

BILL ANALYSIS

C.S.S.B. 1368
By: Shapleigh
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a county is authorized to establish an ethics board but without enabling legislation a county cannot authorize its ethics board to impose effective penalties against those who violate ethics standards. An ethics board can censure a public official, make a referral to a law enforcement agency or, if the violator is a county employee, recommend disciplinary action. An ethics board is prohibited from imposing a civil penalty and can take little action when an elected official, lobbyist, or vendor violates ethics standards, absent statutory authorization.

C.S.S.B. 1368 authorizes the creation of an effective county ethics enforcement mechanism in a county that meets the description in the bill, with the power to adopt an ethics code governing county public servants, review complaints, and impose penalties on violators.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution, however, rulemaking authority is expressly granted to a county ethics commission established as provided in SECTION 1 of the bill.

ANALYSIS

Creates a new Chapter 161 in the Local Government Code. All references below are to sections in this new proposed chapter unless otherwise noted.

Proposed Section 161.001 applies the new chapter to a county with a population greater than 650,000 located on the international border that has a county ethics board appointed by the commissioners court before September 1, 2009.

Proposed Section 161.002 defines terms to be used throughout the new chapter.

Proposed Section 161.003 provides that the new chapter cannot construe to affect a collective bargaining agreement authorized by Chapter 174 or civil services statutes applicable to a county employee. In the event of a conflict between Chapter 161 and the agreement or civil service laws, then the agreement or prevail.

Proposed Section 161.051 provides for creation of an ethics commission by an order adopted by a majority of the commissioners court's full membership. A copy of such an order is required to be placed in the minutes of the court's proceedings and is public information.

Proposed Section 161.052 provides for the creation of an ethics commission by election called by the county commissioners court and establishes required votes necessary for creation and certain procedures for calling the election including required notices.

Proposed Section 161.053 provides for the ballot language in the event creation of an ethics commission is proposed by election.

Proposed Section 161.054 provides the procedures to be used if an election to create an ethics commission is successful.

Proposed Section 161.055 provides for appointment of a 10-member ethics commission, 5 members by members of the commissioners court (each of whom is appointed by the county judge or a county commissioner) and 5 members appointed by the commissioners court from lists of nominees submitted from organizations, some of which are designated by the commissioners court. If one of the court-designated organizations does not wish to submit nominees, the court shall select a similar entity that has experience with grievance or mediation structures or processes. Provides for the timing of the appointments, the delivery of nominations, and setting of the initial meeting by the commissioners court.

Proposed Section 161.056 provides the eligibility criteria for appointment to the commission.

Proposed Section 161.057 provides for ethics commissioners to serve two-year terms beginning on February 1 of odd-numbered years and allows members to serve more than one term.

Proposed Section 161.058 provides the methods of filling vacancies on an ethics commission. It contains a provision that if the county judge or county commissioner, as applicable, does not fill the vacancy within a certain amount of time after the position becomes vacant, the commission may fill the vacancy by a majority vote of the remaining members.

Proposed Section 161.059 provides that an ethics commission shall meet regularly, is a governmental body for purposes of Chapter 551, Government Code, and that a majority of the ethics commissioners constitutes a quorum unless otherwise provided by the chapter.

Proposed Section 161.0591 provides that the position of chair of the commission rotates every six months, prescribes the method of rotation and provides that the chair does not vote except to break a tie.

Proposed Section 161.060 provides that a member of the commission is a county officer described by Section 87.012(15), Local Government Code and may be removed as provided by Chapter 87, Local Government Code, if after a trial, the jury finds good cause for removal. Section 161.060 describes some of those causes.

Proposed Section 161.061 provides that the county attorney, criminal district attorney or district attorney with the duty to represent the county in civil matters shall represent the commission in all legal matters, as appropriate.

Proposed Section 161.101 provides the general powers of an ethics commission, including adopting, publishing and enforcing an ethics code governing county public servants. Authorizes an ethics commission to use as a guide ethics codes of other political subdivisions listed in the bill to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county. Requires the commission to base certain calculations that implicate who is a lobbyist on the Texas Ethics Commission under Chapter 305, Government Code. Authorizes an ethics commission to adopt bylaws, rules, forms, policies or procedures to assist in the administration of its duties and to be guided by Robert's Rules of Order to the extent that it does not conflict with the constitution and laws of the United States, the State of Texas, or other guidelines adopted by the commission. Requires the county to assign staff and provide access to county resources to assist a commission with its duties and requires the commission to provide the public with certain information and enforce the provisions of the ethics code by issuing appropriate orders or recommendations or imposing appropriate penalties.

