

BILL ANALYSIS

C.S.H.B. 1638
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that current law fails to specifically address the recusal of a prosecutor who is under investigation by a grand jury for an offense within the attorney's authority to prosecute. While most prosecutors would immediately recuse themselves in such a situation, the potential still exists for a local district or county attorney to refuse to step aside and possibly leave the grand jury with no effective legal representation in the jury's review of the allegations against the attorney. It is the intent of C.S.H.B. 1638 to resolve that issue by providing a way to disqualify such an attorney, thereby ensuring the integrity of the criminal justice system.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1638 amends the Code of Criminal Procedure to require a judge of a court in which a district or county attorney represents the state to declare the attorney disqualified for purposes of state law providing for an attorney pro tem when an attorney for the state is disqualified to act in any case or proceeding on a showing that the attorney, as a result of credible evidence of criminal misconduct, is the subject of a criminal investigation for an offense that is within the attorney's authority to prosecute. The bill makes such a disqualification applicable only to the attorney's access to the criminal investigation pending against the attorney and to any prosecution of a criminal charge resulting from that investigation.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1638 contains a provision not included in the original requiring the showing that the attorney is the subject of a criminal investigation to be a result of credible evidence of criminal misconduct.