current requirements for complaint procedures and hearings.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Ethics charges are routine in today's political climate, especially local campaigns. Some of these complaints are made in bad faith merely for the negative effect they may have and are used to create doubt about a certain candidate in the minds of the voters. This creates an impression of an ethics problem, whether or not there is one.

Under current law, the Ethics Commission is authorized only to determine if an ethics allegation is frivolous if the original charge is still under investigation. Current law requires the commission to go through technical steps to accept jurisdiction over a complaint. If the commission dismisses or closes a complaint, it cannot go back later and investigate whether that complaint was frivolous.

This means a candidate who was named in an ethics complaint, in order to make a counter claim that the charge was made in bad faith and frivolous, must defend the charge while simultaneously filing his or her own allegation that the claim was frivolous. This has been especially challenging for some respondents because the commission routinely investigates complaints quickly and can dismiss a complaint within 21 days after its filing.

HB 2826 would allow a person to clear that person's name and allege that an ethics claim was frivolous and brought in bad faith. It would clarify that the commission could investigate both pending or closed complaints. It would not alter in any way the amount of the civil penalty the commission could assess if a complaint were found to be frivolous.

Concern that the bill would not be clear about who would be allowed to file a counter complaint could be addressed by an amendment.

**OPPONENTS
SAY:**

The bill is ambiguous because it would allow any person to file a sworn complaint alleging a complaint already filed with the commission was frivolous. Instead, it should allow a person to file a sworn complaint

alleging that a complaint in which that person was the respondent was frivolous and brought in bad faith.