Proposed Section 161.102 authorizes an ethics commission to issue advisory opinions under certain conditions and deems the name of the person requesting the opinion confidential.

Proposed Section 161.103 requires an ethics commission to develop and distribute plain-language public interest information materials meeting certain criteria. Requires the commission to post the information on the county's Internet website and make the information otherwise available to the public. Also requires these materials to be provided to each complainant and respondent. Requires the commission to adopt a policy to effectively distribute these materials.

Proposed Section 161.104 provides that appointed members of the ethics commission must complete certain training related to the commission and service on it not later than the 60th day after the date a person is appointed, including certain specified information. It further requires subsequent training on other matters. Prohibits ethics commission appointees, other than the initial ones, from participating in an ethics commission's votes, deliberations, or from being counted as a member in attendance at a meeting until the person completes a training that complies with Section 161.104.

Proposed Section 161.105 requires an ethics commission and its staff to provide ethics training to persons covered by the ethics code adopted by the commission on at least a quarterly basis. The training must provide certain information. Section 161.105 also requires that, in addition to the qualifications under Subchapter C, Chapter 262, Local Government Code, before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, an officer, principal, or other person with the authority to bind the vendor shall complete training on the ethics code. Also requires lobbyists intending to meet with a person covered by the ethics code to complete training on the ethics code.

Proposed Section 161.106 prohibits a member of an ethics commission from discussing a sworn complaint alleging a violation of the ethics code with the member of the commissioners court who appointed the commission member if that member was appointed under Section 161.055(a)(1); and with any member of the commissioners court if that member was appointed under Section 161.055(a)(2).

Proposed Section 161.151 provides definitions that categorize types of ethics violations. A "Category One violation" means a violation of the ethics code adopted by the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including certain types of violations. A "Category Two violation" means a violation of the ethics code adopted by the commission that is not a Category One violation.

Proposed Section 161.152 requires an ethics commission to adopt the complaint procedures and hearings set forth in Subchapter D and allows an ethics commission to adopt additional procedures not in conflict with the provisions of Subchapter D.

Proposed Section 161.153 authorizes an ethics commission to hold a hearing on a sworn complaint and render a decision on a complaint or report of a violation as provided by Chapter 161; and to agree to the settlement of issues. Prohibits the commission from considering a complaint or voting to investigate a matter outside the commission's jurisdiction; or from investigating any matter except in response to a sworn complaint.

Proposed Sec. 161.154 provides for the categorization of violations. Under the section, an allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the commission at any time determines that the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or 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 161.159(a).

Proposed Section 161.155 authorizes a person to file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. The commission shall make the complaint form available on the county website. Such a complaint must be in writing and under oath and must set forth certain information in simple, concise, and direct statements. Required information includes, but is not limited to all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

Section 161.155 would also provide that the complaint must be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official. Also provides that a complaint must state on its face an allegation that, if true, constitutes a violation of the ethics code.

Proposed Section 161.1551 provides for a standing preliminary review committee, consisting of two members of the ethics commission (one from each appointment method) and a review officer selected and retained by the commission who must be a practicing attorney or former judge, to conduct a preliminary review of each sworn complaint. Provides that ethics commissioners serve on the standing preliminary review committee for six months and provides for the rotation of commissioners to serve on the committee.

Proposed Section 161.156 provides for the processing of sworn complaints by a standing preliminary review committee, provides deadlines for reviewing whether the complaint complies with the requirements, providing certain notices to complainants and respondents and resubmission of rejected complaints. Provides for deferral of certain complaints to the county sheriff's department and return of certain such deferred complaints to the ethics commission for additional proceedings.

Proposed Section 161.157 prohibits retaliation against a county employee who reports a violation of the ethics code. It provides that the county may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code. Likewise, the county is prohibited from taking any of those actions against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code. A commission created by a county under this chapter is a part of the "local governmental entity" for purposes of Section 554.002, Government Code and an ethics code adopted by a commission pursuant to this chapter is a "law" as defined by Section 554.001, Government Code.

Proposed Section 161.158 provides the procedures and deadlines for the conduct of a preliminary review by a standing preliminary review committee. Requires the committee to issue certain notices depending on whether the matter under consideration is determined to be within the ethics commission's jurisdiction.

