

## **BILL ANALYSIS**

Senate Research Center

H.B. 17  
By: Cook et al. (Huffman)  
State Affairs  
5/10/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 17 amends current law relating to official misconduct by and removal of prosecuting attorneys.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 87.011, Local Government Code, by amending Subdivision (3) and adding Subdivisions (4) and (5) to redefine "official misconduct" and define "policy" and "prosecuting attorney."

SECTION 2. Amends Section 87.015, Local Government Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Authorizes a petition for removal of an officer other than a prosecuting attorney to be filed by any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county. Makes nonsubstantive changes.

(b-1) Authorizes a petition for removal of a prosecuting attorney to be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense other than a Class C misdemeanor in that county. Requires that at least one of the parties who files the petition swear to it at or before the filing.

(c) Requires that a petition for removal of an officer other than a prosecuting attorney be addressed to the district judge of the court in which it is filed. Requires that a petition for removal of a prosecuting attorney be addressed to the presiding judge of the administrative judicial region in which the petition is filed.

SECTION 3. Amends Subchapter B, Chapter 87, Local Government Code, by adding Section 87.0151, as follows:

Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a) Requires the district clerk, immediately after a petition for removal of a prosecuting attorney is filed with a district court under Section 87.015 (Petition for Removal), to deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits.

(b) Requires the presiding judge of the administrative judicial region, on receiving a petition for removal of a prosecuting attorney under Subsection (a), to assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings.

SECTION 4. Amends Section 87.018, Local Government Code, by amending Subsections (e) and (f) and adding Subsections (g) and (h), as follows:

(e) Requires the district attorney, in a proceeding to remove a county attorney who is not a prosecuting attorney from office, to represent the state.

(f) Requires the presiding judge of the administrative judicial region in which the petition for removal was filed, in a proceeding to remove a prosecuting attorney from office, to appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to represent the state. Deletes existing text requiring the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, in a proceeding to remove the county or district attorney from office, to represent the state if the attorney who would otherwise represent the state under Section 87.018 (Trial) is also the subject of a pending removal proceeding.

(g) Provides that a prosecuting attorney's public statement that the prosecuting attorney has adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) (relating to defining "official misconduct" to include refusing to prosecute certain offenses), in a proceeding to remove a prosecuting attorney from office, creates a rebuttable presumption that the prosecuting attorney has committed official misconduct.

(h) Entitles a prosecuting attorney who prevails in a proceeding under this section to reasonable attorney's fees and costs that the prosecuting attorney personally expended in the proceeding.

SECTION 5. Provides that the changes in law made by this Act apply only to an action taken or public statement made by a prosecuting attorney on or after the effective date of this Act.

SECTION 6. Effective date: upon passage or September 1, 2023.