

By: Shapleigh

S.B. No. 1368

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 with a population of 650,000 or more that is located on the international border.

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) "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 includes:

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

(B) as determined by the county, any other

1 persons doing business with the county.

2 (4) "County employee" means a person employed by the  
3 county or a county officer and includes a person employed in the  
4 judicial branch of the county government who is not subject to the  
5 Code of Judicial Conduct. The term does not include a county  
6 officer.

7 (5) "County office" means a position held by a county  
8 officer.

9 (6) "County officer" means a county judge, county  
10 commissioner, county attorney, sheriff, county tax  
11 assessor-collector, county clerk, district clerk, county  
12 treasurer, county auditor, county purchasing agent, and constable.

13 (7) "County public servant" means a person elected,  
14 selected, appointed, employed, or otherwise designated as one of  
15 the following, even if the person has not yet qualified for or  
16 assumed the duties of office:

17 (A) a county officer or county employee;

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

21 (i) an authority, board, bureau,  
22 commission, committee, council, department, district, division, or  
23 office of the county; or

24 (ii) a multi-jurisdictional board;

25 (C) an attorney at law or notary public when  
26 participating in the performance of a governmental function;

27 (D) a candidate for nomination or election to an

1 elected county office; or

2 (E) a person who is performing a governmental  
3 function under a claim of right although the person is not legally  
4 qualified or authorized to do so.

5 (8) "Lobbyist" means a person who communicates with a  
6 county officer or county employee to influence official action.

7 [Sections 161.003-161.050 reserved for expansion]

8 SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION

9 MEMBERS

10 Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) The  
11 commissioners court of a county, by an order adopted by a majority  
12 of the court's full membership, may create a county ethics  
13 commission.

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

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

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

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

1       (d) In addition to the notice required by Chapter 4,  
2 Election Code, the commissioners court must publish in a newspaper  
3 of general circulation in the county, and on the home page of the  
4 county's Internet website, a substantial copy of the order calling  
5 the election. The first newspaper publication must be made on or  
6 before the 15th day before the date of the election and continue  
7 once a week for two consecutive weeks, and the notice on the  
8 county's Internet website shall remain on the home page each day  
9 beginning not later than the 16th day before the election and ending  
10 on the date of the election.

11       Sec. 161.053. BALLOT. The commissioners court shall order  
12 the ballot at the election to be printed to provide for voting for  
13 or against the proposition: "Creation of a county ethics  
14 commission."

15       Sec. 161.054. RESULT OF ELECTION. If the proposition is  
16 approved, the commissioners court shall declare the result and by  
17 order create the county ethics commission. A copy of the order  
18 creating the commission shall be placed in the minutes of the  
19 court's proceedings.

20       Sec. 161.055. APPOINTMENT OF COMMISSION. (a) The  
21 commission is composed of:

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

24               (2) four public representative members, appointed as  
25 provided by this section.

26       (b) Not later than the 60th day after the date of the order  
27 creating the commission as provided in Section 161.051 or Section

1 161.054:

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

4 (2) the commissioners court shall order publication of  
5 a notice seeking applicants for four public representative members  
6 of the commission.

7 (c) The commissioners court shall set the date for the first  
8 meeting of the initial members appointed by the county judge and the  
9 commissioners court. The first meeting must be set not earlier than  
10 the 60th day after the date of the order creating the commission and  
11 not later than the 90th day after the date of that order.

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

14 (e) Not later than the 120th day after the date of the order  
15 creating the commission, the initial members shall appoint four  
16 public representatives from the applications received pursuant to  
17 Subsection (b)(2). After the initial public representatives are  
18 appointed, the entire board shall appoint the successor public  
19 representatives.

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

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

23 (2) have resided in the county for the two years  
24 immediately preceding the date on which the person's term will  
25 begin.

26 (b) A person is not eligible for appointment to the  
27 commission if the person is:

- 1           (1) an elected officer;
- 2           (2) a county employee;
- 3           (3) a county affiliate;
- 4           (4) a person employed as a lobbyist;
- 5           (5) a person convicted of a misdemeanor involving  
6 moral turpitude or a felony; or
- 7           (6) a person who is delinquent in payment of local,  
8 state, or federal taxes.