Proposed Section 161.159 provides the criteria and deadlines to be met by a respondent to a sworn complaint depending on the category of allegation and provides for resolution of the complaint between the respondent and the committee. Provides that failure of a respondent to timely respond is a Category One violation, that a respondent must raise a jurisdictional challenge in the response and acknowledge the occurrence or commission of a violation, deny the allegation and provide supporting evidence or enter into an agreement to cease and desist. Provides for notice if the matter is set for a preliminary review hearing.

Proposed Section 161.160 provides that during a preliminary review, the commission staff may submit written questions to the complainant or the respondent. Requires the questions to reasonably lead to the discovery of matters relevant to the investigation.

Proposed Section 161.161 provides the preliminary review procedures. Requires the commission to adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The procedures must include a reasonable time for responding to questions and subpoenas submitted and issued by the commission. Requires the tolling of otherwise applicable deadlines where the commission issues a subpoena and the preliminary review committee's schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines or the commission decides the matter is too complex to resolve within the deadline without compromising either the investigation or the rights of the respondent.

Proposed Section 161.162 provides for the procedure of the preliminary review hearing. The standing preliminary review committee shall conduct a review hearing, if following the preliminary review, the committee and the respondent cannot agree to the disposition of the complaint or the respondent requests a hearing in writing. Provides that the committee shall provide written notice to the complainant and respondent of the date, time, and place of the hearing. After notice of the hearing, the committee may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. After receiving answers to such questions and before the hearing, the committee shall provide the respondent both the questions and the answers to the questions submitted by the complainant. Provides that this subsection shall not be construed to require a person to give evidence that violates the right against self-incrimination. Upon the respondent's request, the committee shall request that any information in the possession or control of the complainant, including exculpatory information that is directly related to the complaint be provided to the respondent and the committee. During the hearing, the committee may consider all submitted evidence related to the complaint, may review any related documents and shall determine whether there is credible evidence that provides cause for the committee to conclude that a violation within the jurisdiction of the commission has occurred. During the hearing, the respondent may appear before the committee with counsel and may present relevant evidence, including a written statement.

Proposed Section 161.163 provides for the resolution of the hearing. Provides that the commission shall by vote issue a decision stating whether there is credible evidence to determine a violation occurred and whether the violation is technical or de minimis or that there is insufficient evidence to determine a violation occurred. If the committee determines that a violation occurred, the committee shall resolve and settle the complaint to the extent possible. If the committee successfully resolves a complaint then the committee shall send a copy of the order to the complainant and the respondent no later than the 10th business day after the date of the final resolution of the complaint. If the committee is unsuccessful in resolving the complaint, the committee shall order a formal hearing and send the complaint and the respondent no later than the 10th business day of the order certain documents. If the committee determines that there is credible evidence for the committee to determine that no violation occurred, the committee shall dismiss the complaint and no later than the 5th business day of the dismissal send both the complainant and the respondent a copy of the order of dismissal. If the committee determines that there is insufficient credible evidence for the committee to determine that a violation has occurred, the commission may dismiss the complaint or order a formal hearing. No later than the 5th business day after such a determination, the committee shall send to the both parties a copy of the decision stating the determination and written notice of the grounds for the determination.

Proposed Section 161.164 provides that during the formal hearing the standard of evidence shall be by a preponderance of the evidence.

Proposed Section 161.165 provides that during the formal hearing stage, a subpoena served shall be made with sufficient time in advance of the scheduled hearing for the person subpoenaed to prepare and employ counsel if desired. Except as provided by Section 161.166(a)(1), the commission may order that a person may not make public the name of the witness subpoenaed by the commission before the date of the witness's scheduled appearance unless specifically authorized by the presiding author. Provides that a witness may read a written statement or present an opening statement at a formal hearing, subject to rules of evidence applicable to a contested case under Section 2001.081 of the Government Code. Provides that a person identified, mentioned, or referred to in testimony or statements made a commission member, staff member, or a witness, and who reasonably believes that the statement tends to adversely affect that person's reputation, may request to appear before the commission to testify in his/her own behalf or file a sworn statement of facts relevant to the statement. Testimony at a formal hearing must be sworn testimony.

Proposed Section 161.166 provides that no later than the 5th business day before the scheduled hearing or on the granting of a discovery motion, the commission shall provide to the respondent a list of proposed witnesses, copies of all documents expected to be introduced as exhibits at the hearing and a brief statement as to the nature of a witness's expected testimony. Provides that respondent maintains his right against self-incrimination. Provides that the commission shall

adopt rules governing discovery, hearings and related procedures consistent with Chapter 161 and Chapter 2001, Government Code.

