

By: McClendon, Moody, Canales, Crownover,
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H.B. No. 166

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. TIMOTHY COLE EXONERATION REVIEW COMMISSION

Sec. 1. CREATION. The Timothy Cole Exoneration Review
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 Timothy Cole Exoneration

1 Review Commission is subject to Chapter 325, Government Code (Texas
2 Sunset Act). Unless continued in existence as provided by that
3 chapter, the Timothy Cole Exoneration Review Commission is
4 abolished and this article expires September 1, 2025.

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, 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 thoroughly review each application
25 for writ of habeas corpus made to the court of criminal appeals for
26 which the court has issued a final ruling to:

27 (1) identify any ethical violations or misconduct by

1 attorneys or judges revealed in the course of the habeas review
2 process;

3 (2) refer any ethical violations or misconduct
4 discovered to the State Commission on Judicial Conduct, the State
5 Bar of Texas, the office of the attorney general, or other
6 appropriate agency or office to review the violations or misconduct
7 and, if appropriate, initiate or take corrective disciplinary
8 action;

9 (3) identify any patterns of ethical violations or
10 misconduct by attorneys or judges or errors or defects in the
11 criminal justice system in this state that impact the habeas review
12 process;

13 (4) consider and develop solutions and methods to
14 correct through legislation, rule, or procedural changes the
15 patterns, errors, and defects identified under Subdivision (3); and

16 (5) identify procedures, programs, and educational or
17 training opportunities demonstrated to eliminate or minimize the
18 patterns, errors, and defects identified under Subdivision (3).

19 (c) The commission shall consider potential implementation
20 plans, costs, cost savings, and the impact on the criminal justice
21 system for each potential solution identified under Subsection (a)
22 or (b).

23 (d) The commission may enter into contracts for research and
24 professional services as may be necessary or appropriate to
25 facilitate the work and activities of the commission or complete
26 the review or investigation of a particular case, including
27 forensic testing and autopsies.

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

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

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

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

27 Sec. 11. SUBMISSION. The commission shall submit the

1 reports described by Section 10 to the governor, the lieutenant
2 governor, the speaker of the house of representatives, and the
3 legislature not later than December 1 of each even-numbered year,
4 or not later than the 60th day after the issuance of the report,
5 whichever occurs first.

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

12 (b) The commission may also receive donations from private
13 individuals or entities.

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

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

24 Sec. 13. COMPENSATION; REIMBURSEMENT. A member of the
25 commission may not receive compensation for the services provided
26 as a member. A member is entitled to reimbursement by the
27 commission for the member's actual and necessary expenses incurred

1 in performing commission duties, subject to the availability of
2 funds from general revenue that may be appropriated to the
3 commission by the state. Reimbursements to members for actual and
4 necessary expenses incurred may be authorized by the commission
5 through funds received and administered by the commission from
6 gifts, grants, and donations the commission accepts under Section
7 12.

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

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

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

20 SECTION 2. In appointing the initial members of the Timothy
21 Cole Exoneration Review Commission, the governor shall appoint
22 three persons to terms expiring February 1, 2015, three to terms
23 expiring February 1, 2017, and three to terms expiring February 1,
24 2019.

25 SECTION 3. The appointments to the Timothy Cole Exoneration
26 Review Commission required by Article 43.27, Code of Criminal
27 Procedure, as added by this Act, shall be made not later than the

1 60th day after the effective date of this Act.

2 SECTION 4. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2013.

COMMITTEE AMENDMENT NO. 1

Amend H.B. 166 as introduced, Section 9 of the Bill as follows:

On page 5, lines 26-27, amend section (d) by adding the following language [double-underscored]:

(d) The commission may enter into contracts for research and professional services as may be necessary or appropriate to facilitate the work and activities of the commission or complete the review or investigation of a case in which there has been an exoneration or a final adjudication of a habeas corpus, including forensic testing and autopsies.

Schaefer