

SENATE AMENDMENTS

2nd Printing

By: Aliseda

H.B. No. 1638

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the disqualification of a district or county attorney
3 who is the subject of a criminal investigation.

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

5 SECTION 1. Article 2.08, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 2.08. DISQUALIFIED. (a) District and county
8 attorneys shall not be of counsel adversely to the State in any
9 case, in any court, nor shall they, after they cease to be such
10 officers, be of counsel adversely to the State in any case in which
11 they have been of counsel for the State.

12 (b) A judge of a court in which a district or county attorney
13 represents the State shall declare the district or county attorney
14 disqualified for purposes of Article 2.07 on a showing that the
15 attorney, as a result of credible evidence of criminal misconduct,
16 is the subject of a criminal investigation for an offense that is
17 within the attorney's authority to prosecute. A disqualification
18 under this subsection applies only to the attorney's access to the
19 criminal investigation pending against the attorney and to any
20 prosecution of a criminal charge resulting from that investigation.

21 SECTION 2. The change in law made by this Act applies only
22 to the prosecution of an offense committed on or after the effective
23 date of this Act. The prosecution of an offense committed before
24 the effective date of this Act is governed by the law in effect on

1 the date the offense was committed, and the former law is continued
2 in effect for that purpose. For purposes of this section, an
3 offense was committed before the effective date of this Act if any
4 element of the offense occurred before that date.

5 SECTION 3. This Act takes effect September 1, 2011.

ADOPTED

MAY 25 2011

Atty Gen
Secretary of the Senate

By: Rep. Amiseda

H.B. No. 1638

Substitute the following for ___B. No. _____:

By: [Signature]

C.S. ___B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.

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

SECTION 1. Article 2.08, Code of Criminal Procedure, is amended to read as follows:

Art. 2.08. DISQUALIFIED. (a) District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State.

(b) A judge of a court in which a district or county attorney represents the State shall declare the district or county attorney disqualified for purposes of Article 2.07 on a showing that the attorney is the subject of a criminal investigation by a law enforcement agency if that investigation is based on credible evidence of criminal misconduct for an offense that is within the attorney's authority to prosecute. A disqualification under this subsection applies 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.

SECTION 2. The change in law made by this Act applies only to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before

1 the effective date of this Act is governed by the law in effect on
2 the date the offense was committed, and the former law is continued
3 in effect for that purpose. For purposes of this section, an
4 offense was committed before the effective date of this Act if any
5 element of the offense occurred before that date.

6 SECTION 3. This Act takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1638 by Aliseda (Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend Article 2.08 of 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 on a showing that the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct for an offense that is within the attorney's authority to prosecute. The disqualification applies only to the attorney's access to the criminal investigation and to any prosecution of a criminal charge resulting from the investigation. No significant fiscal impact on the court system is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill would amend Article 2.08 of the Code of Criminal Procedure to disqualify a district or county attorney for the purposes of Article 2.07 if the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct that is within the attorney's authority to prosecute. Costs could be incurred if it were necessary for a district or county to contract with a non-state attorney or with another commissioners court to appoint an attorney pro tem in accordance with Article 2.07. Costs would only be incurred if a district or county attorney were under criminal investigation and the district or county were unable to appoint a local attorney of the state as attorney pro tem; costs would vary depending on applicability of the bill but are not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, TB, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1638 by Aliseda (Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend Article 2.08 of 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 on a showing that the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct for an offense that is within the attorney's authority to prosecute. The disqualification applies only to the attorney's access to the criminal investigation and to any prosecution of a criminal charge resulting from the investigation. No significant fiscal impact on the court system is anticipated. The bill would take effect September 1, 2011.

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, TB, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 13, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1638 by Aliseda (Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend Article 2.08 of 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 on a showing that the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct for an offense that is within the attorney's authority to prosecute. The disqualification applies only to the attorney's access to the criminal investigation and to any prosecution of a criminal charge resulting from the investigation. No significant fiscal impact on the court system is anticipated. The bill would take effect September 1, 2011.

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, TB, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 23, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1638 by Aliseda (Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend Article 2.08 of 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 on a showing that the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct for an offense that is within the attorney's authority to prosecute. The disqualification applies only to the attorney's access to the criminal investigation and to any prosecution of a criminal charge resulting from the investigation. No significant fiscal impact on the court system is anticipated. The bill would take effect September 1, 2011.

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The bill would amend Article 2.08 of the Code of Criminal Procedure to disqualify a district or county attorney for the purposes of Article 2.07 if the attorney is the subject of a criminal investigation based on credible evidence of criminal misconduct that is within the attorney's authority to prosecute. Costs could be incurred if it were necessary for a district or county to contract with a non-state attorney or with another commissioners court to appoint an attorney pro tem in accordance with Article 2.07. Costs would only be incurred if a district or county attorney were under criminal investigation and the district or county were unable to appoint a local attorney of the state as attorney pro tem; costs would vary depending on applicability of the bill but are not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, TB, KKR

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 14, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1638 by Aliseda (Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Article 2.08 of 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 on a showing that the attorney is the subject of a criminal investigation for an offense that is within the attorney's authority to prosecute. The disqualification applies only to the attorney's access to the criminal investigation and to any prosecution of a criminal charge resulting from the investigation. No significant fiscal impact on the court system is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill would amend Article 2.08 of the Code of Criminal Procedure to disqualify a district or county attorney for the purposes of Article 2.07 if the attorney is the subject of a criminal investigation that is within the attorney's authority to prosecute. Costs could be incurred if it were necessary for a district or county to contract with a non-state attorney or with another commissioners court to appoint an attorney pro tem in accordance with Article 2.07. Costs would only be incurred if a district or county attorney were under criminal investigation and the district or county were unable to appoint a local attorney of the state as attorney pro tem; costs would vary depending on applicability of the bill but are not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, TB, KKR