Proposed Section 161.167 provides that no later than the 30th business day after the formal hearing, the commission shall convene a meeting and by motion issue a final decision and written report stating the findings of fact, conclusions of law and recommendation of a civil penalty, if any. Provides that six members of the commission constitutes a quorum for a formal hearing. Provides that commission shall send certain documents to the complainant and respondent no later than the 10th business day after the issuance of the decision and to make the report and decision available to the public during business hours.

Proposed Section 161.168 provides that the commission shall keep an information file about complaints filed with the commission. Provides that the file must include certain information about the complaints. Provides that the commission shall provide its policies and procedures to the person filing the complaint and to each person who is a subject of the complaint and shall make at a minimum quarterly updates on the status of the complaint to the complainant and the respondent until the complaint is resolved. Provides that the commission shall resolve the complaint within six months unless it determines additional time is required for resolution. If time is extended, the extensions shall be in three month increments and each time extended requires separate approval by the commission. The complaint shall be deemed to have been dismissed without prejudice if the commission does not resolve the matter with six months or within an authorized extension.

Proposed Section 161.169 provides that the commission may on its own motion or by respondent's request, extend any deadline for action relating to a sworn complaint, preliminary review hearing, or formal hearing.

Proposed Section 161.170 provides that the commission in connection with a formal hearing may subpoena and examine witnesses and documents that directly relate to a sworn complaint. Provides that in connection with the preliminary review the commission may subpoena documents and witnesses on application of the commission staff and a motion adopted by a vote of at least five members of the commission if the commission reasonably believes the information is likely to determine whether a violation occurred and is not reasonably available through other means. The commission shall adopt procedures for issuing subpoenas. Provides that Section 2001.089, Government Code, applies to a subpoena issued under Subchapter 161.170 and that a copy of a subpoena issued must be delivered to the respondent. On the request of the respondent, the commission shall subpoena any information in the possession of another identified person, including exculpatory information. At the request of at least five commission members, a peace officer shall serve a subpoena in the manner prescribed for service of a district court subpoena. If a person refuses to abide by subpoena, the commission shall report that fact to a district court in the county which shall enforce the subpoena with contempt proceedings. A respondent has the same right to quash a subpoena as provided by law for court proceedings in a district court in the county. A subpoenaed witness is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides documents under a subpoena is entitled to reimbursement for producing documents.

Proposed Section 161.171 provides that the complainant is not a party under this subchapter.

Proposed Section 161.172 provides that, except as provided by Section 161.173(b), Chapter 552, Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing or resolution of a sworn complaint. Provides that Chapter 551, Government Code, only applies to a formal hearing held under Section 161.164 through 161.167. Subchapters C through H in Chapter 2001, Government Code, apply only to a formal hearing, the resolution of the hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Proposed Section 161.173 provides that, except as provided by this section, proceedings at a preliminary review hearing, a sworn complaint and documents and any other evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a complaint, are confidential, except that a document or statement that was previously public information remains

public information. An order by the commission determining that a violation other than a technical or de minimis violation has occurred is not confidential. The commission staff may, for the purpose of investigating a sworn complaint, disclose otherwise confidential information to the complainant, respondent or a witness if four criteria are met. A person commits an offense if the person intentionally destroys, mutilates, or alters information obtained under Chapter 161 or removes such information without the required permission. Such an offense is a misdemeanor punishable by a fine of not less than \$25 or more than \$4,000, confinement in the county jail for not less and three days or more than three months or both.

Proposed Section 161.173 also provides that a person commits an offense if the person distributes information considered confidential under the terms of Chapter 161. A person commits an offense if the person obtains confidential information if that person knowingly: 1) uses the confidential information for any purpose other than the purpose for which it was received; 2) permits inspection of the information by an unauthorized person; 3) discloses the information to an unauthorized person. These offenses are misdemeanors and punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months or by both. If such conduct also constitutes an offense under the Penal Code, the person may be prosecuted by this section or by the Penal Code, as applicable. A violation under this section constitutes official misconduct. In addition to other penalties, the respondent may commence a civil action for damages against any person who is alleged to have disclosed confidential information. Such action shall be brought in a district court in the county. The court may award costs and attorney's fees. A county employee can be disciplined or terminated from employment for disclosing confidential information. The commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under the proposed section. A county employee who discloses confidential information in compliance with the proposed section, shall not be subject to discipline.