9           Sec. 161.057. TERMS. (a) Members of the commission serve  
10 staggered terms of two years, with the terms of four or five members  
11 expiring each year.

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

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

17           (1) if the vacancy represents a member appointed by  
18 the county judge or a county commissioner, the vacancy is filled,  
19 except as provided by Subsection (b), by appointment of that  
20 officer or the officer's successor-in-office; or

21           (2) if the vacancy represents a public representative  
22 member, by the commission.

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

27           Sec. 161.059. MEETINGS. (a) The commission shall meet on a

1 regular basis.

2 (b) The commission is a governmental body for purpose of  
3 Chapter 551, Government Code.

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

7 (1) failure to pay local, state, or federal taxes when  
8 due;

9 (2) violation of the ethics code adopted by the  
10 commission;

11 (3) conviction of a felony or misdemeanor;

12 (4) excessive absenteeism as determined by the  
13 commission; and

14 (5) official misconduct.

15 Sec. 161.061. LEGAL REPRESENTATION. The county attorney, or  
16 district attorney, or criminal district attorney, as appropriate,  
17 with the duty to represent the county in civil matters shall  
18 represent the commission in all legal matters.

19 [Sections 161.062-161.100 reserved for expansion]

20 SUBCHAPTER C. POWERS

21 Sec. 161.101. GENERAL POWERS. (a) The commission shall  
22 adopt, publish, and enforce an ethics code governing county public  
23 servants.

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

1       (c) The commission may adopt bylaws, rules, forms,  
2 policies, or procedures to assist in the administration of the  
3 commission's duties under this chapter. The commission may be  
4 guided by Robert's Rules of Order to the extent that it does not  
5 conflict with the constitution and laws of the United States and  
6 this state or conflict with other guidelines adopted by the  
7 commission.

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

10       (e) The commission shall develop and implement polices that  
11 provide the public with information on the commission and the  
12 ethics code.

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

15       (g) The commission shall enforce the provisions of the  
16 ethics code by issuing appropriate orders or recommendations or by  
17 imposing appropriate penalties.

18       Sec. 161.102. ADVISORY OPINIONS. On its own initiative or  
19 on the request of any person covered by the ethics code adopted by  
20 the commission, the commission may issue a written ethics advisory  
21 opinion regarding the application of the ethics code to a specified  
22 existing or hypothetical factual situation. The commission may not  
23 issue an opinion that includes the name of any person who may be  
24 affected by the opinion. If made at the request of a person covered  
25 by the ethics code, the name of that person shall be deemed  
26 confidential.

27       Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) The



1 commission shall develop plain-language materials as described by  
2 this section. The commission shall post the information on the  
3 county's Internet website and make the information otherwise  
4 available to the public.

5 (b) The materials must include:

6 (1) a description of:

7 (A) the commission's responsibilities;

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

10 (C) the types of sanctions the commission may  
11 impose;

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

14 (E) the duties of a person filing a complaint  
15 with the commission; and

16 (2) a diagram showing the basic steps in the  
17 commission's procedures relating to complaint investigation and  
18 resolution.

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

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

23 Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING.

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

27 (1) the legislation that created the commission;

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

2           (3) the requirements of:

3                   (A) the open meetings law, Chapter 551,  
4 Government Code;

5                   (B) the public information law, Chapter 552,  
6 Government Code; and

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

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

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

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

13           (c) Other than the initial appointees and public  
14 representatives, a person who is appointed to and qualifies for  
15 office as a member of the commission may not vote, deliberate, or be  
16 counted as a member in attendance at a meeting of the commission  
17 until the person completes a training program that complies with  
18 this section.

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

23           (b) The training program must provide information  
24 regarding:

25                   (1) the ethics code;

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

27                   (3) plain-language materials as further described by

1 Section 161.103.

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

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

9 [Sections 161.106-161.150 reserved for expansion]

10 SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

11 Sec. 161.151. DEFINITIONS. In this subchapter:

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

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

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

20 (ii) file the statement or report in a  
21 timely manner;

22 (B) a misrepresentation in a report required  
23 under the ethics code; or

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

26 (2) "Category Two violation" means a violation of the  
27 ethics code adopted by the commission that is not a Category One

1 violation.

