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By:  King S.B. No. 404

A BILL TO BE ENTITLED

AN ACT

relating to the reestablishment of the Prosecuting Attorneys Coordinating Council.

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

SECTION 1.  Subtitle C, Title 2, Government Code, is amended by adding Chapter 47 to read as follows:

CHAPTER 47. PROSECUTING ATTORNEYS COORDINATING COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 47.001.  DEFINITIONS. In this chapter:

(1)  "Complaint" means a written communication submitted to the council by an individual residing in the jurisdiction of the prosecuting attorney to whom the complaint corresponds.

(2)  "Council" means the Prosecuting Attorneys Coordinating Council.

(3)  "Formal hearing" means a public evidentiary proceeding conducted before the council or by a special master.

(4)  "Formal proceeding" means any proceeding the council initiates following a formal hearing concerning the public reprimand, disqualification, or removal of a prosecuting attorney.

(5)  "Incompetence" means:

(A)  gross ignorance or neglect of an official duty;

(B)  a physical or mental defect which prohibits the prompt or proper discharge of official duties; or

(C)  failure to maintain the qualifications required by law for election to the office, including membership in good standing of the State Bar of Texas.

(6)  "Misconduct" means:

(A)  unlawful behavior prohibited by Chapter 39, Penal Code;

(B)  an act that is a felony;

(C)  an act that is a misdemeanor involving moral turpitude; or

(D)  wilful or persistent conduct inconsistent with the proper performance of official duties.

(7)  "Prosecuting attorney" means a district or county attorney described by Section 21, Article V, Texas Constitution.

SUBCHAPTER B. PROSECUTING ATTORNEYS COORDINATING COUNCIL

Sec. 47.101.  COUNCIL MEMBERSHIP. (a) The council consists of seven members as follows:

(1)  one member appointed by the governor;

(2)  one member who is currently serving as a county sheriff or municipal police chief, appointed by the governor;

(3)  one member who is an incumbent judge of a court with criminal jurisdiction, appointed by the supreme court;

(4)  one member who is an elected county attorney;

(5)  one member who is an elected district attorney;

(6)  one member who represents the public and is not licensed to practice law, appointed by the speaker of the house; and

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

(b)  The supreme court shall establish the process for selecting the members described by Subsections (a)(4) and (5).

(c)  For purposes of this chapter, the duties of a council member are in addition to the duties required for any elected position held by the member, and membership on the council does not constitute dual officeholding.

(d)  A member of the council serves without compensation, but is entitled to reimbursement for expenses incurred in attending meetings or performing other council duties, as provided by the General Appropriations Act.

Sec. 47.102.  TERMS; VACANCIES. (a) The members of the council serve staggered six-year terms as determined by the supreme court.

(b)  If a vacancy occurs on the council, a replacement who meets the qualifications for the vacant position under Section 47.101(a) shall be appointed to serve for the remainder of the term.

Sec. 47.103.  PRESIDING OFFICER. The member appointed by the governor under Section 47.101(a)(1) serves as presiding officer of the council. The presiding officer may vote on any matter before the council.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 47.201.  ADMINISTRATIVE ATTACHMENT; SUPPORT. (a) The council is an agency of the judicial branch of state government, administratively attached to the supreme court.

(b)  The supreme court shall provide administrative support services, including human resource, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the council as necessary to carry out the purposes of this chapter.

Sec. 47.202.  POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1)  review and resolve complaints involving incompetency and misconduct by prosecuting attorneys under this chapter;

(2)  provide notice to a prosecuting attorney who is the subject of an investigation by the council that:

(A)  specifies the matters under investigation and the complaint against the attorney; and

(B)  sets a date for a hearing or the taking of testimony for investigation purposes;

(3)  coordinate with statewide district and county attorneys associations to carry out the purposes of this chapter; and

(4)  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.

(b)  The council may:

(1)  accept complaints that clearly allege facts of incompetency or misconduct by a prosecuting attorney;

(2)  initiate and conduct investigations for incompetency or misconduct by prosecuting attorneys;

(3)  hold formal hearings or formal proceedings on complaints against and investigations of prosecuting attorneys;

(4)  administer oaths;

(5)  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;

(6)  order the deposition of any person be taken in accordance with the Texas Rules of Civil Procedure;

(7)  respond to a district court's request for recommendations on the appointment of an attorney to represent the council in disqualification proceedings under Section 47.301(b); and

(8)  enter into agreements with other public or private agencies, associations, or organizations to implement this chapter.

(c)  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.

