

BILL ANALYSIS

C.S.S.B. 10
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General Investigating & Ethics
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, certain criminal investigations of public officials are conducted by a single agency in Travis County, even though most often the public official under investigation is elected to office in a county other than Travis County and the acts alleged occur outside of Travis County. Interested parties assert that transferring the responsibility for investigations into allegations of criminal conduct against a public official to the Texas Rangers would mitigate the possibility of political intervention in this criminal justice process. C.S.S.B. 10 seeks to ensure appropriate accountability in this process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.S.B. 10 amends the Government Code to require the investigation of a formal or informal complaint alleging an offense against public administration specified under the bill's provisions to be conducted by an officer of the Texas Rangers unless another state agency is designated as having primary responsibility for an investigation of such a complaint. The bill requires the Texas Rangers, if a state agency other than the Texas Rangers has primary responsibility for an investigation of such a complaint, to provide assistance if assistance is requested by that state agency. The bill establishes that nothing in its provisions regarding public integrity prosecutions shall prevent the state auditor from conducting an investigation under statutory provisions regarding the state auditor. The bill requires an officer of the Texas Rangers conducting an investigation of such a complaint that demonstrates a reasonable suspicion that the alleged offense occurred to refer the complaint to the appropriate prosecutor of the county in which venue is proper as established by the bill. The bill requires the prosecutor to whom a complaint of an alleged offense against public administration was referred, not later than the 90th day before the expiration of the statute of limitations for the prosecution of the offense alleged in the complaint, to notify the Texas Rangers of the status of the case and requires the Texas Rangers to immediately notify the legislature if a prosecutor does not provide the status notification to the Texas Rangers within that time period.

C.S.S.B. 10 authorizes a prosecutor to whom such a complaint has been referred by the Texas Rangers or the defendant to request that the court with jurisdiction over the complaint order the prosecutor to be recused from the case for good cause and establishes that the prosecutor is considered disqualified if the court approves the request. The bill requires a prosecutor to whom

a complaint has been referred and who has, either currently or in the past, a financial or other business relationship with the defendant to request that the court with jurisdiction over the complaint permit the prosecutor to be recused from the case for good cause and requires that the prosecutor be considered disqualified if the court approves the request. The bill requires a prosecutor to whom a complaint has been referred to disclose to the court if the prosecutor, in either a personal or professional capacity, has ever made a campaign contribution to or received a campaign contribution from the person against whom the complaint was made or a political committee organized for the benefit of the person against whom the complaint was made and requires the court to consider that disclosure in determining whether good cause exists for recusal.

C.S.S.B. 10 requires the presiding judges of the administrative judicial regions, following such a recusal of a prosecutor, to select the replacement prosecutor by a majority vote and requires the prosecutor for an offense against public administration to represent another county within the same administrative judicial region as the county in which venue is proper as established by the bill. The bill authorizes such a prosecutor to be selected only with the prosecutor's consent to the appointment and requires the judges, in selecting a replacement prosecutor, to consider the proximity of the county or district represented by the prosecutor to the county in which venue is proper. The bill authorizes the replacement prosecutor to pursue a waiver to extend the statute of limitations by no more than two years and, if the waiver adds less than two years to limitations, to pursue a successive waiver for good cause shown to the court, providing that the total time of all waivers does not exceed two years.

C.S.S.B. 10 requires a state agency or local law enforcement agency, to the extent allowed by law, to cooperate with the prosecutor of a public integrity prosecution by providing information requested by the prosecutor as necessary to carry out the bill's purposes and establishes that the disclosed information is confidential and not subject to disclosure under state public information law. The bill authorizes the Texas Rangers to refer the investigation of a complaint alleging such an offense against public administration involving a person who is a member of the executive branch to the local law enforcement agency that would otherwise have authority to investigate the complaint, if a conflict of interest arises from the conduct of an investigation by the officers of the Texas Rangers. The bill requires the Texas Rangers, if in the course of conducting an investigation of a complaint the Texas Rangers determine that an individual who is assigned to the security detail of a state official is a fact witness or has knowledge of the facts underlying the complaint, to refer the investigation of the complaint to another law enforcement agency. The bill requires the public safety director of the Department of Public Safety (DPS) to notify the chair of the Public Safety Commission of the referral of a complaint to another law enforcement agency within 24 hours after the referral is made. The bill requires the Texas Rangers, if a formal or informal complaint alleges that the public safety director or a deputy or assistant director of DPS has committed an offense against public administration, to refer the investigation of the complaint to another law enforcement agency and requires the public safety director to notify the chair of the commission of the referral within 24 hours after the referral is made. The bill requires local law enforcement to comply with all of the bill's requirements regarding public integrity prosecutions in conducting an investigation of a complaint alleging such an offense against public administration.