2 Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. The  
3 commission may adopt the complaint procedures and hearings set  
4 forth in this subchapter.

5 Sec. 161.153. HEARINGS AND SETTLEMENT. (a) The commission  
6 may:

7 (1) hold hearings, on its own motion adopted by an  
8 affirmative vote of at least six commission members or on a sworn  
9 complaint, and render decisions on complaints or reports of  
10 violations as provided by this chapter; and

11 (2) agree to the settlement of issues.

12 (b) The commission may not consider a complaint or vote to  
13 investigate a matter outside the commission's jurisdiction.

14 Sec. 161.154. CATEGORIZATION OF VIOLATIONS. An allegation  
15 of a violation listed as a Category One violation shall be treated  
16 as a Category Two violation if the commission at any time determines  
17 that:

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

22 (2) the facts and law related to a particular  
23 allegation or a defense to the allegation present a level of  
24 complexity that prevents resolution through the preliminary review  
25 procedures for Category One violations prescribed by Section  
26 161.159(a).

27 Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) An

1 individual may file with the commission a sworn complaint, on a form  
2 prescribed by the commission, alleging that a person subject to the  
3 ethics code has violated the ethics code. The commission shall make  
4 the complaint form available on the county website.

5 (b) A complaint filed under this section must be in writing  
6 and under oath and must set forth in simple, concise, and direct  
7 statements:

8 (1) the name of the complainant;

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

10 (3) the name of each respondent;

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

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

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

18 (7) all documents or other material available to the  
19 complainant that are relevant to the allegation, a list of all  
20 documents or other material within the knowledge of the complainant  
21 and available to the complainant that are relevant to the  
22 allegation but that are not in the possession of the complainant,  
23 including the location of the documents, if known, and a list of all  
24 documents or other material within the knowledge of the complainant  
25 that are unavailable to the complainant and that are relevant to the  
26 complaint, including the location of the documents, if known.

27 (c) The complaint must be accompanied by an affidavit

1 stating either that the information contained in the complaint is  
2 correct or that the complainant has good reason to believe and does  
3 believe that the violation occurred. If the complaint is based on  
4 information and belief, the complaint shall state the source and  
5 basis of the information and belief. The complainant may swear to  
6 the facts by oath before a notary public or other authorized  
7 official.

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

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

13 (b) Not later than the 10th business day after the date a  
14 complaint is filed, the commission shall send written notice to the  
15 complainant and the respondent. The notice must state whether the  
16 complaint complies with the form requirements of Section 161.155  
17 and include the information required by Section 161.158(d).

18 (c) If the commission determines that the complaint does not  
19 comply with the form requirements, the commission shall send the  
20 complaint to the complainant with the written notice, a statement  
21 explaining how the complaint fails to comply, and a copy of the  
22 rules for filing sworn complaints. The complainant may resubmit  
23 the complaint not later than the 21st day after the date the notice  
24 under Subsection (b) is mailed. If the commission determines that  
25 the complaint is not resubmitted within the 21-day period, the  
26 commission shall:

27 (1) dismiss the complaint; and

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

4           (d) If the commission determines that a complaint is  
5 resubmitted under Subsection (c) within the 21-day period but is  
6 not in proper form, the commission shall send the notice required  
7 under Subsection (c), and the complainant may resubmit the  
8 complaint under that subsection.

9           (e) If the commission determines that a complaint returned  
10 to the complainant under Subsection (c) or (d) is resubmitted  
11 within the 21-day period and that the complaint complies with the  
12 form requirements, the commission shall send the written notice  
13 under Subsection (b).

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) On a motion adopted by an affirmative vote of at least  
10 six commission members, the commission may initiate a preliminary  
11 review of the matter that is the subject of the motion without a  
12 sworn complaint.

13 (c) The commission shall determine in writing whether the  
14 commission has jurisdiction over the violation of the ethics code  
15 provision alleged in a sworn complaint processed under Section  
16 161.156.

17 (d) If the commission determines that it has jurisdiction,  
18 it shall issue a notice under Section 161.156(b) that must include:

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

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

24 (3) the date by which the respondent is required to  
25 respond to the notice;

26 (4) a copy of the complaint and the rules of procedure  
27 of the commission;



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

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

4 (7) a statement that a failure to timely respond to the  
5 notice will be treated as a separate violation.

