

By: Marquez, Quintanilla

H.B. No. 2301

Substitute the following for H.B. No. 2301:

By: Marquez

C.S.H.B. No. 2301

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a county ethics commission in certain counties; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Local Government Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county that:

- (1) has a population of 650,000 or more;
- (2) is located on the international border; and
- (3) before September 1, 2009, had a county ethics board appointed by the commissioners court.

Sec. 161.002. DEFINITIONS. In this chapter:

(1) "Commission" means a county ethics commission created under this chapter.

(2) "Commission staff" means county employees assigned to provide administrative support to the commission.

(3) "Communicates directly with" has the meaning assigned by Section 305.002, Government Code.

(4) "County affiliate" means a person described and determined by order of the commissioners court on recommendation of the commission. As determined by the commissioners court, the term

1 includes:

2 (A) any person whose goods and services are
3 purchased under the terms of a purchase order or contractual
4 agreement with the county; and

5 (B) as determined by the county, any other
6 persons doing business with the county.

7 (5) "County employee" means a person employed by the
8 county or a county officer and includes a person employed in the
9 judicial branch of the county government who is not subject to the
10 Code of Judicial Conduct. The term does not include a county
11 officer.

12 (6) "County office" means a position held by a county
13 officer.

14 (7) "County officer" means a county judge, county
15 commissioner, county attorney, sheriff, county tax
16 assessor-collector, county clerk, district clerk, county
17 treasurer, county auditor, county purchasing agent, and constable.

18 (8) "County public servant" means a person elected,
19 selected, appointed, employed, or otherwise designated as one of
20 the following, even if the person has not yet qualified for or
21 assumed the duties of office:

22 (A) a county officer or county employee;

23 (B) a person appointed by the commissioners court
24 or a county officer to a position on one of the following, whether
25 the position is compensated or not:

26 (i) an authority, board, bureau,
27 commission, committee, council, department, district, division, or

- 1 office of the county; or
2 (ii) a multi-jurisdictional board;
3 (C) an attorney at law or notary public when
4 participating in the performance of a governmental function;
5 (D) a candidate for nomination or election to an
6 elected county office; or
7 (E) a person who is performing a governmental
8 function under a claim of right although the person is not legally
9 qualified or authorized to do so.

10 (9) "Lobbyist" means a person who, for compensation in
11 excess of an amount established by the commission, communicates
12 directly with a county officer or county employee to influence
13 official action.

14 Sec. 161.003. CONFLICT WITH CIVIL SERVICE AGREEMENT. (a)
15 This chapter may not be construed to affect:

16 (1) the terms of an agreement authorized by Chapter
17 174 between the county and county employees; or

18 (2) any provision of a civil service statute
19 applicable to a county employee.

20 (b) If an agreement authorized by Chapter 174 or a civil
21 service statute applicable to a county employee conflicts with this
22 chapter or an ethics code adopted or enforced under this chapter,
23 the agreement or civil service statute prevails.

24 [Sections 161.004-161.050 reserved for expansion]

25 SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION

26 MEMBERS

27 Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) The

1 commissioners court of a county, by an order adopted by a majority
2 of the court's full membership, may create a county ethics
3 commission.

4 (b) A copy of an order adopted under this section shall be
5 placed in the minutes of the court's proceedings. The copy of the
6 order is public information.

7 Sec. 161.052. CREATION OF COMMISSION BY ELECTION. (a) A
8 county ethics commission may be created by approval of the system by
9 a majority of the qualified voters of the county voting at an
10 election called for that purpose.

11 (b) The commissioners court by order may call an election on
12 the question of the creation of a county ethics commission.

13 (c) The commissioners court shall hold the election called
14 under this section on the first authorized uniform election date
15 prescribed by Chapter 41, Election Code, that allows sufficient
16 time for publication of the notice required by Subsection (d) and
17 for compliance with any other requirements established by law.

18 (d) In addition to the notice required by Chapter 4,
19 Election Code, the commissioners court must publish in a newspaper
20 of general circulation in the county, and on the home page of the
21 county's Internet website, a substantial copy of the order calling
22 the election. The first newspaper publication must be made on or
23 before the 15th day before the date of the election and continue
24 once a week for two consecutive weeks, and the notice on the
25 county's Internet website shall remain on the home page each day
26 beginning not later than the 16th day before the election and ending
27 on the date of the election.

1 Sec. 161.053. BALLOT. The commissioners court shall order
2 the ballot at the election to be printed to provide for voting for
3 or against the proposition: "Creation of a county ethics
4 commission."

5 Sec. 161.054. RESULT OF ELECTION. If the proposition is
6 approved, the commissioners court shall declare the result and by
7 order create the county ethics commission. A copy of the order
8 creating the commission shall be placed in the minutes of the
9 court's proceedings.

10 Sec. 161.055. APPOINTMENT OF COMMISSION. (a) The
11 commission is composed of:

12 (1) five members, each of whom is appointed by the
13 county judge or a county commissioner; and

14 (2) four public representative members, appointed as
15 provided by this section.

16 (b) Not later than the 60th day after the date of the order
17 creating the commission as provided in Section 161.051 or Section
18 161.054:

19 (1) the county judge and each county commissioner
20 shall each appoint one member of the commission; and

21 (2) the commissioners court shall order publication of
22 a notice seeking applicants for four public representative members
23 of the commission.

24 (c) The commissioners court shall set the date for the first
25 meeting of the initial members appointed by the county judge and the
26 commissioners court. The first meeting must be set not earlier than
27 the 60th day after the date of the order creating the commission and

1 not later than the 90th day after the date of that order.

2 (d) At the first meeting of the commission, the initial
3 members shall elect one member as chair of the commission.

4 (e) Not later than the 120th day after the date of the order
5 creating the commission, the initial members shall appoint four
6 public representatives from the applications received pursuant to
7 Subsection (b)(2). After the initial public representatives are
8 appointed, the entire board shall appoint the successor public
9 representatives.