C.S.S.B. 10 establishes that the county in which the defendant resided at the time the offense was committed is the venue for a public integrity prosecution if the defendant is a state officer, unless the defendant holds an office of the executive branch subject to a constitutional residency requirement, in which case the venue is the county in which the defendant resided at the time of election to the term of that office during which the offense was committed. The bill establishes that the venue for a public integrity prosecution is the county in which the conduct constituting the offense against public administration occurred if the defendant is a state employee who is not a state officer. The bill establishes venue in any county in which the conduct constituting the offense against public administration occurred for a complaint alleging an offense against public administration that alleges an offense was committed by two or more defendants. The bill

prohibits its provisions regarding public integrity prosecutions from being construed as limiting the attorney general's authority to prosecute Election Code offenses.

C.S.S.B. 10 changes from the Travis County district attorney to the appropriate prosecuting attorney as provided under the bill's public integrity prosecution provisions the entity to which the president of the senate or speaker of the house of representatives must certify a statement of facts relating to a prosecution for contempt of the legislature by failing to cooperate with an applicable legislative committee. The bill transfers from the Travis County district attorney to the prosecuting attorney to whom such a statement of facts is certified or the prosecutor selected under the bill's provisions by the presiding judges of the administrative judicial regions following recusal, if applicable, the requirement to bring the matter relating to a prosecution for contempt of the legislature before the grand jury for action and the requirement to prosecute any such indictment returned by the grand jury.

C.S.S.B. 10 requires the investigation of an offense against public administration that is classified as ongoing or pending on the bill's effective date to remain with the entity that is conducting the investigation, unless the entity consents to transfer the investigation to the Texas Rangers. The bill establishes that if any of its provisions or its application to any person or circumstance is held invalid, the invalidity does not affect other bill provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the bill's provisions are severable.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 10 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 411, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PUBLIC INTEGRITY UNIT

Sec. 411.0251. DEFINITIONS. In this subchapter:

(1) "Offense" means a prohibited act for which state law imposes a criminal or civil penalty.

(2) "Prosecuting attorney" means a district attorney, criminal district attorney, or county attorney.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 41, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PUBLIC INTEGRITY PROSECUTIONS

Sec. 41.351. DEFINITIONS. In this subchapter:

(1) "Offense" means a prohibited act for which state law imposes a criminal or civil penalty.

(2) "Prosecute" means represent the state to impose a criminal or civil penalty.

(3) "Public integrity prosecution" means the prosecution of an offense against public administration under Section 41.352.

(4) "State agency" means a department,

commission, board, office, council, authority, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(5) "State employee" means an individual, other than a state officer, who is employed by:

(A) a state agency;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, or the Texas Judicial Council; or

(C) either house of the legislature or a legislative agency, council, or committee, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library.

(6) "State officer" means an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency.

Sec. 411.0252. OFFENSES AGAINST PUBLIC ADMINISTRATION. For purposes of this subchapter, the following are offenses against public administration:

(1) an offense under Title 8, Penal Code, committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment;

(2) an offense under Chapter 301, 302, 305, 571, 572, or 2004;

(3) an offense under Chapter 573 committed by a state officer in connection with the powers and duties of the state office; and

(4) an offense under Title 15, Election Code, committed in connection with:

(A) a campaign for or the holding of state office; or

(B) an election on a proposed constitutional amendment.

Sec. 41.352. OFFENSES AGAINST PUBLIC ADMINISTRATION. For purposes of this subchapter, the following are offenses against public administration:

(1) an offense under Title 8, Penal Code, committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment;

(2) an offense under Chapter 301, 302, 571, 572, or 2004 committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment or by a candidate for state office;

(3) an offense under Chapter 573 committed by a state officer in connection with the powers and duties of the state office; and

(4) an offense under Title 15, Election Code, committed in connection with:

(A) a campaign for or the holding of state office; or

(B) an election on a proposed constitutional amendment.

Sec. 411.0253. PUBLIC INTEGRITY UNIT. (a) The Texas Rangers division of the department shall establish and support a public integrity unit.