6 (e) If the commission determines that the commission does  
7 not have jurisdiction over the violation alleged in the complaint,  
8 the commission shall:

9 (1) dismiss the complaint; and

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

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

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

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

18 (2) if the matter is not resolved by agreement between  
19 the commission and the respondent before the 30th business day  
20 after the date the respondent receives the notice under Section  
21 161.156(b), the commission shall set the matter for a preliminary  
22 review hearing to be held at the next commission meeting for which  
23 notice has not yet been posted.

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

25 (1) the respondent must respond to the notice required  
26 by Section 161.156(b) not later than the 25th business day after the  
27 date the respondent receives the notice under Section 161.156(b);

1 and

2 (2) if the matter is not resolved by agreement between  
3 the commission and the respondent before the 75th business day  
4 after the date the respondent receives the notice under Section  
5 161.156(b), the commission shall set the matter for a preliminary  
6 review hearing to be held at the next commission meeting for which  
7 notice has not yet been posted.

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

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

14 (1) acknowledge the occurrence or commission of a  
15 violation;

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

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

21 (e) If the commission sets the matter for a preliminary  
22 review hearing, the commission shall promptly send to the  
23 complainant and the respondent written notice of the date, time,  
24 and place of the preliminary review hearing.

25 Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS.

26 During a preliminary review, the commission staff may submit to the  
27 complainant or respondent written questions reasonably intended to

1 lead to the discovery of matters relevant to the investigation.

2 Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW  
3 PROCEDURES. The commission shall adopt procedures for the conduct  
4 of preliminary reviews and preliminary review hearings. The  
5 procedures must include:

6 (1) a reasonable time for responding to questions  
7 submitted by the commission and commission staff and subpoenas  
8 issued by the commission; and

9 (2) the tolling or extension of otherwise applicable  
10 deadlines where:

11 (A) the commission issues a subpoena and the  
12 commission's meeting schedule makes it impossible both to provide a  
13 reasonable time for response and to comply with the otherwise  
14 applicable deadlines; or

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

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

22 (1) following the preliminary review, the commission  
23 and the respondent cannot agree to the disposition of the complaint  
24 or motion; or

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

26 (b) The commission shall provide written notice to the  
27 complainant, if any, and the respondent of the date, time, and place

1 the commission will conduct the preliminary review hearing.

2 (c) At or after the time the commission provides notice of a  
3 preliminary review hearing, the commission may submit to the  
4 complainant and the respondent written questions and require those  
5 questions to be answered under oath within a reasonable time.

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

7 (1) may consider all submitted evidence related to the  
8 complaint or to the subject matter of a motion under Section  
9 161.158(b);

10 (2) may review any documents or material related to  
11 the complaint or to the motion; and

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

15 (e) During a preliminary review hearing, the respondent may  
16 appear before the commission with the assistance of counsel, if  
17 desired by the respondent, and present any relevant evidence,  
18 including a written statement.

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

22 (1) whether there is credible evidence for the  
23 commission to determine that a violation within the jurisdiction of  
24 the commission has occurred and whether the violation is technical  
25 or de minimis; or

26 (2) that there is insufficient evidence for the  
27 commission to determine whether a violation within the jurisdiction

1 of the commission has occurred.

2 (b) If the commission determines that there is credible  
3 evidence for the commission to determine that a violation has  
4 occurred, the commission shall resolve and settle the complaint or  
5 motion to the extent possible. If the commission successfully  
6 resolves and settles the complaint or motion, not later than the  
7 10th business day after the date of the final resolution of the  
8 complaint or motion, the commission shall send to the complainant,  
9 if any, and the respondent a copy of the decision stating the  
10 commission's determination and written notice of the resolution and  
11 the terms of the resolution. If the commission is unsuccessful in  
12 resolving and settling the complaint or motion, the commission  
13 shall:

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

16 (2) not later than the 10th business day after the date  
17 of the decision, send to the complainant, if any, and the  
18 respondent:

19 (A) a copy of the decision;

20 (B) written notice of the date, time, and place  
21 of the formal hearing;