10 Sec. 161.056. ELIGIBILITY. (a) To be eligible for
11 appointment to the commission, a person must:

12 (1) be at least 25 years old; and

13 (2) have resided in the county for the two years
14 immediately preceding the date on which the person's term will
15 begin.

16 (b) A person is not eligible for appointment to the
17 commission if the person is:

18 (1) an elected officer;

19 (2) a county employee;

20 (3) a county affiliate;

21 (4) a person employed as a lobbyist;

22 (5) a person convicted of a misdemeanor involving
23 moral turpitude or a felony; or

24 (6) a person who is delinquent in payment of local,
25 state, or federal taxes.

26 Sec. 161.057. TERMS. (a) Members of the commission serve
27 staggered terms of two years, with the terms of four or five members

1 expiring each year.

2 (b) Notwithstanding Subsection (a), the initial members of
3 the commission shall select by lot five members to serve a term of
4 two years and four members to serve a term of one year.

5 Sec. 161.058. VACANCIES. (a) A vacancy on the commission
6 shall be filled for the remainder of the unexpired term as follows:

7 (1) if the vacancy represents a member appointed by
8 the county judge or a county commissioner, the vacancy is filled,
9 except as provided by Subsection (b), by appointment of that
10 officer or the officer's successor in office; or

11 (2) if the vacancy represents a public representative
12 member, by the commission.

13 (b) If the county judge or county commissioner, as
14 applicable, does not fill the vacancy before the 60th day after the
15 date the position becomes vacant, the commission may fill the
16 vacancy by a majority vote of the remaining members.

17 Sec. 161.059. MEETINGS. (a) The commission shall meet on a
18 regular basis.

19 (b) The commission is a governmental body for purposes of
20 Chapter 551, Government Code.

21 Sec. 161.060. REMOVAL OF COMMISSION MEMBER. A member of the
22 commission may be removed as provided by Chapter 87 if, after a
23 trial, the jury finds good cause for removal, including:

24 (1) failure to pay local, state, or federal taxes when
25 due;

26 (2) violation of the ethics code adopted by the
27 commission;

1 (3) conviction of a felony or misdemeanor;

2 (4) excessive absenteeism as determined by the
3 commission; and

4 (5) official misconduct.

5 Sec. 161.061. LEGAL REPRESENTATION. The county attorney, or
6 district attorney, or criminal district attorney, as appropriate,
7 with the duty to represent the county in civil matters shall
8 represent the commission in all legal matters.

9 [Sections 161.062-161.100 reserved for expansion]

10 SUBCHAPTER C. POWERS

11 Sec. 161.101. GENERAL POWERS. (a) The commission shall
12 adopt, publish, and enforce an ethics code governing county public
13 servants.

14 (b) The commission may adopt or use as a guide any ethics law
15 or rule of the United States, this state, or a political subdivision
16 in this state to the extent that the law or rule promotes the
17 purposes of this chapter and serves the needs of the county.

18 (c) The commission may adopt bylaws, rules, forms,
19 policies, or procedures to assist in the administration of the
20 commission's duties under this chapter. The commission may be
21 guided by Robert's Rules of Order to the extent that it does not
22 conflict with the constitution and laws of the United States and
23 this state or conflict with other guidelines adopted by the
24 commission.

25 (d) The commission shall be assigned staff by the county and
26 provided access to county resources to assist in its duties.

27 (e) The commission shall develop and implement polices that

1 provide the public with information on the commission and the
2 ethics code.

3 (f) The commission may adopt or use as a guide the
4 provisions of Subchapter D or E.

5 (g) The commission shall enforce the provisions of the
6 ethics code by issuing appropriate orders or recommendations or by
7 imposing appropriate penalties.

8 Sec. 161.102. ADVISORY OPINIONS. On the request of any
9 person covered by the ethics code adopted by the commission, the
10 commission may issue a written ethics advisory opinion regarding
11 the application of the ethics code to a specified existing or
12 hypothetical factual situation. The commission may not issue an
13 opinion that includes the name of any person who may be affected by
14 the opinion. The name of the person requesting the opinion shall be
15 deemed confidential.

16 Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) The
17 commission shall develop plain-language materials as described by
18 this section. The commission shall post the information on the
19 county's Internet website and make the information otherwise
20 available to the public.

21 (b) The materials must include:

22 (1) a description of:

23 (A) the commission's responsibilities;

24 (B) the types of conduct that constitute a
25 violation of the ethics code adopted by the commission;

26 (C) the types of sanctions the commission may
27 impose;

1 (D) the commission's policies and procedures
2 relating to complaint investigation and resolution; and

3 (E) the duties of a person filing a complaint
4 with the commission; and

5 (2) a diagram showing the basic steps in the
6 commission's procedures relating to complaint investigation and
7 resolution.

8 (c) The commission shall provide the materials described by
9 this section to each complainant and respondent.

10 (d) The commission shall adopt a policy to effectively
11 distribute materials as required by this section.

12 Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING.

13 (a) Not later than the 60th day after the date a person is appointed
14 to the commission, the person must complete training on the
15 following matters:

16 (1) the legislation that created the commission;

17 (2) the role and functions of the commission; and

18 (3) the requirements of:

19 (A) the open meetings law, Chapter 551,
20 Government Code;

21 (B) the public information law, Chapter 552,
22 Government Code; and

23 (C) other laws relating to public officials,
24 including conflict-of-interest laws.

25 (b) A member of the commission must complete subsequent
26 training programs on the following matters:

27 (1) the ethics code adopted by the commission; and

1 (2) the procedural rules adopted by the commission.

