

BILL ANALYSIS

H.B. 200
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

During the last interim, there were stories of prosecutors decrying the laws they were elected to uphold. While prosecutorial discretion is an inherent and important part of a prosecutor's ability to do their job and should be protected, blanket statements and policies about classes of crimes that will or won't be prosecuted do a disservice to the office and the citizens it represents. H.B. 200 seeks to address this issue by reestablishing the defunct Prosecuting Attorneys Coordinating Council (PACC), which would focus on disciplining prosecutors. The original PACC, established in 1977, was a centralized agency providing technical assistance, education, and professional development to Texas prosecutors, and it was disbanded in 1985 due to a lack of funding, inefficiencies, and redundant efforts. H.B. 200 would resurrect the agency solely to accept and investigate complaints alleging incompetence or misconduct by elected prosecutors, a new focus compared to the original PACC. This will establish an appropriate channel to properly investigate complaints against prosecutors through a consistent, independent process, and it allows for the removal of a prosecutor who fails to do the job they were elected to do, neglects their duties, or breaks the law themselves.

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 rulemaking authority is expressly granted to the Prosecuting Attorneys Coordinating Council in SECTION 1 of this bill.

ANALYSIS

Prosecuting Attorneys Coordinating Council

H.B. 200 amends the Government Code to reestablish the seven-member Prosecuting Attorneys Coordinating Council as an agency of the judicial branch that is administratively attached to the Texas Supreme Court. The bill provides for the composition and appointing authorities of the council as follows:

- one member appointed by the governor, to serve as presiding officer;
- one member who is currently serving as a county sheriff or municipal police chief, appointed by the governor;
- one member who is an incumbent judge of a court with criminal jurisdiction, appointed by the supreme court;
- one member who is an elected county attorney;
- one member who is an elected district attorney;
- one member who represents the public and is not licensed to practice law, appointed by the speaker of the house; and

- one member who represents the public and is not licensed to practice law, appointed by the lieutenant governor.

The bill requires the supreme court, not later than November 1, 2023, to establish the process for selecting the member who is an elected county attorney and the member who is an elected district attorney and requires the appointing authorities to appoint the members, as applicable, not later than January 1, 2024. Members of the council serve staggered six-year terms as determined by the supreme court, and, if a vacancy occurs a replacement who meets the qualifications for the vacant position must be appointed to serve for the remainder of the term. The bill provides for the reimbursement of members' expenses, as provided by the General Appropriations Act, and requires the supreme court to provide administrative support services to the council as necessary to carry out the bill's purposes. Membership on the council does not constitute dual officeholding.

Powers and Duties

H.B. 200 establishes that the duties of a council member with respect to the council are in addition to the duties required for any elected position held by the member. The bill provides for the council's powers and duties as follows:

- it requires the council to:
 - review and resolve complaints involving incompetency and misconduct by prosecuting attorneys under the bill's provisions;
 - provide notice to a prosecuting attorney who is the subject of an investigation by the council that specifies the matters under investigation and the complaint against the attorney and sets a date for a hearing or the taking of testimony for investigation purposes;
 - coordinate with statewide district and county attorneys associations to carry out the purposes of the bill's provisions; and
 - annually report to the governor, legislature, and supreme court on or before December 1 on all council proceedings, funding and staffing needs, and any recommendations for legislation or rules necessary for effective criminal prosecutions; and
- it authorizes the council to:
 - accept complaints that clearly allege facts of incompetency or misconduct by a prosecuting attorney;
 - initiate and conduct investigations for incompetency or misconduct by prosecuting attorneys;
 - hold formal hearings or formal proceedings on complaints against and investigations of prosecuting attorneys;
 - administer oaths;
 - issue subpoenas for the attendance of witnesses and to compel testimony and the production of books, records, papers, accounts, and documents relevant to any investigation or hearing;
 - order the deposition of any person be taken in accordance with the Texas Rules of Civil Procedure;
 - respond to a district court's request for recommendations on the appointment of an attorney to represent the council in disqualification proceedings under the bill's provisions; and
 - enter into agreements with other public or private agencies, associations, or organizations to implement the bill's provisions.

The bill establishes that a council subpoena for the attendance of witnesses, testimony, or production of evidence is enforceable by contempt proceedings in a district court serving the county in which the prosecuting attorney under investigation resides.