22 (C) a statement of the nature of the alleged  
23 violation;

24 (D) a description of the evidence of the alleged  
25 violation;

26 (E) a copy of the complaint or motion;

27 (F) a copy of the commission's rules of

1 procedure; and

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

3 (c) If the commission determines that there is credible  
4 evidence for the commission to determine that a violation within  
5 the jurisdiction of the commission has not occurred, the commission  
6 shall:

7 (1) dismiss the complaint or motion; and

8 (2) not later than the fifth business day after the  
9 date of the dismissal, send to the complainant, if any, and the  
10 respondent a copy of the decision stating the commission's  
11 determination and written notice of the dismissal and the grounds  
12 for dismissal.

13 (d) If the commission determines that there is insufficient  
14 credible evidence for the commission to determine that a violation  
15 within the jurisdiction of the commission has occurred, the  
16 commission may dismiss the complaint or motion or promptly conduct  
17 a formal hearing under Sections 161.164 through 161.167. Not later  
18 than the fifth business day after the date of the commission's  
19 determination under this subsection, the commission shall send to  
20 the complainant, if any, and the respondent a copy of the decision  
21 stating the commission's determination and written notice of the  
22 grounds for the determination.

23 Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE.  
24 During a formal hearing, the commission shall determine by a  
25 preponderance of the evidence whether a violation within the  
26 jurisdiction of the commission has occurred.

27 Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES.

1 (a) A subpoena or other request to testify shall be served  
2 sufficiently in advance of the scheduled appearance at a formal  
3 hearing to allow a reasonable period, as determined by the  
4 commission, for the person subpoenaed to prepare for the hearing  
5 and to employ counsel if desired.

6 (b) Except as provided by Section 161.166(a)(1), the  
7 commission may order that a person may not, except as specifically  
8 authorized by the presiding officer, make public the name of a  
9 witness subpoenaed by the commission before the date of that  
10 witness's scheduled appearance.

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

13 (d) A person whose name is mentioned or who is identified or  
14 referred to in testimony or in statements made by a commission  
15 member, commission staff member, or witness and who reasonably  
16 believes that the statement tends to adversely affect the person's  
17 reputation may:

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

20 (2) file a sworn statement of facts relevant to the  
21 testimony or statement that the person believes adversely affects  
22 the person's reputation.

23 (e) A witness who testifies at a formal hearing must be  
24 sworn.

25 Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Not later  
26 than the fifth business day before the date of a scheduled formal  
27 hearing or on the granting of a motion for discovery by the

1 respondent, the commission shall provide to the complainant, if  
2 any, and to the respondent:

3 (1) a list of proposed witnesses to be called at the  
4 hearing;

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

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

9 (b) The respondent may not be compelled to give evidence or  
10 testimony that violates the respondent's right against  
11 self-incrimination under the United States Constitution or the  
12 Texas Constitution.

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

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

19 (1) a final decision stating the resolution of the  
20 formal hearing; and

21 (2) a written report stating the commission's findings  
22 of fact, conclusions of law, and recommendation of criminal  
23 referral or imposition of a civil penalty, if any.

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

26 (c) Not later than the 10th business day after the date the  
27 commission issues the final decision and written report, the



1 commission shall:

2 (1) send a copy of the decision and report to the  
3 complainant, if any, and to the respondent; and

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

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

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

10 (2) the date the complaint is received by the  
11 commission;

12 (3) the subject matter of the complaint;

13 (4) the name of each person contacted in relation to  
14 the complaint;

15 (5) a summary of the results of the review or  
16 investigation of the complaint; and

17 (6) an explanation of the reason the file was closed,  
18 if the commission closed the file without taking action other than  
19 to investigate the complaint.

20 (b) The commission shall provide to the person filing the  
21 complaint and to each person who is a subject of the complaint a  
22 copy of the commission's policies and procedures relating to  
23 complaint investigation and resolution.

24 (c) In addition to the notice required by Sections 161.156  
25 and 161.167, the commission, at least quarterly until final  
26 disposition of a complaint, shall notify the person who filed the  
27 complaint and each person who is a subject of the complaint, if any,

1 of the status of the sworn or other complaint.

