

- SUBJECT:** Establishing procedures for public integrity prosecutions
- COMMITTEE:** General Investigating and Ethics — committee substitute recommended
- VOTE:** *After recommitted:*  
4 ayes — Kuempel, S. Davis, Hunter, Larson  
  
2 nays — Collier, Moody  
  
1 absent — C. Turner
- WITNESSES:** *March 26 public hearing:*  
For — None  
  
Against — Jules Dufresne, Common Cause Texas; Carol Birch, Public Citizen, Texans for Public Justice; Sara Smith, Texas Public Interest Research Group; (*Registered, but did not testify:* Kelley Shannon, Freedom of Information Foundation of Texas)  
  
On — Brantley Starr, Office of Attorney General; David Slayton, Office of Court Administration, Texas Judicial Council; Steven McCraw, Texas Department of Public Safety; Robert Kepple, Texas District and County Attorneys Association; Gregg Cox, Travis County District Attorney's Office, Public Integrity Unit
- BACKGROUND:** The Travis County District Attorney established the Public Integrity Unit in 1978 to investigate and prosecute crimes related to state government. Cases include fraud and financial crimes targeting various state programs and public corruption cases against state employees and officials involving offenses in Travis County. The Legislature has funded the unit since the early 1980s. The unit's funding for fiscal 2014-15 was vetoed by the governor.
- DIGEST:** CSHB 1690 would add to Government Code, ch. 41 a new subchapter establishing procedures for public integrity prosecutions.

The bill would include the following as offenses against public administration:

- offenses listed in Title 8 of the Penal Code, such as bribery and coercion, when committed by a state officer or state employee in connection with the powers and duties of the state office or employment;
- conduct that violates Government Code requirements for the Legislature, House speaker, and lobbyists, including lobbyist registration, campaign finance, and personal financial disclosure requirements;
- violations of nepotism laws committed by state officers; and
- violations of Election Code regulations of political funds and campaigns committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

The bill would not limit the authority of the attorney general to prosecute election law offenses.

**Investigations.** Officers of the Texas Rangers would be required to investigate formal or informal complaints alleging an offense against public administration. If there were a conflict of interest involving an investigation of a member of the executive branch, the Rangers could refer an investigation to the local law enforcement agency that would otherwise have authority to investigate the complaint. Local law enforcement would have to comply with all the bill's requirements

**Prosecutions.** Investigations that demonstrate a reasonable suspicion that an offense occurred would be referred to the prosecutor in either:

- the county where the defendant resides; or
- the county where the defendant resided when the defendant was elected to a statewide office subject to a residency requirement in the Texas Constitution.

A prosecutor could request to be recused from a case for good cause. If the court with jurisdiction over the complaint approved the request, an alternate prosecutor would be selected by a majority vote of the presiding judges of the state's nine administrative judicial regions. The administrative judges would be required to select an alternate prosecutor from the same administrative judicial region and would have to consider the proximity of the county or district represented by the new prosecutor to the county in which venue is proper. The alternate prosecutor could pursue a waiver to extend the statute of limitations for the offense only with approval of a majority of the administrative judges.

CSHB 1690 would remove the Travis County district attorney from prosecutions for contempt of the Legislature under Government Code, sec. 301.027. When the Legislature was not in session, the Senate president or House speaker would be required to certify a statement of facts concerning the contempt allegations to the appropriate prosecuting attorney under the bill's venue provisions. The prosecuting attorney or an alternate prosecutor selected under the bill's recusal provisions would have to bring the matter before the grand jury for action and, if the grand jury returned an indictment, would have to prosecute the indictment.

**Confidentiality.** The bill would require state agencies and local law enforcement agencies to cooperate with public integrity prosecutions by providing information requested by the prosecutor and would exempt disclosed information from state public information laws.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1690 would establish a fairer process for investigating and prosecuting elected officials for public corruption crimes, such as bribery and violations of ethics laws. Complaints would be investigated by the Texas Rangers and prosecuted in the home county of the officer or employee. This process would disperse power from a single district attorney's office in the state capital to prosecutors around the state. This spreading of authority could help alleviate concerns that politics has

played a role in certain high-profile prosecutions of state officials in Travis County.

The Texas Rangers are an elite law enforcement agency with sufficient training and experience to conduct public integrity investigations. The Rangers already have a unit dedicated to public corruption cases and could easily absorb the small number of complaints brought against state officials each year. The Rangers also have civil service protections that could give them an added layer of independence from political pressure that could be connected to an investigation. The bill would guard against possible conflicts of interest by allowing the Rangers to refer cases involving members of the state executive branch to a local law enforcement agency.

