

By: Cook, Moody, Leach, Metcalf, Burrows,  
et al.

H.B. No. 17

Substitute the following for H.B. No. 17:

By: Moody

C.S.H.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to official misconduct by and removal of prosecuting  
attorneys.

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

SECTION 1. Section 87.011, Local Government Code, is  
amended by amending Subdivision (3) and adding Subdivisions (4) and  
(5) to read as follows:

(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; or

(B) a prosecuting attorney's adoption or  
enforcement of a policy of categorically refusing to prosecute  
specific criminal offenses under state law, except a policy  
adopted:

(i) in compliance with state law or an  
injunction, judgment, or other court order;

(ii) in response to an evidentiary  
impediment to prosecution;

(iii) to provide for diversion or similar  
conditional dismissals of cases; or

1                    (iv) to require supervisory review or the  
2 presentation of certain specified evidence before prosecution is  
3 authorized.

4                    (4) "Policy" means an instruction or directive  
5 expressed in any matter.

6                    (5) "Prosecuting attorney" means a district attorney  
7 or a county attorney with criminal jurisdiction.

8                    SECTION 2. Section 87.015, Local Government Code, is  
9 amended by amending Subsections (b) and (c) and adding Subsection  
10 (b-1) to read as follows:

11                    (b) A petition for removal of an officer other than a  
12 prosecuting attorney may be filed by any [Any] resident of this  
13 state who has lived for at least six months in the county in which  
14 the petition is to be filed and who is not currently under  
15 indictment in the county [~~may file the petition~~]. At least one of  
16 the parties who files the petition must swear to it at or before the  
17 filing.

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

25                    (c) A [The] petition for removal of an officer other than a  
26 prosecuting attorney must be addressed to the district judge of the  
27 court in which it is filed. A petition for removal of a prosecuting

1 attorney must be addressed to the presiding judge of the  
2 administrative judicial region in which the petition is filed. The  
3 petition must set forth the grounds alleged for the removal of the  
4 officer in plain and intelligible language and must cite the time  
5 and place of the occurrence of each act alleged as a ground for  
6 removal with as much certainty as the nature of the case permits.

7 SECTION 3. Subchapter B, Chapter 87, Local Government Code,  
8 is amended by adding Section 87.0151 to read as follows:

9 Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a)  
10 Immediately after a petition for removal of a prosecuting attorney  
11 is filed with a district court under Section 87.015, the district  
12 clerk shall deliver a copy of the petition to the presiding judge of  
13 the administrative judicial region in which the court sits.

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

19 SECTION 4. Section 87.018, Local Government Code, is  
20 amended by amending Subsections (e) and (f) and adding Subsection  
21 (g) to read as follows:

22 (e) In a proceeding to remove a county attorney who is not a  
23 prosecuting attorney from office, the district attorney shall  
24 represent the state. If the county does not have a district  
25 attorney, the county attorney from an adjoining county, as selected  
26 by the commissioners court of the county in which the proceeding is  
27 pending, shall represent the state.

1           (f) In a proceeding to remove a prosecuting attorney [~~the~~  
2 ~~county attorney or district attorney~~] from office, the presiding  
3 judge of the administrative judicial region in which the petition  
4 for removal was filed shall appoint a prosecuting [~~the county~~]  
5 attorney from another judicial district or county, as applicable,  
6 in the administrative judicial region to [~~from an adjoining county,~~  
7 ~~as selected by the commissioners court of the county in which the~~  
8 ~~proceeding is pending, shall]~~ represent the state [~~if the attorney~~  
9 ~~who would otherwise represent the state under this section is also~~  
10 ~~the subject of a pending removal proceeding)].~~

11           (g) In a proceeding to remove a prosecuting attorney from  
12 office, a prosecuting attorney's public statement indicating the  
13 prosecuting attorney has adopted or enforced or intends to adopt or  
14 enforce a policy described by Section 87.011(3)(B) creates a  
15 rebuttable presumption that the prosecuting attorney has committed  
16 official misconduct.

17           SECTION 5. The changes in law made by this Act apply only to  
18 an action taken by a prosecuting attorney on or after the effective  
19 date of this Act.

20           SECTION 6. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2023.