Proposed Section 161.174 provides that as soon as practicable after the commission determines that a person has committed a violation, the commission shall make available on the internet a copy of the order or a summary of the order. This section does not apply to determination of a violation that is technical or de minimis.

Proposed Section 161.201 provides that the commission may issue and enforce a cease and desist order to stop a violation, may issue an affirmative order to require compliance with the laws administered and enforced by the commission, and may issue an order of public censure with or without a civil penalty.

Proposed Section 161.202 provides that the commission may impose a civil penalty of not more than \$500 for each delay in complying with an order. The commission may impose a civil penalty of not more than \$4,000 for a violation of the ethics code. A penalty paid under the proposed section shall be deposited in the general fund of the county. Section 161.202 is cumulative of any other sanctions under this chapter.

Proposed Section 161.203 provides that a person may request the waiver or reduction of a civil penalty by submitting an affidavit stating reasons why. The commission may waive or reduce the penalty if it is in the public interest and in the interest of justice. The commission shall consider six factors before acting to waive or reduce a civil penalty.

Proposed Section 161.204 provides that the commission may notify any appropriate regulatory or supervisory entity of a violation of the ethics code.

Proposed Section 161.205 defines "frivolous complaint" and provides that the commission may impose a civil penalty of no more than \$4,000 for filing a frivolous or bad-faith complaint. The respondent may commence a civil action on his own behalf against any person who filed a frivolous complaint against the respondent. Such action shall be brought in a district court in the county and the court may award costs and attorney's fees. A person may file a sworn complaint with the commission alleging a frivolous complaint without regard to whether the complaint is pending before the commission or has been resolved. The commission shall act on such a complaint as provided by Subchapter D.

Proposed Section 161.206 provides that the commission shall consider five factors in assessing a sanction.

Proposed Section 161.207 provides that a respondent may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision. Such an appeal is not limited to questions of law and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The district court shall try all issues of fact and law in the manner applicable to other civil suites but may not admit in evidence the fact of prior action by the commission or the nature of that action except as necessary to show compliance with provisions that vest jurisdiction in the court. A petitioner is entitled to a jury trial and if the district court renders judgment for petitioner and petitioner is a county employee, the court may order reinstatement of the county employee, payment of back pay or other relief. If the district court renders judgment for the petitioner, the court may order that petitioner be awarded costs and attorney's fees.

Proposed Section 161.208 provides the delivery of record to the reviewing court. After service of the petition and within the time permitted for filing an answer or within additional time allowed by the court, the commission shall send the reviewing court the original or certified copy of the entire record of the proceeding under review, which shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record unless the party pays all costs of record preparation. The court may require or permit later corrections or additions to the record.

Proposed Section 161.209 provides that the commission may require a party who appeals a final decision under Section 161.207 to pay one-half of the cost of record preparation. Such charge imposed is a court cost and may be assessed by the court by the Texas Rules of Civil Procedure.

Proposed Section 161.210 provides that the county attorney may collect a fine or other penalty imposed by the commission in the same manner as provided for the collection of a debt owed to the county.

Proposed Section 161.301 allows for the dissolution of the commission. If after the ethics commission has been effect for at least one year, 10 percent of the qualified voters of the county petition the commissioner's court to dissolve the commission, the court shall call an election to determine whether the commission will be dissolved.

Proposed Section 161.302 provides that a dissolution election must be held in the manner provided for an election to create a county ethics commission. The ballot must be printed to provide for voting for or against the proposition: "Dissolution of the county ethics commission."

Proposed Section 161.303 provides that if the voters elect to dissolve the commission, the commissioner's court shall declare the result and by order dissolve the commission. Copy of such order shall be placed in the court minutes.

Proposed Section 161.304 provides that dissolution of the commission does not affect the prior operation of the ethics code adopted by the commission or any prior action taken under it. It also does not affect any penalty, forfeiture or punishment incurred for a violation of the ethics code before the effective date of the dissolution.

EFFECTIVE DATE

Section 2. This Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Modifies the description of the counties to which the bill applies.

Clarifies that the term lobbyist does not include an attorney who communicates directly with a county officer or county employee to the extent that such communication relates to the attorney's representation of a party in a civil or criminal proceeding.

Adds new proposed Section 161.003 prohibiting Chapter 161 from being construed to affect the terms of an agreement authorized by Chapter 174 between the county and county employees; or any provision of a civil service statute applicable to a county employee. It further provides that if an agreement authorized by Chapter 174 or a civil service statute applicable to a county employee conflicts with Chapter 161 or an ethics code adopted or enforced under it, the agreement or civil service statute prevails.