2 (c) Other than the initial appointees and public
3 representatives, a person who is appointed to and qualifies for
4 office as a member of the commission may not vote, deliberate, or be
5 counted as a member in attendance at a meeting of the commission
6 until the person completes a training program that complies with
7 this section.

8 Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY
9 ETHICS CODE. (a) The commission and commission staff shall provide
10 periodic training for persons covered by the ethics code adopted by
11 the commission on at least a quarterly basis.

12 (b) The training program must provide information
13 regarding:

14 (1) the ethics code;

15 (2) the role and functions of the commission; and

16 (3) plain-language materials as further described by
17 Section 161.103.

18 (c) In addition to the qualifications under Subchapter C,
19 Chapter 262, before submitting a bid, responding to a request for
20 qualifications or proposals, or otherwise contracting with the
21 county, an officer, principal, or other person with the authority
22 to bind the vendor shall complete training on the ethics code.

23 (d) A lobbyist intending to meet with a person covered by
24 the ethics code shall complete training on the ethics code.

25 [Sections 161.106-161.150 reserved for expansion]

26 SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

27 Sec. 161.151. DEFINITIONS. In this subchapter:

1 (1) "Category One violation" means a violation of the
2 ethics code adopted by the commission as to which it is generally
3 not difficult to ascertain whether the violation occurred or did
4 not occur, including:

5 (A) the failure by a person required to file a
6 statement or report required under the ethics code to:

7 (i) file the statement or report in a manner
8 that complies with applicable requirements; or

9 (ii) file the statement or report in a
10 timely manner;

11 (B) a misrepresentation in a report required
12 under the ethics code; or

13 (C) a failure to respond in a timely manner to a
14 written notice under Section 161.156(b).

15 (2) "Category Two violation" means a violation of the
16 ethics code adopted by the commission that is not a Category One
17 violation.

18 Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. The
19 commission may adopt the complaint procedures and hearings set
20 forth in this subchapter.

21 Sec. 161.153. HEARINGS AND SETTLEMENT. (a) The commission
22 may:

23 (1) hold a hearing on a sworn complaint and render a
24 decision on a complaint or report of a violation as provided by this
25 chapter; and

26 (2) agree to the settlement of issues.

27 (b) The commission may not:

1 (1) consider a complaint or vote to investigate a
2 matter outside the commission's jurisdiction; or

3 (2) investigate any matter except in response to a
4 sworn complaint.

5 Sec. 161.154. CATEGORIZATION OF VIOLATIONS. An allegation
6 of a violation listed as a Category One violation shall be treated
7 as a Category Two violation if the commission at any time determines
8 that:

9 (1) the allegation arises out of the same set of facts
10 as those that give rise to an allegation of a Category Two
11 violation, and the interests of justice or efficiency require
12 resolution of the allegations together; or

13 (2) the facts and law related to a particular
14 allegation or a defense to the allegation present a level of
15 complexity that prevents resolution through the preliminary review
16 procedures for Category One violations prescribed by Section
17 161.159(a).

18 Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) An
19 individual may file with the commission a sworn complaint, on a form
20 prescribed by the commission, alleging that a person subject to the
21 ethics code has violated the ethics code. The commission shall make
22 the complaint form available on the county website.

23 (b) A complaint filed under this section must be in writing
24 and under oath and must set forth in simple, concise, and direct
25 statements:

26 (1) the name of the complainant;

27 (2) the street or mailing address of the complainant;

1 (3) the name of each respondent;

2 (4) the position or title of each respondent;

3 (5) the nature of the alleged violation, including if
4 possible the specific rule or provision of the ethics code alleged
5 to have been violated;

6 (6) a statement of the facts constituting the alleged
7 violation and the dates on which or period of time in which the
8 alleged violation occurred; and

9 (7) all documents or other material available to the
10 complainant that are relevant to the allegation, a list of all
11 documents or other material within the knowledge of the complainant
12 and available to the complainant that are relevant to the
13 allegation but that are not in the possession of the complainant,
14 including the location of the documents, if known, and a list of all
15 documents or other material within the knowledge of the complainant
16 that are unavailable to the complainant and that are relevant to the
17 complaint, including the location of the documents, if known.

18 (c) The complaint must be accompanied by an affidavit
19 stating either that the information contained in the complaint is
20 correct or that the complainant has good reason to believe and does
21 believe that the violation occurred. If the complaint is based on
22 information and belief, the complaint shall state the source and
23 basis of the information and belief. The complainant may swear to
24 the facts by oath before a notary public or other authorized
25 official.

26 (d) The complaint must state on its face an allegation that,
27 if true, constitutes a violation of the ethics code.

1 Sec. 161.156. PROCESSING OF COMPLAINT. (a) The commission
2 shall determine whether a sworn complaint filed with the commission
3 complies with the form requirements of Section 161.155.

4 (b) Not later than the 10th business day after the date a
5 complaint is filed, the commission shall send written notice to the
6 complainant and the respondent. The notice must state whether the
7 complaint complies with the form requirements of Section 161.155
8 and include the information required by Section 161.158(c).

9 (c) If the commission determines that the complaint does not
10 comply with the form requirements, the commission shall send the
11 complaint to the complainant with the written notice, a statement
12 explaining how the complaint fails to comply, and a copy of the
13 rules for filing sworn complaints. The complainant may resubmit
14 the complaint not later than the 21st day after the date the notice
15 under Subsection (b) is mailed. If the commission determines that
16 the complaint is not resubmitted within the 21-day period, the
17 commission shall:

18 (1) dismiss the complaint; and

19 (2) not later than the 10th business day after the date
20 of the dismissal, send written notice to the complainant and the
21 respondent of the dismissal and the grounds for dismissal.

22 (d) If the commission determines that a complaint is
23 resubmitted under Subsection (c) within the 21-day period but is
24 not in proper form, the commission shall send the notice required
25 under Subsection (c), and the complainant may resubmit the
26 complaint under that subsection.

