

By: McClendon, Gallego

H.B. No. 115

Substitute the following for H.B. No. 115:

By: Gallego

C.S.H.B. No. 115

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a commission to investigate convictions after exoneration and to prevent wrongful convictions.

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

SECTION 1. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.27 to read as follows:

Art. 43.27. TEXAS INNOCENCE COMMISSION

Sec. 1. CREATION. The Texas Innocence Commission is created.

Sec. 2. COMPOSITION. The commission is composed of nine members appointed by the governor. The governor shall make appointments to the commission without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 3. TERMS; VACANCIES. (a) Members serve staggered six-year terms, with one-third of the members' terms expiring February 1 of each odd-numbered year.

(b) In the event of a vacancy, the governor shall appoint a replacement to fill the unexpired portion of the term.

(c) The presiding officer of the commission shall be elected on an annual basis by the members of the commission.

Sec. 4. MEETINGS. (a) The commission may hold its meetings, hearings, and other proceedings at times and places as the commission shall determine, but shall meet in Austin at least

1 once each year. Proceedings shall be by majority vote of those  
2 present.

3 (b) The commission shall conduct a public hearing at least  
4 once a year, the agenda of which must include a review of the work of  
5 the commission in reviewing and investigating matters considered by  
6 the commission under this article.

7 Sec. 5. QUALIFICATIONS. (a) Each member must be a  
8 registered voter of the state.

9 (b) A member of the commission may not hold any other public  
10 office or be an employee of any state department or agency, or be an  
11 employee or member of another state board or commission during the  
12 member's tenure on the commission.

13 (c) An individual may not be a member of the commission or  
14 act as the general counsel to the commission if the individual or  
15 individual's spouse is required to register as a lobbyist under  
16 Chapter 305, Government Code, because of the individual's  
17 activities for compensation on behalf of a profession or entity  
18 related to the operation of the commission.

19 Sec. 6. GROUNDS FOR REMOVAL. (a) It is a ground for  
20 removal from the commission that a member:

21 (1) does not have at the time of appointment the  
22 qualifications required by this article;

23 (2) does not maintain during service on the commission  
24 the qualifications required by this article;

25 (3) violates a prohibition established by this  
26 article;

27 (4) is ineligible for membership under this article;

1           (5) cannot, because of illness or disability,  
2 discharge the member's duties for a substantial part of the member's  
3 term; or

4           (6) is absent from more than half of the regularly  
5 scheduled meetings that the member is eligible to attend during a  
6 calendar year, unless the absence is excused by a majority vote of  
7 the commission.

8           (b) The validity of an action of the commission is not  
9 affected by the fact that it is taken when a ground for removal of a  
10 commission member exists.

11           Sec. 7. COMMISSION MEMBER TRAINING. (a) A person who is  
12 appointed to and qualifies for office as a member of the commission  
13 shall complete a training program that meets the requirements of  
14 this section.

15           (b) The training program must provide the person with  
16 information regarding:

17                   (1) the legislation that created the commission;  
18                   (2) the programs operated by the commission;  
19                   (3) the role and functions of the commission;  
20                   (4) the rules of the commission, with an emphasis on  
21 the rules that relate to its investigatory authority;

22                   (5) the requirements of laws relating to public  
23 officials and public meetings, including conflict-of-interest  
24 laws; and

25                   (6) any applicable ethics policies adopted by the  
26 commission or the Texas Ethics Commission.

27           Sec. 8. SUNSET PROVISION. The Texas Innocence Commission

1 is subject to Chapter 325, Government Code (Texas Sunset Act).  
2 Unless continued in existence as provided by that chapter, the  
3 Texas Innocence Commission is abolished and this article expires  
4 September 1, 2023.

5 Sec. 9. DUTIES. (a) The commission shall make thorough  
6 review or investigation of all cases in which an innocent person was  
7 convicted and exonerated, including convictions vacated based on a  
8 plea to time served, to:

9 (1) identify the causes of wrongful convictions;

10 (2) ascertain errors and defects in the laws, rules,  
11 proof, and procedures applied in prosecuting the defendant's case  
12 at issue or implicated by each identified cause of wrongful  
13 convictions;

14 (3) identify errors and defects in the criminal  
15 justice process in this state generally, using peer-reviewed  
16 research, expert analysis, and demographic data;

17 (4) consider and develop solutions and methods to  
18 correct the identified errors and defects through legislation,  
19 rule, regulation, or procedural changes; and

20 (5) identify procedures, programs, and educational or  
21 training opportunities demonstrated to eliminate or minimize the  
22 causes of wrongful convictions and prevent the future occurrence of  
23 wrongful convictions and resulting executions.