The bill would create a neutral venue and would allow defendants to be tried by a jury of their peers. Contrary to opponents' suggestions that the hometown venue would favor a defendant, the criminal prosecution likely would be more accessible to local voters and covered by local media. In addition, up to \$500,000 could be made available through a contingency rider in Art. 11 of the general appropriations act to pay for witness travel and other costs associated with the bill's venue provisions. There is precedent in state law for trying defendants in the county where they reside for offenses committed elsewhere. For example, Code of Criminal Procedure, art. 13.10 provides that certain offenses committed outside Texas by a state officer acting under state authority may be prosecuted in the county where the officer resides.

If a local prosecutor had a conflict of interest, the bill would create a process for that prosecutor to ask to be recused and for an alternate prosecutor to be appointed. Opponents claim that the bill relies too much on a prosecutor's willingness to be recused, but public pressure likely would force the hand of a prosecutor who should step aside but declined to do so.

The bill would not disturb Travis County's jurisdiction over offenses involving insurance fraud and motor fuels tax collections. The Travis

County D.A.'s Public Integrity Unit would continue to prosecute fraud and financial crimes targeting various state programs and certain crimes committed by state employees. These cases make up the vast majority of the Public Integrity Unit's caseload. Under the House-passed budget, the unit would receive \$6.5 million in general revenue and general revenue dedicated funds for fiscal 2016-17, contingent on the passage of HB 1690 or similar legislation.

Concern about the confidentiality of information provided in connection with public integrity prosecutions is overstated. Current law contains exceptions from public information laws for records and information if the release of the information would interfere with a criminal investigation or prosecution.

**OPPONENTS  
SAY:**

CSHB 1690 could result in less accountability in public corruption cases against state officers and state employees by giving those defendants a "home-field advantage" during a prosecution. The bill would make a significant change from the usual prosecution of crimes in the county where they occurred. This could lead to troubling situations, such as a public servant accused of official oppression for actions taken while on assignment in one part of the state being tried far from the county where the acts occurred.

Placing venue in an official's home county would set the stage for crony politics. For example, the local prosecutor overseeing the case may be friends or political acquaintances with the official being prosecuted. The bill lacks any requirements for recusal of a prosecutor and leaves it up to a prosecutor to self-report and ask for a recusal.

In the event that a prosecution was transferred to another county, the bill also could increase costs for public corruption prosecutions if witnesses were required to travel to a county far from where the crime occurred. An estimated \$500,000 could be needed to reimburse counties for costs associated with prosecuting officials in their home counties.

There could be conflicts of interest involving the Texas Rangers, which is a division of the Texas Department of Public Safety (DPS). The DPS

director is hired by the Public Safety Commission, whose five members are appointed by the governor. Many other high-ranking state executives also are appointed by the governor. While the Rangers could refer an investigation involving a member of the executive branch to a local law enforcement agency, they would not be required to transfer the case.

CSHB 1690 would exempt from state public information laws information from state agencies and local law enforcement provided in connection with public integrity prosecutions. This blanket exemption could result in information that normally would be available to the public through open records laws becoming off limits when a local prosecutor takes over a case.

The bill is based on incorrect perceptions that the Travis County District Attorney has made partisan decisions in public corruption prosecutions. Since its inception, the D.A.'s Public Integrity Unit has prosecuted elected officials from both political parties. Additionally, the bill could complicate the Travis County D.A.'s ability to pursue certain charges involving employees who lived outside Travis County.

NOTES:

The author of CSHB 1690 planned to offer floor amendments to:

- remove violations of lobby registration laws as an offense covered by the bill;
- define “state agency” as an executive branch entity to ensure that investigators must subpoena judicial and legislative records;
- clarify that Government Code offenses must be committed in connection with the powers and duties of the state office or state employment or by a candidate for state office;
- clarify that another state agency having primary responsibility for investigating a complaint alleging an offense against public administration could continue to perform those investigations;
- require a prosecutor selected as an alternate to the home county prosecutor to be appointed only with the prosecutor’s consent;
- place venue in the county where the defendant resided at the time the offense was committed; and

- clarify that venue for prosecuting a statewide elected official would be the county in which the defendant resided at the time the defendant was initially elected to statewide office.

Unlike the filed bill, the committee substitute would:

- require investigations of complaints alleging offenses against public administration to be conducted by an officer of the Texas Rangers;
- allow the Rangers to refer complaints to local law enforcement agencies if the Rangers have a conflict of interest;
- place venue in a defendant's county of residence or the county where certain statewide officials previously resided; and
- permit local prosecutors to be recused for good cause and establish a process for their replacement.

SB 10 by Huffman concerning offenses against public administration was passed by the Senate on April 9.

CSHB 1690 was reported favorably as substituted by the House Committee on General Investigating and Ethics on April 2, placed on the General State Calendar for April 16, recommitted on a point of order and again reported favorably on April 17.