27 (e) If the commission determines that a complaint returned

1 to the complainant under Subsection (c) or (d) is resubmitted
2 within the 21-day period and that the complaint complies with the
3 form requirements, the commission shall send the written notice
4 under Subsection (b).

5 (f) If a complaint filed with the commission is within the
6 jurisdiction of the commission but may also be brought under the
7 provisions of a collective bargaining agreement authorized by
8 Chapter 174, a civil service rule under Section 158.0025, or a rule
9 of the sheriff's department, the commission shall defer
10 jurisdiction over the complaint to the sheriff for disposition. The
11 sheriff may return a complaint deferred under this subsection to
12 the commission for additional proceedings as the commission
13 determines appropriate.

14 Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE
15 REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) The county may
16 not suspend or terminate the employment of or take other adverse
17 action against a county employee who in good faith files a complaint
18 or otherwise reports to the ethics commission, commission staff, or
19 another law enforcement authority a violation of the ethics code by
20 a person subject to the ethics code.

21 (b) The county may not suspend or terminate the employment
22 of or take other adverse action against a county employee who in
23 good faith participates in the complaint processing, preliminary
24 review, hearing, or any other aspect of the investigation and
25 resolution by the commission of an alleged violation of the ethics
26 code by a person subject to the ethics code.

27 (c) A commission created by a county under this chapter is a

1 part of the "local governmental entity" for purposes of Section
2 554.002, Government Code.

3 (d) An ethics code adopted by a commission pursuant to this
4 chapter is a "law" as defined by Section 554.001, Government Code.

5 Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) The
6 commission staff shall promptly conduct a preliminary review on
7 receipt of a written complaint that is in compliance with the form
8 requirements of Section 161.155.

9 (b) The commission shall determine in writing whether the
10 commission has jurisdiction over the violation of the ethics code
11 provision alleged in a sworn complaint processed under Section
12 161.156.

13 (c) If the commission determines that it has jurisdiction,
14 it shall issue a notice under Section 161.156(b) that must include:

15 (1) a statement that the commission has jurisdiction
16 over the violation alleged in the complaint;

17 (2) a statement of whether the complaint will be
18 processed as a Category One violation or a Category Two violation,
19 subject to reconsideration as provided for by Section 161.154;

20 (3) the date by which the respondent is required to
21 respond to the notice;

22 (4) a copy of the complaint and the rules of procedure
23 of the commission;

24 (5) a statement of the rights of the respondent;

25 (6) a statement inviting the respondent to provide to
26 the commission any information relevant to the complaint; and

27 (7) a statement that a failure to timely respond to the

1 notice will be treated as a separate violation.

2 (d) If the commission determines that the commission does
3 not have jurisdiction over the violation alleged in the complaint,
4 the commission shall:

5 (1) dismiss the complaint; and

6 (2) not later than the 10th business day after the date
7 of the dismissal, send to the complainant and the respondent
8 written notice of the dismissal and the grounds for the dismissal.

9 Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT.

10 (a) If the alleged violation is a Category One violation:

11 (1) the respondent must respond to the notice required
12 by Section 161.156(b) not later than the 10th business day after the
13 date the respondent receives the notice; and

14 (2) if the matter is not resolved by agreement between
15 the commission and the respondent before the 30th business day
16 after the date the respondent receives the notice under Section
17 161.156(b), the commission shall set the matter for a preliminary
18 review hearing to be held at the next commission meeting for which
19 notice has not yet been posted.

20 (b) If the alleged violation is a Category Two violation:

21 (1) the respondent must respond to the notice required
22 by Section 161.156(b) not later than the 25th business day after the
23 date the respondent receives the notice under Section 161.156(b);
24 and

25 (2) if the matter is not resolved by agreement between
26 the commission and the respondent before the 75th business day
27 after the date the respondent receives the notice under Section

1 161.156(b), the commission shall set the matter for a preliminary
2 review hearing to be held at the next commission meeting for which
3 notice has not yet been posted.

4 (c) A respondent's failure to timely respond as required by
5 Subsection (a)(1) or (b)(1) is a Category One violation.

6 (d) The response required by Subsection (a) or (b) must
7 include any challenge the respondent seeks to raise to the
8 commission's exercise of jurisdiction. In addition, the respondent
9 may:

10 (1) acknowledge the occurrence or commission of a
11 violation;

12 (2) deny the allegations contained in the complaint
13 and provide evidence supporting the denial; or

14 (3) agree to enter into an assurance of voluntary
15 compliance or other agreed order, which may include an agreement to
16 immediately cease and desist.

17 (e) If the commission sets the matter for a preliminary
18 review hearing, the commission shall promptly send to the
19 complainant and the respondent written notice of the date, time,
20 and place of the preliminary review hearing.

21 Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS.
22 During a preliminary review, the commission staff may submit to the
23 complainant or respondent written questions reasonably intended to
24 lead to the discovery of matters relevant to the investigation.

25 Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW
26 PROCEDURES. The commission shall adopt procedures for the conduct
27 of preliminary reviews and preliminary review hearings. The

1 procedures must include:

2 (1) a reasonable time for responding to questions
3 submitted by the commission and commission staff and subpoenas
4 issued by the commission; and

5 (2) the tolling or extension of otherwise applicable
6 deadlines where:

7 (A) the commission issues a subpoena and the
8 commission's meeting schedule makes it impossible both to provide a
9 reasonable time for response and to comply with the otherwise
10 applicable deadlines; or

11 (B) the commission determines that, despite the
12 commission staff's diligence and the reasonable cooperation of the
13 respondent, a matter is too complex to resolve within the otherwise
14 applicable deadlines without compromising either the commission
15 staff's investigation or the rights of the respondent.