2 (d) The commission shall resolve a complaint within six  
3 months of its receipt unless it makes a determination that  
4 additional time is required to resolve the matter. On a  
5 determination that additional time is required, the commission may  
6 extend the investigation in three-month increments. Each extension  
7 requires separate approval by the commission.

8 (e) If the commission does not resolve the matter within six  
9 months or within an authorized extension, the complaint shall be  
10 deemed to have been dismissed without prejudice.

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

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

19 (b) In connection with a preliminary review, the  
20 commission, for good cause and as authorized by this chapter, may  
21 subpoena documents and witnesses on application by the commission  
22 staff and a motion adopted by a vote of at least five members of the  
23 commission, for the purpose of attempting to obtain from the  
24 documents or witnesses specifically identified information, if the  
25 commission reasonably believes that the specifically identified  
26 information:

27 (1) is likely to be determinative as to whether the

1 subject of an investigation has violated a provision of the ethics  
2 code;

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

5 (3) is not reasonably available through a less  
6 intrusive means.

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

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

11 (e) At the written request of at least five members of the  
12 commission, a peace officer shall serve a subpoena of the  
13 commission in the manner prescribed for service of a district court  
14 subpoena.

15 (f) If a person to whom a subpoena is directed refuses to  
16 appear, refuses to answer inquiries, or fails or refuses to produce  
17 books, records, or other documents that were under the person's  
18 control when the demand was made, the commission shall report that  
19 fact to a district court in the county. The district court shall  
20 enforce the subpoena by attachment proceedings for contempt in the  
21 same manner as the court enforces a subpoena issued by the court.

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

24 (h) A subpoenaed witness who attends a commission hearing is  
25 entitled to the same mileage and per diem payments as a witness who  
26 appears before a grand jury. A person who provides subpoenaed  
27 documents to the commission is entitled to reimbursement from the

1 commission for the person's reasonable cost of producing the  
2 documents.

3 Sec. 161.171. STATUS OF COMPLAINANT. The complainant is  
4 not a party to a preliminary review, preliminary review hearing, or  
5 formal hearing under this subchapter.

6 Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Except as  
7 provided by Section 161.173(b), Chapter 552, Government Code, does  
8 not apply to documents or any additional evidence relating to the  
9 processing, preliminary review, preliminary review hearing, or  
10 resolution of a sworn complaint or motion.

11 (b) Chapter 551, Government Code, does not apply to the  
12 processing, preliminary review, preliminary review hearing, or  
13 resolution of a sworn complaint or motion, but does apply to a  
14 formal hearing held under Sections 161.164 through 161.167.

15 (c) Subchapters C through H, Chapter 2001, Government Code,  
16 apply only to a formal hearing under this subchapter, the  
17 resolution of a formal hearing, and the appeal of a final order of  
18 the commission, and only to the extent consistent with this  
19 chapter.

20 Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Except as  
21 provided by Subsection (b) or (c) or by Section 161.201,  
22 proceedings at a preliminary review hearing performed by the  
23 commission, a sworn complaint, and documents and any additional  
24 evidence relating to the processing, preliminary review,  
25 preliminary review hearing, or resolution of a sworn complaint or  
26 motion are confidential and may not be disclosed unless entered  
27 into the record of a formal hearing or a judicial proceeding, except

1 that a document or statement that was previously public information  
2 remains public information.

3 (b) An order issued by the commission after the completion  
4 of a preliminary review or hearing determining that a violation  
5 other than a technical or de minimis violation has occurred is not  
6 confidential.

7 (c) Commission staff may, for the purpose of investigating a  
8 sworn complaint or motion, disclose to the complainant, the  
9 respondent, or a witness information that is otherwise confidential  
10 and relates to the sworn complaint if:

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

13 (2) the employee's determination under Subdivision (1)  
14 is objectively reasonable;

15 (3) the commission specifically authorizes the  
16 disclosure; and

17 (4) the employee discloses only the information  
18 necessary to conduct the investigation.

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

20 (1) destroys, mutilates, or alters information  
21 obtained under this chapter; or

22 (2) removes information obtained under this chapter  
23 without permission as provided by this chapter.

24 (e) An offense under Subsection (d) is a misdemeanor  
25 punishable by:

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

27 (2) confinement in the county jail for not less than

1 three days or more than three months; or

2 (3) both the fine and confinement.