Sec. 47.203.  PROHIBITED COMPLAINTS BY CONVICTED DEFENDANT AGAINST PROSECUTING ATTORNEY. A person convicted of a criminal offense may not file a complaint against a prosecuting attorney under this chapter if the criminal offense corresponds or is related to the complaint.

Sec. 47.204.  COUNCIL ACTION ON COMPLAINT AGAINST PROSECUTING ATTORNEY; PETITIONS FOR REMOVAL. (a) After examining the records and proceedings before the council on any complaint filed against a prosecuting attorney under this chapter, the council by majority vote may:

(1)  issue a public or private finding that the prosecuting attorney is not incompetent or has not committed any misconduct;

(2)  issue a public or private reprimand to the prosecuting attorney for deficient conduct of their duties which does not rise to the level of incompetence or misconduct;

(3)  request the supreme court to appoint a special master who shall, after appropriate hearings, submit to the council a report and recommendation on whether sufficient cause exists to remove the prosecuting attorney under this chapter; or

(4)  file a petition for removal of the prosecuting attorney.

(b)  A petition for removal by the council must:

(1)  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

(2)  contain allegations of incompetency or misconduct and the facts on which the allegations are based.

(c)  The trial on a petition for removal shall proceed in accordance with the Texas Rules of Civil Procedure.

(d)  All proceedings and records before the council or a special master requested by the council are confidential and privileged until:

(1)  the proceedings and records are introduced in evidence in any proceeding for removal; or

(2)  the council issues a public reprimand.

Sec. 47.205.  RULES. The council shall adopt rules as necessary to administer and enforce this chapter.

SUBCHAPTER D. DISQUALIFICATION, SUSPENSION, OR REMOVAL OF PROSECUTING ATTORNEY

Sec. 47.301.  DISQUALIFICATION, SUSPENSION, OR REMOVAL OF PROSECUTING ATTORNEY. (a) A prosecuting attorney may be disqualified, suspended, or removed from office in accordance with this chapter.

(b)  When a petition for removal is filed under this chapter, the judge of the court in which the petition is filed shall request the appointment of a special judge to hear the case. On appointment, the special judge shall appoint an attorney representing the council to prosecute the case. The special judge must select the attorney from a list of not fewer than five qualified attorneys submitted by the council.

(c)  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 under this chapter and remains disqualified while the petition is pending before a district court.

(d)  A prosecuting attorney is suspended from office if the attorney has:

(1)  been disbarred or suspended from the practice of law in this state through trial or on agreement;

(2)  been found guilty in a court of competent jurisdiction of a misdemeanor involving moral turpitude or any felony; or

(3)  been found incompetent, or to have committed misconduct, following a trial on the merits of a petition for removal.

(e)  On final adjudication or conviction of a prosecuting attorney suspended from office under Subsection (d) for any cause of action on which the attorney's suspension was based, the court shall order the attorney removed from office.

Sec. 47.302.  PROSECUTING ATTORNEY PRO TEM. (a) On disqualification or suspension of a prosecuting attorney, the duties of that attorney's office shall be performed by a prosecuting attorney pro tem, who shall exercise all the powers and duties of a prosecuting attorney.

(b)  The prosecuting attorney pro tem shall be appointed by the council, and shall serve until:

(1)  the disqualification or suspension of the prosecuting attorney is lifted; or

(2)  a successor to a removed prosecuting attorney has been appointed under Section 21, Article V, Texas Constitution, or Section 87.017, Local Government Code.

Sec. 47.303.  EFFECTS OF DISQUALIFICATION, SUSPENSION, OR REMOVAL. (a) 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.

(b)  During a period of suspension, a prosecuting attorney:

(1)  is not entitled to any compensation provided by law for that office; and

(2)  is disqualified from performing any official duties imposed on that office by law or exercising any privilege incident to that office.

(c)  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.

SECTION 2.  (a) Not later than November 1, 2023, the Supreme Court of Texas shall establish the process to select the members of the Prosecuting Attorneys Coordinating Council in accordance with Chapter 47, Government Code, as added by this Act.

(b)  Not later than January 1, 2024, the appointing officials shall appoint the members of the Prosecuting Attorneys Coordinating Council in accordance with Chapter 47, Government Code, as added by this Act.

SECTION 3.  Not later than April 1, 2024, the Prosecuting Attorneys Coordinating Council shall adopt the rules necessary to implement Chapter 47, Government Code, as added by this Act.

SECTION 4.  This Act takes effect September 1, 2023.