16 Sec. 161.162. PRELIMINARY REVIEW HEARING: PROCEDURE. (a)
17 The commission shall conduct a preliminary review hearing if:

18 (1) following the preliminary review, the commission
19 and the respondent cannot agree to the disposition of the
20 complaint; or

21 (2) the respondent in writing requests a hearing.

22 (b) The commission shall provide written notice to the
23 complainant, if any, and the respondent of the date, time, and place
24 the commission will conduct the preliminary review hearing.

25 (c) At or after the time the commission provides notice of a
26 preliminary review hearing, the commission may submit to the
27 complainant and the respondent written questions and require those

1 questions to be answered under oath within a reasonable time.

2 (d) During a preliminary review hearing, the commission:

3 (1) may consider all submitted evidence related to the
4 complaint;

5 (2) may review any documents or material related to
6 the complaint; and

7 (3) shall determine whether there is credible evidence
8 that provides cause for the commission to conclude that a violation
9 within the jurisdiction of the commission has occurred.

10 (e) During a preliminary review hearing, the respondent may
11 appear before the commission with the assistance of counsel, if
12 desired by the respondent, and present any relevant evidence,
13 including a written statement.

14 Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION. (a)
15 As soon as practicable after the completion of a preliminary review
16 hearing, the commission by vote shall issue a decision stating:

17 (1) whether there is credible evidence for the
18 commission to determine that a violation within the jurisdiction of
19 the commission has occurred and whether the violation is technical
20 or de minimis; or

21 (2) that there is insufficient evidence for the
22 commission to determine whether a violation within the jurisdiction
23 of the commission has occurred.

24 (b) If the commission determines that there is credible
25 evidence for the commission to determine that a violation has
26 occurred, the commission shall resolve and settle the complaint to
27 the extent possible. If the commission successfully resolves and

1 settles the complaint, not later than the 10th business day after
2 the date of the final resolution of the complaint, the commission
3 shall send to the complainant and the respondent a copy of the
4 decision stating the commission's determination and written notice
5 of the resolution and the terms of the resolution. If the
6 commission is unsuccessful in resolving and settling the complaint,
7 the commission shall:

8 (1) order a formal hearing to be held in accordance
9 with Sections 161.164 through 161.167; and

10 (2) not later than the 10th business day after the date
11 of the decision, send to the complainant and the respondent:

12 (A) a copy of the decision;

13 (B) written notice of the date, time, and place
14 of the formal hearing;

15 (C) a statement of the nature of the alleged
16 violation;

17 (D) a description of the evidence of the alleged
18 violation;

19 (E) a copy of the complaint;

20 (F) a copy of the commission's rules of
21 procedure; and

22 (G) a statement of the rights of the respondent.

23 (c) If the commission determines that there is credible
24 evidence for the commission to determine that a violation within
25 the jurisdiction of the commission has not occurred, the commission
26 shall:

27 (1) dismiss the complaint; and

1 (2) not later than the fifth business day after the
2 date of the dismissal, send to the complainant and the respondent a
3 copy of the decision stating the commission's determination and
4 written notice of the dismissal and the grounds for dismissal.

5 (d) If the commission determines that there is insufficient
6 credible evidence for the commission to determine that a violation
7 within the jurisdiction of the commission has occurred, the
8 commission may dismiss the complaint or promptly conduct a formal
9 hearing under Sections 161.164 through 161.167. Not later than the
10 fifth business day after the date of the commission's determination
11 under this subsection, the commission shall send to the complainant
12 and the respondent a copy of the decision stating the commission's
13 determination and written notice of the grounds for the
14 determination.

15 Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE.
16 During a formal hearing, the commission shall determine by a
17 preponderance of the evidence whether a violation within the
18 jurisdiction of the commission has occurred.

19 Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES.
20 (a) A subpoena or other request to testify shall be served
21 sufficiently in advance of the scheduled appearance at a formal
22 hearing to allow a reasonable period, as determined by the
23 commission, for the person subpoenaed to prepare for the hearing
24 and to employ counsel if desired.

25 (b) Except as provided by Section 161.166(a)(1), the
26 commission may order that a person may not, except as specifically
27 authorized by the presiding officer, make public the name of a

1 witness subpoenaed by the commission before the date of that
2 witness's scheduled appearance.

3 (c) A witness may read a written statement or present a
4 brief oral opening statement at a formal hearing.

5 (d) A person whose name is mentioned or who is identified or
6 referred to in testimony or in statements made by a commission
7 member, commission staff member, or witness and who reasonably
8 believes that the statement tends to adversely affect the person's
9 reputation may:

10 (1) request to appear personally before the commission
11 to testify in the person's own behalf; or

12 (2) file a sworn statement of facts relevant to the
13 testimony or statement that the person believes adversely affects
14 the person's reputation.

15 (e) A witness who testifies at a formal hearing must be
16 sworn.

17 Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Not later
18 than the fifth business day before the date of a scheduled formal
19 hearing or on the granting of a motion for discovery by the
20 respondent, the commission shall provide to the complainant and to
21 the respondent:

22 (1) a list of proposed witnesses to be called at the
23 hearing;

24 (2) copies of all documents expected to be introduced
25 as exhibits at the hearing; and

26 (3) a brief statement as to the nature of the testimony
27 expected to be given by each witness to be called at the hearing.

1 (b) The respondent may not be compelled to give evidence or
2 testimony that violates the respondent's right against
3 self-incrimination under the United States Constitution or the
4 Texas Constitution.

5 (c) The commission shall adopt rules governing discovery,
6 hearings, and related procedures consistent with this chapter and
7 Chapter 2001, Government Code.

8 Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) Not later
9 than the 30th business day after the date of the formal hearing, the
10 commission shall convene a meeting and by motion shall issue:

11 (1) a final decision stating the resolution of the
12 formal hearing; and

13 (2) a written report stating the commission's findings
14 of fact, conclusions of law, and recommendation of imposition of a
15 civil penalty, if any.