3 (f) A person commits an offense if the person distributes  
4 information considered confidential under the terms of this  
5 chapter.

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

8 (1) uses the confidential information for a purpose  
9 other than the purpose for which the information was received or for  
10 a purpose unrelated to this chapter, including solicitation of  
11 political contributions or solicitation of clients;

12 (2) permits inspection of the confidential  
13 information by a person who is not authorized to inspect the  
14 information; or

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

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

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

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

22 (3) both the fine and confinement.

23 (i) A violation under this section constitutes official  
24 misconduct.

25 (j) In addition to other penalties, the respondent may  
26 commence a civil action for damages on the respondent's own behalf  
27 against any person who is alleged to have disclosed information

1 made confidential by this subchapter. Any action under this chapter  
2 must be brought in a district court in the county. The court may  
3 award costs and attorney's fees.

4 (k) A county employee is subject to discipline, including  
5 termination of employment, for disclosing confidential information  
6 under this chapter.

7 (l) A county employee who discloses confidential  
8 information in compliance with Subsection (c) is not subject to  
9 Subsections (d)-(k).

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

16 (1) a copy of the commission's order stating the  
17 determination; or

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

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

21 [Sections 161.175-161.200 reserved for expansion]

22 SUBCHAPTER E. ENFORCEMENT

23 Sec. 161.201. INITIATION AND REFERRAL. (a) On a motion  
24 adopted by an affirmative vote of at least six commission members,  
25 the commission may initiate civil enforcement actions and refer  
26 matters to the appropriate prosecuting attorney for criminal  
27 prosecution.

1       (b) On receipt of a sworn complaint, if the commission  
2 reasonably believes that the person who is the subject of the  
3 complaint has violated Chapter 36, 37, or 39, Penal Code, the  
4 commission may refer the matter to the appropriate prosecuting  
5 attorney for criminal prosecution.

6       (c) In making a referral to a prosecuting attorney under  
7 this section, the commission may disclose confidential  
8 information.

9       Sec. 161.202. ORDER. The commission may:

10       (1) issue and enforce a cease and desist order to stop  
11 a violation;

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

14       (3) issue an order of public censure with or without  
15 penalty as provided pursuant to Section 161.203.

16       Sec. 161.203. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) The  
17 commission may impose a civil penalty of not more than \$500 for each  
18 delay in complying with a commission order.

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

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

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

26       Sec. 161.204. WAIVER OR REDUCTION OF PENALTY. (a) A person  
27 may request the waiver or reduction of a civil penalty by submitting



1 an affidavit to the commission that states the filer's reasons for  
2 requesting a waiver or reduction.

3 (b) The commission may waive or reduce a civil penalty if  
4 the commission finds that a waiver or reduction is in the public  
5 interest and in the interest of justice. The commission shall  
6 consider the following before acting to waive or reduce a civil  
7 penalty:

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

10 (2) the seriousness of the violation, including the  
11 nature, circumstances, consequences, extent, and gravity of the  
12 violation, and the amount of the penalty;

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

14 (4) the demonstrated good faith of the person,  
15 including actions taken to rectify the consequences of the  
16 violation;

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

18 and

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

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

22 Sec. 161.205. NOTIFICATION OF REGULATORY OR SUPERVISORY  
23 ENTITY. The commission may notify the appropriate regulatory or  
24 supervisory entity, including any agency, the State Commission on  
25 Judicial Conduct, or the State Bar of Texas, of a violation of the  
26 ethics code adopted by the commission.

27 Sec. 161.206. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH

1 COMPLAINT. (a) The commission may impose a civil penalty of not  
2 more than \$4,000 for the filing of a frivolous or bad-faith  
3 complaint. In this subsection, "frivolous complaint" means a  
4 complaint that is groundless and brought in bad faith or is  
5 groundless and brought for the purpose of harassment.

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

11 (c) A person may file a sworn complaint with the commission,  
12 in accordance with Section 161.155, alleging that a complaint  
13 relating to that person filed with the commission is frivolous or  
14 brought in bad faith. A complaint may be filed under this  
15 subsection without regard to whether the complaint alleged to be  
16 frivolous or brought in bad faith is pending before the commission  
17 or has been resolved. The commission shall act on a complaint made  
18 under this subsection as provided by Subchapter D.

