By:  Cook H.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to the official misconduct and removal of district attorneys and county attorneys.

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

SECTION 1.  Subchapter B, Chapter 87, Local Government Code, is amended by amending Sections 87.011, 87.015, and 87.018 to read as follows:

Sec. 87.011.  DEFINITIONS. In this subchapter:

(1)  "District attorney" includes a criminal district attorney.

(2)  "Incompetency" means:

(A)  gross ignorance of official duties;

(B)  gross carelessness in the discharge of those duties; or

(C)  unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer's election.

(3)  "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(A)  an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law; and

(B)  the adoption or implementation of a formal or stated policy by a district attorney or a county attorney under which that attorney prohibits or materially limits the enforcement of any criminal offense other than to comply with an injunction, judgment, or order issued by a court.

Sec. 87.015.  PETITION FOR REMOVAL. (a) A proceeding for the removal of an officer is begun by filing a written petition for removal in a district court of the county in which the officer resides. However, a proceeding for the removal of a district attorney is begun by filing a written petition in a district court of:

(1)  the county in which the attorney resides; or

(2)  the county where the alleged cause of removal occurred, if that county is in the attorney's judicial district.

(b)  Any resident of this state who has lived for at least six months in the county in which the alleged cause of removal occurred [~~petition is to be filed~~] and who is not currently under information or indictment in that [~~the~~] county may file the petition. At least one of the parties who files the petition must swear to it at or before the filing.

(c)  The petition must be addressed to the presiding judge for the administrative region for [~~district judge of~~] the court in which it is filed. The petition must set forth the grounds alleged for the removal of the officer in plain and intelligible language and must cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

Sec. 87.018.  TRIAL. (a) Officers may be removed only following a trial by jury.

(b)  The trial for removal of an officer and the proceedings connected with the trial shall be conducted as much as possible in accordance with the rules and practice of the court in other civil cases, in the name of the State of Texas, and on the relation of the person filing the petition.

(c)  In a removal case, the judge may not submit special issues to the jury. Under a proper charge applicable to the facts of the case, the judge shall instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. If the petition alleges more than one ground for removal, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained.

(d)  The county attorney shall represent the state in a proceeding for the removal of an officer except as otherwise provided by Subsection (e) or (f).

(e)  In a proceeding to remove a county attorney from office, the district attorney shall represent the state. If the county does not have a district attorney, the presiding judge shall appoint a prosecuting attorney from another county in that administrative region and that attorney shall represent the state [~~county attorney from an adjoining county, as appointed selected by the commissioners court of the county in which the proceeding is pending, shall represent the state~~].

(f)  In a proceeding to remove the county attorney or district attorney from office, the presiding judge shall appoint a prosecuting attorney from another county in that administrative region and that attorney shall represent the state [~~the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state~~] if the attorney who would otherwise represent the state under this section is also the subject of a pending removal proceeding.

(g)  A public declaration or announcement by a district attorney or a county attorney of an intent to prohibit the enforcement of any criminal offense is prima facie evidence of an adoption or implementation of a formal or stated policy for purposes of this chapter.

SECTION 2.  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, 2023.