16 (b) Six members of the commission are required for a quorum
17 at a formal hearing.

18 (c) Not later than the 10th business day after the date the
19 commission issues the final decision and written report, the
20 commission shall:

21 (1) send a copy of the decision and report to the
22 complainant and to the respondent; and

23 (2) make a copy of the decision and report available to
24 the public during reasonable business hours.

25 Sec. 161.168. STATUS OF COMPLAINT. (a) The commission
26 shall keep an information file about each sworn or other complaint
27 filed with the commission. The file must include:

1 (1) the name of the person who filed the complaint;

2 (2) the date the complaint is received by the
3 commission;

4 (3) the subject matter of the complaint;

5 (4) the name of each person contacted in relation to
6 the complaint;

7 (5) a summary of the results of the review or
8 investigation of the complaint; and

9 (6) an explanation of the reason the file was closed,
10 if the commission closed the file without taking action other than
11 to investigate the complaint.

12 (b) The commission shall provide to the person filing the
13 complaint and to each person who is a subject of the complaint a
14 copy of the commission's policies and procedures relating to
15 complaint investigation and resolution.

16 (c) In addition to the notice required by Sections 161.156
17 and 161.167, the commission, at least quarterly until final
18 disposition of a complaint, shall notify the person who filed the
19 complaint and each person who is a subject of the complaint of the
20 status of the sworn complaint.

21 (d) The commission shall resolve a complaint within six
22 months of its receipt unless it makes a determination that
23 additional time is required to resolve the matter. On a
24 determination that additional time is required, the commission may
25 extend the investigation in three-month increments. Each extension
26 requires separate approval by the commission.

27 (e) If the commission does not resolve the matter within six

1 months or within an authorized extension, the complaint shall be
2 deemed to have been dismissed without prejudice.

3 Sec. 161.169. EXTENSION OF DEADLINE. The commission may,
4 on its own motion or on the reasonable request of a respondent,
5 extend any deadline for action relating to a sworn complaint,
6 preliminary review hearing, or formal hearing.

7 Sec. 161.170. SUBPOENA. (a) In connection with a formal
8 hearing, the commission, as authorized by this chapter, may
9 subpoena and examine witnesses and documents that directly relate
10 to a sworn complaint.

11 (b) In connection with a preliminary review, the
12 commission, for good cause and as authorized by this chapter, may
13 subpoena documents and witnesses on application by the commission
14 staff and a motion adopted by a vote of at least five members of the
15 commission, for the purpose of attempting to obtain from the
16 documents or witnesses specifically identified information, if the
17 commission reasonably believes that the specifically identified
18 information:

19 (1) is likely to be determinative as to whether the
20 subject of an investigation has violated a provision of the ethics
21 code;

22 (2) can be determined from the documents or is known by
23 the witnesses; and

24 (3) is not reasonably available through a less
25 intrusive means.

26 (c) The commission shall adopt procedures for the issuance
27 of subpoenas under this section.

1 (d) A copy of a subpoena issued under this section must be
2 delivered to the respondent.

3 (e) At the written request of at least five members of the
4 commission, a peace officer shall serve a subpoena of the
5 commission in the manner prescribed for service of a district court
6 subpoena.

7 (f) If a person to whom a subpoena is directed refuses to
8 appear, refuses to answer inquiries, or fails or refuses to produce
9 books, records, or other documents that were under the person's
10 control when the demand was made, the commission shall report that
11 fact to a district court in the county. The district court shall
12 enforce the subpoena by attachment proceedings for contempt in the
13 same manner as the court enforces a subpoena issued by the court.

14 (g) A respondent has the right to quash a subpoena as
15 provided by law.

16 (h) A subpoenaed witness who attends a commission hearing is
17 entitled to the same mileage and per diem payments as a witness who
18 appears before a grand jury. A person who provides subpoenaed
19 documents to the commission is entitled to reimbursement from the
20 commission for the person's reasonable cost of producing the
21 documents.

22 Sec. 161.171. STATUS OF COMPLAINANT. The complainant is
23 not a party to a preliminary review, preliminary review hearing, or
24 formal hearing under this subchapter.

25 Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Except as
26 provided by Section 161.173(b), Chapter 552, Government Code, does
27 not apply to documents or any additional evidence relating to the

1 processing, preliminary review, preliminary review hearing, or
2 resolution of a sworn complaint.

3 (b) Chapter 551, Government Code, does not apply to the
4 processing, preliminary review, preliminary review hearing, or
5 resolution of a sworn complaint, but does apply to a formal hearing
6 held under Sections 161.164 through 161.167.

7 (c) Subchapters C through H, Chapter 2001, Government Code,
8 apply only to a formal hearing under this subchapter, the
9 resolution of a formal hearing, and the appeal of a final order of
10 the commission, and only to the extent consistent with this
11 chapter.

12 Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Except as
13 provided by Subsection (b), (c), or (m), proceedings at a
14 preliminary review hearing performed by the commission, a sworn
15 complaint, and documents and any additional evidence relating to
16 the processing, preliminary review, preliminary review hearing, or
17 resolution of a sworn complaint are confidential and may not be
18 disclosed unless entered into the record of a formal hearing or a
19 judicial proceeding, except that a document or statement that was
20 previously public information remains public information.

21 (b) An order issued by the commission after the completion
22 of a preliminary review or hearing determining that a violation
23 other than a technical or de minimis violation has occurred is not
24 confidential.

25 (c) Commission staff may, for the purpose of investigating a
26 sworn complaint, disclose to the complainant, the respondent, or a
27 witness information that is otherwise confidential and relates to

1 the sworn complaint if:

2 (1) the employee makes a good faith determination that
3 the disclosure is necessary to conduct the investigation;

4 (2) the employee's determination under Subdivision (1)
5 is objectively reasonable;

6 (3) the commission specifically authorizes the
7 disclosure; and

8 (4) the employee discloses only the information
9 necessary to conduct the investigation.