Modifies the composition of an ethics commission to include ten members, five appointed by members of the commissioners court and five appointed from nominees provided by various listed organizations, some of which may be designated by the commissioners court. Eliminates most references in the original to public members and an initial meeting called by the commissioners court. Adds 161.055 (b)(2), a provision that not later than the 60th day after the date of the order creating the ethics commission each entity described by Subsection (a)(2) or alternate entity designated under Subsection (a-1) shall deliver to the commissioners court the entity's nominees for membership on the commission.

Adjusts eligibility requirements to provide that a person must be at least 18 years old to be eligible to serve on the ethics commission and be a property tax payer in the county.

Changes terms of ethics commissioners from the original process, replacing it with provisions that ethics commissioners serve two year terms commencing on February 1 of odd-numbered years and may serve more than one term.

Makes certain grammatical changes.

Provides for filling a vacancy in the position of certain ethics commissioners.

Provides that a majority of the ethics commission constitutes a quorum unless otherwise provided.

Provides for alternating the chair of the commission and for the chair to vote only in case of a tie.

Defines an ethics commissioner as a county officer for purposes of the removal statute, Chapter 87, Local Government Code.

Invokes Texas Ethics Commission rules to determine when a person will be considered a lobbyist for the purpose of Chapter 161.

Removes a provision that the commission may adopt or use as a guide the provisions of Subchapters D and E in the bill.

Removes a provision allowing an ethics commission to issue a written ethics advisory opinion on its own initiative. Adds provisions clarifying that the names of people requesting advisory opinions shall be confidential whether or not the person requesting the opinion is a person covered by the ethics code.

Adds Section 161.106 prohibiting discussions between ethics commissioners and certain county officials regarding complaints.

Requires the ethics commission to adopt the procedures in proposed Chapter 161 and to act only on sworn complaints and makes conforming changes accordingly. The substitute removes the power of the commission to hold hearings on its own motion and makes conforming changes accordingly. The substitute allows the commission to adopt additional procedures not in conflict with Chapter 161.

Adds Section 161.1551 providing for the creation of a standing preliminary review committee composed of two ethics commissioners and one review officer, who must be a practicing attorney or former judge, and provides for rotating membership on the committee. Provides for the functions to be performed by the standing review committee and conforms the language throughout the bill where needed to account for the committee's functions.

Adds Section 161.156 (f) providing for a complaint filed with the ethics commission that implicates a collective bargaining agreement, civil service laws or sheriff's department rule to be deferred to the sheriff and provides for the return of certain deferred complaints to the ethics commission by the sheriff.

Adds provisions into Section 161.162 requiring certain information asked of and received from the complainant to be provided to the respondent and that information that is directly related to the complaint, including exculpatory information, may be requested from the complainant and provided to the respondent and the committee. Also provides that these laws shall not be construed to require a person to give evidence in violation of their right against self-incrimination.

Applies the rules of evidence applicable to a contested case under Section 2001.081, Government Code, in certain circumstances in formal hearings.

Eliminates the requirement that certain information in a formal hearing be provided to the complainant.

Eliminates reference to a criminal referral.

Expressly applies Section 2001.089, Government Code, to a subpoena issued under this act and requires the commission, on the request of the respondent, to subpoena information that is directly related to the complaint, including exculpatory information, and provide the information to the respondent.

Clarifies that a subpoena may be quashed in a district court in the county.

Adds Section 161.173(m) providing that the commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under Section 161.173 and makes conforming changes accordingly.

Adds a new Section 161.173(i) providing that certain ethics code violations that also violate certain Penal Code provisions may be prosecuted under the ethics commission law or the Penal Code, as applicable, and reorders accordingly.

Removes the original Section 161.201, which thereby eliminates initiation and referral to criminal prosecution, and renumbers and makes conforming changes accordingly.

Clarifies that certain sanctions can be imposed for violations with or without a civil penalty.

Changes the standard of appeal of an ethics commission decision to trial de novo, makes the substantial evidence rule inapplicable and allows a jury trial at the respondent's option. Conforms other provisions related to substantial evidence review.

Eliminates criminal offenses and penalties for violating an ethics code provision and authorizes the appropriate attorney to collect civil penalties as if they were debts to the county by creating a new Section 161.210 and renumbering accordingly.

Modifies the savings provision so that, if a commission is dissolved then accordingly certain ethics code investigations, proceedings, and remedies and the institution, continuation, enforcement and imposition of penalties, forfeiture or punishment also are dissolved.