

By: Schofield

H.B. No. 4026

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of state special prosecutor.

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

SECTION 1. Subtitle C, Title 2, Government Code, is amended by adding Chapter 42A to read as follows:

CHAPTER 42A. STATE SPECIAL PROSECUTOR

Sec. 42A.001. OFFICE. The supreme court shall appoint a state special prosecutor with concurrent jurisdiction to represent the state in the district and inferior courts in this state in a criminal case in which the criminal conduct alleged relates to:

(1) a violation of this state's election laws;

(2) human trafficking or the smuggling of persons or of items known to be acquired or possessed in violation of the laws of any state or of the United States;

(3) a violation of this state's abortion laws, including Chapters 170 and 171, Health and Safety Code, and Chapter 6-1/2, Title 71, Revised Statutes;

(4) a violation of Chapter 481, Health and Safety Code; or

(5) an offense under Title 8, Penal Code.

Sec. 42A.002. OATH; TERM. (a) The state special prosecutor shall take the oath required of state officials.

(b) The state special prosecutor serves a four-year term and continues to serve until a successor is appointed and has

1 qualified.

2 Sec. 42A.003. ASSISTANT STATE SPECIAL PROSECUTORS. (a)
3 The state special prosecutor may appoint one or more assistant
4 state special prosecutors. An assistant state special prosecutor
5 has the same duties and serves the same term of office as the state
6 special prosecutor.

7 (b) The state special prosecutor may appoint a first
8 assistant state special prosecutor to perform the duties and
9 assignments of the state special prosecutor and act as the state
10 special prosecutor when the state special prosecutor is absent or
11 otherwise unable to act.

12 (c) The state special prosecutor may appoint a person
13 -serving as an assistant attorney general as an assistant state
14 special prosecutor. An assistant attorney general appointed under
15 this subsection may maintain the assistant attorney general's
16 employment with the attorney general while serving as an assistant
17 state special prosecutor.

18 Sec. 42A.004. VACANCY. (a) If a vacancy occurs in the
19 position of state special prosecutor, the supreme court shall
20 appoint a successor to fill the office for the remainder of the
21 unexpired term not more than 90 days after the date the vacancy
22 occurs.

23 (b) If the supreme court fails to appoint a successor to
24 fill a vacancy under Subsection (a), the governor may appoint, with
25 the advice and consent of the senate, a state special prosecutor to
26 fill the office for the remainder of the unexpired term.

27 Sec. 42A.005. STAFF. The attorney general and state

1 special prosecutor may enter into a memorandum of understanding for
2 the provision of staff or other resources to assist the special
3 prosecutor in fulfilling the duties of the special prosecutor's
4 office.

5 Sec. 42A.006. REMOVAL. The supreme court may remove a state
6 special prosecutor from office for good cause.

7 SECTION 2. Section 46.001, Government Code, is amended by
8 adding Subdivision (5) to read as follows:

9 (5) "State special prosecutor" means the state special
10 prosecutor appointed under Chapter 42A.

11 SECTION 3. Section 46.002, Government Code, is amended to
12 read as follows:

13 Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter
14 applies to the state prosecuting attorney, all county prosecutors,
15 and the following state prosecutors:

16 (1) the district attorneys for Kenedy and Kleberg
17 Counties and for the 1st, 2nd, 8th, 9th, 18th, 21st, 23rd, 24th,
18 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th,
19 42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th,
20 66th, 69th, 70th, 76th, 79th, 81st, 83rd, 84th, 85th, 88th, 90th,
21 97th, 100th, 105th, 106th, 109th, 110th, 112th, 118th, 119th,
22 123rd, 132nd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th,
23 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th,
24 268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, 369th,
25 452nd, and 506th judicial districts;

26 (1-a) the state special prosecutor;

27 (2) the criminal district attorneys for the counties

1 of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell,
2 Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland,
3 Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo,
4 Jasper, Jefferson, Kaufman, Kendall, Lubbock, McLennan, Madison,
5 Medina, Navarro, Newton, Panola, Polk, Randall, Rockwall, San
6 Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt,
7 Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

8 (3) the county attorneys performing the duties of
9 district attorneys in the counties of Andrews, Aransas, Burleson,
10 Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls,
11 Freestone, Gonzales, Guadalupe, Lamar, Lamb, Lampasas, Lavaca,
12 Lee, Limestone, Marion, Milam, Morris, Ochiltree, Oldham, Orange,
13 Rains, Red River, Robertson, Rusk, Swisher, Terry, Webb, and
14 Willacy.

15 SECTION 4. Section 46.003(a), Government Code, is amended
16 to read as follows:

17 (a) The state prosecuting attorney, the state special
18 prosecutor, and each state prosecutor is entitled to receive from
19 the state a salary in an amount equal to the state annual salary as
20 set by the General Appropriations Act in accordance with Section
21 659.012 paid to a district judge with comparable years of service as
22 the state prosecuting attorney, state special prosecutor, or state
23 prosecutor.

24 SECTION 5. Section 46.004, Government Code, is amended to
25 read as follows:

26 Sec. 46.004. EXPENSES. (a) The state prosecuting
27 attorney, the state special prosecutor, and each state prosecutor

1 is entitled to receive not less than \$22,500 a year from the state
2 to be used by the attorney or prosecutor to help defray the salaries
3 and expenses of the office. That money may not be used to
4 supplement the attorney's or prosecutor's salary.

5 (b) The state prosecuting attorney, the state special
6 prosecutor, and each state prosecutor shall submit annually to the
7 comptroller of public accounts a sworn account showing how this
8 money was spent during the year.

9 SECTION 6. Sections 46.005(a) and (b), Government Code, are
10 amended to read as follows:

11 (a) The state prosecuting attorney, the state special
12 prosecutor, or a state prosecutor may not engage in the private
13 practice of law but may complete all civil cases that are not in
14 conflict with the interest of the state or any of the counties of
15 the district in which the attorney or prosecutor serves and that are
16 pending in court before the attorney or prosecutor takes office.

17 (b) The state prosecuting attorney, the state special
18 prosecutor, or a state prosecutor may not accept a fee from an
19 attorney to whom the state prosecuting attorney, state special
20 prosecutor, or state prosecutor has referred a case.

21 SECTION 7. The office of the state special prosecutor is
22 created January 1, 2024.

23 SECTION 8. This Act takes effect January 1, 2024.