10 (d) A person commits an offense if the person intentionally:

11 (1) destroys, mutilates, or alters information
12 obtained under this chapter; or

13 (2) removes information obtained under this chapter
14 without permission as provided by this chapter.

15 (e) An offense under Subsection (d) is a misdemeanor
16 punishable by:

17 (1) a fine of not less than \$25 or more than \$4,000;

18 (2) confinement in the county jail for not less than
19 three days or more than three months; or

20 (3) both the fine and confinement.

21 (f) A person commits an offense if the person distributes
22 information considered confidential under the terms of this
23 chapter.

24 (g) A person who obtains access to confidential information
25 under this chapter commits an offense if that person knowingly:

26 (1) uses the confidential information for a purpose
27 other than the purpose for which the information was received or for

1 a purpose unrelated to this chapter, including solicitation of
2 political contributions or solicitation of clients;

3 (2) permits inspection of the confidential
4 information by a person who is not authorized to inspect the
5 information; or

6 (3) discloses the confidential information to a person
7 who is not authorized to receive the information.

8 (h) An offense under Subsection (f) or (g) is a misdemeanor
9 punishable by:

10 (1) a fine of not more than \$1,000;

11 (2) confinement in the county jail for not more than
12 six months; or

13 (3) both the fine and confinement.

14 (i) If conduct that constitutes an offense under this
15 section also constitutes an offense under the Penal Code, including
16 under Section 37.10 or 39.06 of that code, the person may be
17 prosecuted under this section or the Penal Code, as applicable.

18 (j) A violation under this section constitutes official
19 misconduct.

20 (k) In addition to other penalties, the respondent may
21 commence a civil action for damages on the respondent's own behalf
22 against any person who is alleged to have disclosed information
23 made confidential by this subchapter. Any action under this chapter
24 must be brought in a district court in the county. The court may
25 award costs and attorney's fees.

26 (l) A county employee is subject to discipline, including
27 termination of employment, for disclosing confidential information

1 under this chapter.

2 (m) The commission may disclose confidential information in
3 making a referral to a prosecuting attorney concerning an offense
4 under this section.

5 (n) A county employee who discloses confidential
6 information in compliance with Subsection (c) or (m) is not subject
7 to Subsections (d)-(l).

8 Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON
9 INTERNET. (a) As soon as practicable following a preliminary
10 review, preliminary review hearing, or formal hearing at which the
11 commission determines that a person has committed a violation
12 within the commission's jurisdiction, the commission shall make
13 available on the Internet:

14 (1) a copy of the commission's order stating the
15 determination; or

16 (2) a summary of the commission's order.

17 (b) This section does not apply to a determination of a
18 violation that is technical or de minimis.

19 [Sections 161.175-161.200 reserved for expansion]

20 SUBCHAPTER E. ENFORCEMENT

21 Sec. 161.201. ORDER. The commission may:

22 (1) issue and enforce a cease and desist order to stop
23 a violation;

24 (2) issue an affirmative order to require compliance
25 with the laws administered and enforced by the commission; and

26 (3) issue an order of public censure with or without a
27 civil penalty imposed under Section 161.202.

1 Sec. 161.202. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) The
2 commission may impose a civil penalty of not more than \$500 for each
3 delay in complying with a commission order.

4 (b) The commission may impose a civil penalty of not more
5 than \$4,000 for a violation of the ethics code adopted by the
6 commission.

7 (c) A penalty paid under this section shall be deposited to
8 the credit of the general fund of the county.

9 (d) This section is cumulative of any other available
10 sanctions under this chapter.

11 Sec. 161.203. WAIVER OR REDUCTION OF PENALTY. (a) A person
12 may request the waiver or reduction of a civil penalty by submitting
13 an affidavit to the commission that states the filer's reasons for
14 requesting a waiver or reduction.

15 (b) The commission may waive or reduce a civil penalty if
16 the commission finds that a waiver or reduction is in the public
17 interest and in the interest of justice. The commission shall
18 consider the following before acting to waive or reduce a civil
19 penalty:

20 (1) the facts and circumstances supporting the
21 person's request for a waiver or reduction;

22 (2) the seriousness of the violation, including the
23 nature, circumstances, consequences, extent, and gravity of the
24 violation, and the amount of the penalty;

25 (3) any history of previous violations by the person;

26 (4) the demonstrated good faith of the person,
27 including actions taken to rectify the consequences of the

1 violation;

2 (5) the penalty necessary to deter future violations;

3 and

4 (6) any other matter that justice may require.

5 (c) After hearing the waiver request, the commission may
6 affirm, reduce, or waive the civil penalty.

7 Sec. 161.204. NOTIFICATION OF REGULATORY OR SUPERVISORY
8 ENTITY. The commission may notify the appropriate regulatory or
9 supervisory entity, including any agency, the State Commission on
10 Judicial Conduct, or the State Bar of Texas, of a violation of the
11 ethics code adopted by the commission.

12 Sec. 161.205. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH
13 COMPLAINT. (a) The commission may impose a civil penalty of not
14 more than \$4,000 for the filing of a frivolous or bad-faith
15 complaint. In this subsection, "frivolous complaint" means a
16 complaint that is groundless and brought in bad faith or is
17 groundless and brought for the purpose of harassment.

18 (b) In addition to other penalties, the respondent may
19 commence a civil action on the respondent's own behalf against any
20 person who filed a frivolous complaint against the respondent. Any
21 action under this chapter shall be brought in a district court in
22 the county. The court may award costs and attorney's fees.