(b) On receiving a formal or informal complaint regarding an offense against public administration or on request of a prosecuting attorney or law enforcement agency, the public integrity unit may perform an initial investigation into whether a person has committed an offense against public administration.

(c) The Texas Rangers have authority to investigate an offense against public administration, any lesser included offense, and any other offense arising from conduct that constitutes an offense against public administration.

(d) If an initial investigation by the public integrity unit demonstrates a reasonable suspicion that an offense against public administration occurred, the matter shall be referred to the prosecuting attorney of the county in which venue is proper under Section 411.0256 or Chapter 13, Code of Criminal Procedure, as applicable.

(e) The public integrity unit shall, on request of the prosecuting attorney described by Subsection (d), assist the attorney in the investigation of an offense against public administration.

No equivalent provision. (*But see Sec. 411.0253, above.*)

No equivalent provision. (*But see Sec. 41.353, below.*)

Sec. 41.353. INVESTIGATION OF PUBLIC INTEGRITY OFFENSES. (a) Unless another state agency is designated as having primary responsibility for an investigation of a complaint alleging an offense against public administration, an investigation of a formal or informal complaint alleging an offense against public administration under this subchapter shall be conducted by an officer of the Texas Rangers. If a state agency other than the Texas Rangers has primary responsibility for an investigation of a complaint alleging an offense against public administration, the Texas Rangers shall provide assistance if assistance is requested by that state agency.

(b) Nothing in this subchapter shall prevent the state auditor from conducting an investigation under Chapter 321, including an investigation

of a formal or informal complaint alleging an offense against public administration.

(c) If an investigation conducted by the Texas Rangers of a complaint alleging an offense against public administration demonstrates a reasonable suspicion that the offense alleged in the complaint occurred, the officer of the Texas Rangers conducting the investigation shall refer the complaint to the appropriate prosecutor of the county in which venue is proper under Section 41.357.

(d) Not later than the 90th day before the expiration of the statute of limitations for the prosecution of an offense against public administration alleged in a complaint referred by the Texas Rangers under Subsection (c), the prosecutor to whom the complaint was referred shall notify the Texas Rangers of the status of the case. The Texas Rangers shall immediately notify the legislature if a prosecutor does not provide the status notification to the Texas Rangers within the time provided in this subsection.

Sec. 411.0254. NOTIFICATION REGARDING DISPOSITION OF CASE. The prosecuting attorney shall notify the public integrity unit of:
(1) the termination of a case investigated by the public integrity unit;
or
(2) the results of the final disposition of a case investigated by the public integrity unit, including the final adjudication or entry of a plea.

No equivalent provision.

Sec. 411.0255. RECUSAL OF PROSECUTING ATTORNEY; SELECTION OF PROSECUTING ATTORNEY BY PRESIDING JUDGE OF ADMINISTRATIVE JUDICIAL REGION. (a) A prosecuting attorney may request that the presiding judge of the administrative judicial region containing the county served by that attorney permit the attorney to recuse himself or herself for good cause in a case investigated under this subchapter, and on submitting the notice of recusal, the attorney is disqualified.

Sec. 41.354. RECUSAL OF PROSECUTOR. (a) In this section, "judges" means the presiding judges of the administrative judicial regions.
(b) A prosecutor to whom a complaint has been referred under Section 41.353(c) or the defendant may request that the court with jurisdiction over the complaint order the prosecutor to be recused from the case for good cause. If the court approves the request, the prosecutor shall be considered disqualified.

No equivalent provision.

(c) A prosecutor to whom a complaint has been referred under Section 41.353(c) and who has, either currently or in the past, a financial or other business relationship with the defendant must request that the court with jurisdiction over the complaint permit the prosecutor to be recused from the case for good cause. If the court approves the request, the prosecutor shall be considered disqualified.

No equivalent provision.

(d) A prosecutor to whom a complaint has been referred under Section 41.353(c) shall disclose to the court if the prosecutor, in either a personal or professional capacity, has ever made a campaign contribution to or received a campaign contribution from the person against whom the complaint was made or a political committee organized for the benefit of the person against whom the complaint was made. The court shall consider a disclosure made under this subsection in determining whether good cause exists for recusal.

(b) On recusal of a prosecuting attorney under Subsection (a), the presiding judge of the administrative judicial region containing the county served by that attorney shall appoint a prosecuting attorney from another county in that administrative judicial region. A prosecuting attorney appointed under this subsection has the authority to represent the state in the prosecution of the offense.