19 Sec. 161.207. FACTORS CONSIDERED FOR ASSESSMENT OF  
20 SANCTION. The commission shall consider the following factors in  
21 assessing a sanction:

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

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

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

1 violation;

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

3 and

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

5 Sec. 161.208. APPEALS. (a) A respondent may appeal the  
6 decision by filing a petition in a district court in the county  
7 within 30 days after the date of the decision.

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

11 (c) If the district court renders judgment for the  
12 petitioner, and the petitioner is a county employee, the court may  
13 order reinstatement of the county employee, payment of back pay, or  
14 other appropriate relief.

15 (d) If the district court renders judgment for the  
16 petitioner, the court may order appropriate relief, including costs  
17 and attorney's fees.

18 Sec. 161.209. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. In  
19 an appeal under Section 161.208, the district court may not  
20 substitute its judgment for the judgment of the commission on the  
21 weight of the evidence on questions committed to the commission's  
22 discretion but:

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

25 (2) shall reverse or remand the case for further  
26 proceedings if substantial rights of the petitioner have been  
27 prejudiced because the commission's findings, inferences,

1 conclusions, or decisions are:

2 (A) in violation of a constitutional or statutory  
3 provision;

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

5 (C) made through unlawful procedure;

6 (D) affected by other error of law;

7 (E) not reasonably supported by substantial  
8 evidence considering the reliable and probative evidence in the  
9 record as a whole; or

10 (F) arbitrary or capricious, characterized by  
11 abuse of discretion, or clearly an unwarranted exercise of  
12 discretion.

13 Sec. 161.210. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL  
14 EVIDENCE RULE. (a) After service of the petition on the  
15 commission and within the time permitted for filing an answer or  
16 within additional time allowed by the court, the commission shall  
17 send to the reviewing court the original or a certified copy of the  
18 entire record of the proceeding under review. The record shall be  
19 filed with the clerk of the court. The record may be shortened by  
20 stipulation of all parties to the review proceedings. The court may  
21 assess additional costs against a party who unreasonably refuses to  
22 stipulate to limit the record, unless the party pays all costs of  
23 record preparation. The court may require or permit later  
24 corrections or additions to the record.

25 (b) A party may apply to the court to present additional  
26 evidence. If the court is satisfied that the additional evidence is  
27 material and that there were good reasons for the failure to present

1 it in the proceeding before the commission, the court may order that  
2 the additional evidence be taken before the commission on  
3 conditions determined by the court. The commission may change its  
4 findings and decisions by reason of the additional evidence and  
5 shall file the additional evidence and any changes, new findings,  
6 or decisions with the reviewing court.

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

10 (d) The court shall conduct the review sitting without a  
11 jury and is confined to the commission record, except that the court  
12 may receive evidence of procedural irregularities alleged to have  
13 occurred before the commission that are not reflected in the  
14 record.

15 Sec. 161.211. COST OF PREPARING COMMISSION RECORD. (a) The  
16 commission may require a party who appeals a final decision under  
17 Section 161.208 to pay one-half of the cost of preparation of the  
18 original or a certified copy of the record of the commission  
19 proceeding that is required to be sent to the reviewing court.

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

23 Sec. 161.212. CRIMINAL PENALTY. (a) A county public  
24 servant or county affiliate commits an offense under this chapter  
25 if the person knowingly violates a provision of the ethics code  
26 adopted by the commission.

27 (b) An offense under this chapter is a misdemeanor

1 punishable by a fine of not less than \$25 and not more than \$4,000.

2 (c) This section is cumulative of any other available  
3 sanctions under this chapter.

4 Sec. 161.213. VENUE. An offense under this subchapter,  
5 including perjury, may be prosecuted in any county in which it may  
6 be prosecuted under the Code of Criminal Procedure.

7 [Sections 161.214-161.300 reserved for expansion]

8 SUBCHAPTER F. DISSOLUTION OF COMMISSION

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

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

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

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

27 Sec. 161.304. SAVING PROVISIONS. The dissolution of a

1 county ethics commission under this subchapter does not affect:

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

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

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

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