23 (c) A person may file a sworn complaint with the commission,
24 in accordance with Section 161.155, alleging that a complaint
25 relating to that person filed with the commission is frivolous or
26 brought in bad faith. A complaint may be filed under this
27 subsection without regard to whether the complaint alleged to be

1 frivolous or brought in bad faith is pending before the commission
2 or has been resolved. The commission shall act on a complaint made
3 under this subsection as provided by Subchapter D.

4 Sec. 161.206. FACTORS CONSIDERED FOR ASSESSMENT OF
5 SANCTION. The commission shall consider the following factors in
6 assessing a sanction:

7 (1) the seriousness of the violation, including the
8 nature, circumstances, consequences, extent, and gravity of the
9 violation;

10 (2) the history and extent of previous violations;

11 (3) the demonstrated good faith of the violator,
12 including actions taken to rectify the consequences of the
13 violation;

14 (4) the penalty necessary to deter future violations;
15 and

16 (5) any other matters that justice may require.

17 Sec. 161.207. APPEALS. (a) A respondent may appeal the
18 decision by filing a petition in a district court in the county
19 within 30 days after the date of the decision.

20 (b) An appeal under this section is under the substantial
21 evidence rule, and the judgment of the district court is appealable
22 as in other civil cases.

23 (c) If the district court renders judgment for the
24 petitioner, and the petitioner is a county employee, the court may
25 order reinstatement of the county employee, payment of back pay, or
26 other appropriate relief.

27 (d) If the district court renders judgment for the

1 petitioner, the court may order appropriate relief, including costs
2 and attorney's fees.

3 Sec. 161.208. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. In
4 an appeal under Section 161.207, the district court may not
5 substitute its judgment for the judgment of the commission on the
6 weight of the evidence on questions committed to the commission's
7 discretion but:

8 (1) may affirm the commission's decision in whole or in
9 part; and

10 (2) shall reverse or remand the case for further
11 proceedings if substantial rights of the petitioner have been
12 prejudiced because the commission's findings, inferences,
13 conclusions, or decisions are:

14 (A) in violation of a constitutional or statutory
15 provision;

16 (B) in excess of the commission's authority;

17 (C) made through unlawful procedure;

18 (D) affected by other error of law;

19 (E) not reasonably supported by substantial
20 evidence considering the reliable and probative evidence in the
21 record as a whole; or

22 (F) arbitrary or capricious, characterized by
23 abuse of discretion, or clearly an unwarranted exercise of
24 discretion.

25 Sec. 161.209. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL
26 EVIDENCE RULE. (a) After service of the petition on the
27 commission and within the time permitted for filing an answer or

1 within additional time allowed by the court, the commission shall
2 send to the reviewing court the original or a certified copy of the
3 entire record of the proceeding under review. The record shall be
4 filed with the clerk of the court. The record may be shortened by
5 stipulation of all parties to the review proceedings. The court may
6 assess additional costs against a party who unreasonably refuses to
7 stipulate to limit the record, unless the party pays all costs of
8 record preparation. The court may require or permit later
9 corrections or additions to the record.

10 (b) A party may apply to the court to present additional
11 evidence. If the court is satisfied that the additional evidence is
12 material and that there were good reasons for the failure to present
13 it in the proceeding before the commission, the court may order that
14 the additional evidence be taken before the commission on
15 conditions determined by the court. The commission may change its
16 findings and decisions by reason of the additional evidence and
17 shall file the additional evidence and any changes, new findings,
18 or decisions with the reviewing court.

19 (c) The party seeking judicial review shall offer, and the
20 reviewing court shall admit, the commission record into evidence as
21 an exhibit.

22 (d) The court shall conduct the review sitting without a
23 jury and is confined to the commission record, except that the court
24 may receive evidence of procedural irregularities alleged to have
25 occurred before the commission that are not reflected in the
26 record.

27 Sec. 161.210. COST OF PREPARING COMMISSION RECORD. (a) The

1 commission may require a party who appeals a final decision under
2 Section 161.207 to pay one-half of the cost of preparation of the
3 original or a certified copy of the record of the commission
4 proceeding that is required to be sent to the reviewing court.

5 (b) A charge imposed under this section is a court cost and
6 may be assessed by the court in accordance with the Texas Rules of
7 Civil Procedure.

8 [Sections 161.211-161.300 reserved for expansion]

9 SUBCHAPTER F. DISSOLUTION OF COMMISSION

10 Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. If,
11 after an ethics commission created pursuant to Section 161.052 has
12 been in effect for at least one year, 10 percent of the qualified
13 voters of the county petition the commissioners court to dissolve
14 the commission, the commissioners court shall call an election to
15 determine whether the commission will be dissolved.

16 Sec. 161.302. DISSOLUTION ELECTION. (a) An election under
17 this subchapter must be held in the manner provided for an election
18 to create a county ethics commission.

19 (b) The ballot for the election shall be printed to provide
20 for voting for or against the proposition: "Dissolution of the
21 county ethics commission."

22 Sec. 161.303. DISSOLUTION OF COMMISSION. If the proposition
23 is approved by a majority of the qualified voters voting at the
24 election, the commissioners court shall declare the result and by
25 order dissolve the ethics commission. A copy of the order
26 dissolving the commission shall be placed in the minutes of the
27 court's proceedings.

1 Sec. 161.304. SAVING PROVISIONS. The dissolution of a
2 county ethics commission under this subchapter does not affect:

3 (1) the prior operation of the ethics code adopted by
4 the commission or any prior action taken under it;

5 (2) any violation of the ethics code or any penalty,
6 forfeiture, or punishment incurred for a violation of the ethics
7 code before the effective date of the dissolution; or

8 (3) any investigation, proceeding, or remedy
9 concerning any penalty, forfeiture, or punishment, and the
10 investigation, proceeding, or remedy may be instituted, continued,
11 or enforced, and the penalty, forfeiture, or punishment imposed, as
12 if the commission had not been dissolved.

13 SECTION 2. This Act takes effect September 1, 2009.