(e) Following the recusal of a prosecutor under Subsection (b) or (c), the judges shall select the prosecutor for prosecution of the complaint by a majority vote. The prosecutor for an offense against public administration must represent another county within the same administrative judicial region as the county in which venue is proper under Section 41.357. A prosecutor may be selected under this section only with the prosecutor's consent to the appointment.

No equivalent provision.

(f) In selecting a prosecutor under this section, the judges shall consider the proximity of the county or district represented by the prosecutor to the county in which venue is proper under Section 41.357.

No equivalent provision.

(g) The prosecutor selected to prosecute the public integrity offense under this section may pursue a waiver to extend the statute of limitations by no more than two years. If the waiver adds less than two years to limitations, the prosecutor

may pursue a successive waiver for good cause shown to the court, providing that the total time of all waivers does not exceed two years.

Sec. 411.0256. VENUE. Notwithstanding Chapter 13, Code of Criminal Procedure, or other law, if the defendant is a natural person, venue for prosecution of an offense against public administration and lesser included offenses arising from the same transaction is the county in which the defendant resides.

No equivalent provision.

No equivalent provision.

No equivalent provision.

Sec. 411.0257. RESIDENCE. For the purposes of this subchapter, a person resides in the county where that person:
(1) claims a residence homestead under Chapter 41, Property Code, if that person is a member of the legislature;
(2) claimed to be a resident before being subject to residency requirements under Article IV, Texas Constitution, if that person is a member of the executive branch of this state;
(3) claims a residence homestead under

Sec. 41.357. VENUE. (a) Notwithstanding Chapter 13, Code of Criminal Procedure, or any other law, and except as provided by Subsection (c) or (d), if the defendant is a state officer, venue for a prosecution under this subchapter is the county in which the defendant resided at the time the offense was committed.

(b) Notwithstanding any other law, if the defendant is a state employee who is not a state officer, venue for a prosecution under this subchapter is the county in which the conduct constituting the offense against public administration occurred.

(c) If the defendant holds an office of the executive branch subject to a residency requirement under Article IV, Texas Constitution, venue for a prosecution under this subchapter is the county in which the defendant resided at the time the defendant was elected to the term of that office during which the offense was committed.

(d) If a complaint alleging an offense against public administration under this subchapter alleges that an offense was committed by two or more defendants, venue for the prosecution of all defendants under this subchapter is any county in which the conduct constituting the offense against public administration occurred.

No equivalent provision.

Chapter 41, Property Code, if that person is a justice on the supreme court or judge on the court of criminal appeals; or

(4) otherwise claims residence if no other provision of this section applies.

Sec. 411.0258. COOPERATION OF STATE AGENCIES AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) To the extent allowed by law, a state agency or local law enforcement agency shall cooperate with the public integrity unit by providing resources and information requested by the unit as necessary to carry out the purposes of this subchapter.

(b) Information disclosed under this section is confidential and not subject to disclosure under Chapter 552.

Sec. 411.0259. SUBPOENAS. (a) In connection with an investigation of an alleged offense against public administration, the public integrity unit may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the public integrity unit, acting through the general counsel of the department, may file suit to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

No equivalent provision.

Sec. 41.355. COOPERATION OF STATE AGENCIES AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) To the extent allowed by law, a state agency or local law enforcement agency shall cooperate with the prosecutor of a public integrity prosecution by providing information requested by the prosecutor as necessary to carry out the purposes of this subchapter.

(b) Information disclosed under this section is confidential and not subject to disclosure under Chapter 552.

No equivalent provision.

Sec. 41.356. CONFLICT OF INTEREST. (a) The Texas Rangers may refer the investigation of a complaint alleging an offense against public administration involving a person who is a member of the executive branch to the local law enforcement agency that would otherwise have authority to investigate the complaint, if a conflict of interest arises from the conduct of an investigation by the officers of the Texas Rangers.

(b) If, in the course of conducting an

investigation of a complaint, the Texas Rangers determine that an individual who is assigned to the security detail of a state official is a fact witness or has knowledge of the facts underlying the complaint, the Texas Rangers shall refer the investigation of the complaint to another law enforcement agency. The public safety director shall notify the chair of the Public Safety Commission of the referral of a complaint to another law enforcement agency within 24 hours after the referral is made.