24 (b) The commission shall consider potential implementation  
25 plans, costs, cost savings, and the impact on the criminal justice  
26 system for each potential solution.

27 (c) The commission may enter into contracts for research and

1 professional services as may be necessary or appropriate to  
2 facilitate the work and activities of the commission or complete  
3 the investigation of a particular post-exoneration case, including  
4 forensic testing and autopsies.

5 Sec. 10. REPORTS AND RECORDS. (a) The commission shall  
6 compile a detailed annual report of its findings and  
7 recommendations, including any proposed legislation, rule, or  
8 policy changes necessary or appropriate to implement procedures and  
9 programs to prevent the causes and occurrence of future wrongful  
10 convictions or executions. The commission may also compile interim  
11 reports for the same or similar purposes.

12 (b) Official annual and interim reports issued by the  
13 commission must be made available to the public on request.

14 (c) The findings and recommendations contained in the  
15 official reports issued by the commission may be used as evidence in  
16 any subsequent civil or criminal proceeding, according to the  
17 applicable procedural and evidentiary rules for the tribunal in  
18 which a particular matter is or may be pending.

19 (d) Working papers and records, including all documentary  
20 or other information, prepared or maintained by the commission,  
21 members, or staff in performing the commission's duties under this  
22 article or other law to conduct an evaluation and prepare a report,  
23 are excepted from the public disclosure requirements of Section  
24 552.021, Government Code. A record held by another entity that is  
25 considered to be confidential by law and that the commission  
26 receives in connection with the performance of the commission's  
27 functions under this article or another law remains confidential

1 and is excepted from the public disclosure requirements of Section  
2 552.021, Government Code.

3 Sec. 11. SUBMISSION. The commission shall submit the  
4 reports described by Section 10 to the governor, the lieutenant  
5 governor, the speaker of the house of representatives, and the  
6 legislature not later than December 1 of each even-numbered year,  
7 or not later than the 60th day after the issuance of the report,  
8 whichever occurs first.

9 Sec. 12. GIFTS AND GRANTS. (a) The commission may apply  
10 for and accept gifts, grants, and donations from any organization  
11 described in Section 501(c)(3) or (4), Internal Revenue Code of  
12 1986, for the purpose of funding any activity of the commission  
13 under this article. The commission may apply for and accept grants  
14 under federal programs.

15 (b) The commission may also receive donations from private  
16 individuals or entities.

17 (c) All gifts, grants, and donations must be accepted in an  
18 open meeting by a majority of the members of the commission then  
19 present and voting, and must be reported in the public records of  
20 the commission with the name of the donor and purpose of the gift,  
21 grant, or donation accepted.

22 (d) The commission may authorize and disburse subgrants of  
23 funds from those funds that it may accept from time to time under  
24 this section for appropriate programs, services, and activities  
25 related to and in accord with the purposes and activities of the  
26 commission.

27 Sec. 13. COMPENSATION; REIMBURSEMENT. A member of the

1 commission may not receive compensation for the services provided  
2 as a member. A member is entitled to reimbursement by the  
3 commission for the member's actual and necessary expenses incurred  
4 in performing commission duties, subject to the availability of  
5 funds from general revenue that may be appropriated to the  
6 commission by the state. Reimbursements to members for actual and  
7 necessary expenses incurred may be authorized by the commission  
8 through funds received and administered by the commission from  
9 gifts, grants, and donations it accepts under Section 12.

10 Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE  
11 AGENCIES. (a) The Texas Legislative Council, the Legislative  
12 Budget Board, and The University of Texas at Austin shall assist the  
13 commission in performing the commission's duties.

14 (b) The commission may also request the assistance of other  
15 state agencies and officers. When assistance is requested, a state  
16 agency or officer shall assist the commission in carrying out its  
17 functions under this article. The commission or its designee may  
18 inspect the records, documents, and files of any state agency in  
19 carrying out the commission's duties.

20 Sec. 15. OTHER LAW. The commission is not subject to  
21 Chapter 2110, Government Code.

22 SECTION 2. In appointing the initial members of the Texas  
23 Innocence Commission, the governor shall appoint three persons to  
24 terms expiring February 1, 2013, three to terms expiring February  
25 1, 2015, and three to terms expiring February 1, 2017.

26 SECTION 3. The appointments to the Texas Innocence  
27 Commission required by Article 43.27, Code of Criminal Procedure,

1 as added by this Act, shall be made not later than the 60th day after  
2 the effective date of this Act.

3 SECTION 4. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2011.