Complaints Against Prosecuting Attorney

H.B. 200 does the following with respect to complaints that are filed with the council:

- prohibits a person convicted of a criminal offense from filing a complaint against a prosecuting attorney if the criminal offense corresponds or is related to the complaint; and
- authorizes the council by majority vote, after examining the records and proceedings associated with the complaint, to take the following actions:
 - issue a public or private finding that the prosecuting attorney is not incompetent or has not committed any misconduct;
 - issue a public or private reprimand to the prosecuting attorney for deficient conduct of the attorney's duties which does not rise to the level of incompetence or misconduct;
 - request the supreme court to appoint a special master who must, after appropriate hearings, submit to the council a report and recommendation on whether sufficient cause exists to remove the prosecuting attorney under the bill's provisions; or
 - file a petition for removal of the prosecuting attorney.

H.B. 200 defines, for the purposes of its provisions, the following terms:

- "incompetence" as gross ignorance or neglect of an official duty, a physical or mental defect which prohibits the prompt or proper discharge of official duties, or failure to maintain the qualifications required by law for election to the office, including membership in good standing of the State Bar of Texas; and
- "misconduct" as unlawful behavior prohibited under Penal Code provisions relating to abuse of office, an act that is a felony, an act that is a misdemeanor involving moral turpitude, or wilful or persistent conduct inconsistent with the proper performance of official duties.

Petition for Removal

H.B. 200 requires a petition for removal by the council to be filed in the name of the State of Texas in the district court of the county in which the prosecuting attorney resides and docketed on the civil docket and contain allegations of incompetency or misconduct and the facts on which the allegations are based. The trial on a petition for removal must proceed in accordance with the Texas Rules of Civil Procedure. All proceedings and records before the council or a special master requested by the council are confidential and privileged until the proceedings and records are introduced in evidence in any proceeding for removal or the council issues a public reprimand.

Disqualification, Suspension, or Removal

H.B. 200, with respect to the disqualification, suspension, or removal of a prosecuting attorney, does the following:

- requires the judge of the court in which a petition for removal is filed to request the appointment of a special judge to hear the case;
- requires the special judge, on appointment, to appoint an attorney representing the council to prosecute the case from a list of qualified attorneys submitted by the council;
- establishes that a prosecuting attorney is disqualified from performing the duties and functions or exercising the privileges of the attorney's office if the council has filed a petition for removal of the attorney from office and that the attorney remains disqualified while the petition is pending before a district court;
- establishes that a prosecuting attorney is suspended from office if the attorney has been:
 - disbarred or suspended from the practice of law in Texas through trial or on agreement;
 - found guilty in a court of competent jurisdiction of a misdemeanor involving moral turpitude or any felony; or
 - found incompetent, or to have committed misconduct, following a trial on the merits of a petition for removal; and

- requires the court on final adjudication or conviction of a prosecuting attorney who is suspended from office for any such reason, to order the attorney removed from office.

Prosecuting Attorney Pro Tem

H.B. 200 requires, on the disqualification or suspension of a prosecuting attorney, the duties of that attorney's office to be performed by a prosecuting attorney pro tem, who must exercise all the powers and duties of a prosecuting attorney. The bill requires the prosecuting attorney pro tem to be appointed by the council and to serve until the disqualification or suspension of the prosecuting attorney is lifted or a successor attorney has been appointed under applicable state law.

Entitlement to Compensation

H.B. 200 provides the following with respect to a prosecuting attorney's entitlement to compensation:

- during a period of disqualification, a prosecuting attorney is entitled to receive the compensation provided by law for that office but is disqualified from performing any official duties imposed on the attorney's office by law or exercising any privilege incident to that office;
- during a period of suspension, a prosecuting attorney is not entitled to such compensation and is disqualified from performing such duties or exercising such privilege; and
- if a court judgment suspending or removing a prosecuting attorney is reversed or vacated and when the reversing or vacating judgment becomes final, the prosecuting attorney is entitled to the compensation provided by law for that office from the date the attorney was suspended or removed from office to the last day of the term to which the attorney was elected or appointed to that office.

Rules for Implementation, Administration, and Enforcement

H.B. 200 requires the council to adopt rules as necessary to administer and enforce the bill's provisions and to adopt rules to implement the bill's provisions not later than April 1, 2024.

EFFECTIVE DATE

September 1, 2023.