(c) If a formal or informal complaint alleges that the public safety director or a deputy or assistant director of the Department of Public Safety has committed an offense against public administration, the Texas Rangers shall refer the investigation of the complaint to another law enforcement agency. The public safety director shall notify the chair of the Public Safety Commission of the referral of a complaint to another law enforcement agency within 24 hours after the referral is made.

(d) Local law enforcement must comply with all requirements of this subchapter in conducting an investigation of a complaint alleging an offense against public administration as provided by this section.

No equivalent provision.

Sec. 41.358. PROSECUTION OF CERTAIN OFFENSES BY ATTORNEY GENERAL. Nothing in this subchapter shall be construed as limiting the authority of the attorney general to prosecute offenses under Section 273.021, Election Code.

No equivalent provision.

SECTION 2. Chapter 41, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PAYMENTS FOR PUBLIC INTEGRITY PROSECUTIONS

Sec. 41.351. DEFINITIONS. In this subchapter:

(1) "Offense against public administration" means an offense described by Section 411.0252.

(2) "Prosecuting attorney" means a county attorney, district attorney, or

criminal district attorney.

Sec. 41.352. PAYMENT FOR EXTRAORDINARY COSTS OF PROSECUTION. The comptroller shall pay from funds appropriated to the comptroller's judiciary section, from appropriations made specifically for enforcement of this section, reasonable amounts incurred by a prosecuting attorney for extraordinary costs of prosecution of an offense against public administration.

SECTION 3. Sections 301.027(b) and (c), Government Code, are amended to read as follows:

(b) If the president of the senate or speaker receives a report or statement of facts as provided by Subsection (a), the president of the senate or speaker shall certify the statement of facts to the appropriate prosecuting [Travis County district] attorney as provided under Section 411.0253(d) under the seal of the senate or house of representatives, as appropriate.

(c) The prosecuting [Travis County district] attorney to whom a statement of facts is certified under Subsection (a) or the prosecutor selected under Section 411.0255, if applicable, shall bring the matter before the grand jury for action. If the grand jury returns an indictment, the prosecuting [district] attorney shall prosecute the indictment.

SECTION 4. Section 411.022, Government Code, is amended by adding Subsection (c) to read as follows:

(c) An officer of the Texas Rangers has the authority to investigate offenses against public administration prosecuted under Subchapter B-1.

SECTION 5. (a) Not later than three months after the effective date of this Act, the Department of Public Safety shall establish the public integrity unit under Subchapter B-1, Chapter 411, Government Code, as added by this Act.

(b) Subchapter B-1, Chapter 411, Government Code, as added by this Act, applies only to the investigation and prosecution of an offense under Subchapter B-1, Chapter 411,

SECTION 2. Sections 301.027(b) and (c), Government Code, are amended to read as follows:

(b) If the president of the senate or speaker receives a report or statement of facts as provided by Subsection (a), the president of the senate or speaker shall certify the statement of facts to the appropriate prosecuting [Travis County district] attorney as provided under Section 41.353(c) under the seal of the senate or house of representatives, as appropriate.

(c) The prosecuting [Travis County district] attorney to whom a statement of facts is certified under Subsection (a) or the prosecutor selected under Section 41.354(e), if applicable, shall bring the matter before the grand jury for action. If the grand jury returns an indictment, the prosecuting [district] attorney shall prosecute the indictment.

SECTION 3. Section 411.022, Government Code, is amended by adding Subsection (c) to read as follows:

(c) An officer of the Texas Rangers has the authority to investigate offenses against public administration prosecuted under Subchapter F, Chapter 41.

SECTION 4.

Subchapter F, Chapter 41, Government Code, as added by this Act, applies only to the prosecution of an offense against public administration committed on or after September 1, 2015.

Government Code, committed on or after the date that the Department of Public Safety establishes the public integrity unit. For purposes of this subsection, an offense is committed if any element of the offense occurs before the date described by this subsection.

(c) The prosecution of an offense committed before the date described in Subsection (b) of this section is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

For purposes of this section, an offense is committed before September 1, 2015, if any element of the offense occurs before that date.

SECTION 5. The investigation of an offense against public administration that is classified as ongoing or pending on the effective date of this Act shall remain with the entity that is conducting the investigation, unless the entity consents to transfer the investigation to the Texas Rangers.

SECTION 6. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act takes effect September 1, 2015.