

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

1 the prompt or proper discharge of official duties; or

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

5 (6) "Misconduct" means:

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

8 (B) an act that is a felony;

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

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

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

15 SUBCHAPTER B. PROSECUTING ATTORNEYS COORDINATING COUNCIL

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

18 (1) one member appointed by the governor;

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

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

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

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

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

27 (7) one member who represents the public and is not

1 licensed to practice law, appointed by the lieutenant governor.

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

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

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

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

15 (b) If a vacancy occurs on the council, a replacement who  
16 meets the qualifications for the vacant position under Section  
17 47.101(a) shall be appointed to serve for the remainder of the term.

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

22 SUBCHAPTER C. POWERS AND DUTIES

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

26 (b) The supreme court shall provide administrative support  
27 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

1 complaints against and investigations of prosecuting attorneys;

2 (4) administer oaths;

3 (5) issue subpoenas for the attendance of witnesses  
4 and to compel testimony and the production of books, records,  
5 papers, accounts, and documents relevant to any investigation or  
6 hearing;

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

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

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

16 (c) A council subpoena for the attendance of witnesses,  
17 testimony, or production of evidence is enforceable by contempt  
18 proceedings in a district court serving the county in which the  
19 prosecuting attorney under investigation resides.

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

25 Sec. 47.204. COUNCIL ACTION ON COMPLAINT AGAINST  
26 PROSECUTING ATTORNEY; PETITIONS FOR REMOVAL. (a) After examining  
27 the records and proceedings before the council on any complaint

1 filed against a prosecuting attorney under this chapter, the  
2 council by majority vote may:

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

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

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

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

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

16 (1) be filed in the name of the State of Texas in the  
17 district court of the county in which the prosecuting attorney  
18 resides and docketed on the civil docket; and

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

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

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

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

1           (2) the council issues a public reprimand.

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

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

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

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

17           (c) A prosecuting attorney is disqualified from performing  
18 the duties and functions or exercising the privileges of the  
19 attorney's office if the council has filed a petition for removal of  
20 the attorney from office under this chapter and remains  
21 disqualified while the petition is pending before a district court.

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

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

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

1 felony; or

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

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

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

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

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

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

21 Sec. 47.303. EFFECTS OF DISQUALIFICATION, SUSPENSION, OR  
22 REMOVAL. (a) During a period of disqualification, a prosecuting  
23 attorney is entitled to receive the compensation provided by law  
24 for that office, but is disqualified from performing any official  
25 duties imposed on the attorney's office by law or exercising any  
26 privilege incident to that office.

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



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

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

6           (c) If a court judgment suspending or removing a prosecuting  
7 attorney is reversed or vacated and when the reversing or vacating  
8 judgment becomes final, the prosecuting attorney is entitled to the  
9 compensation provided by law for that office from the date the  
10 attorney was suspended or removed from office to the last day of the  
11 term to which the attorney was elected or appointed to that office.

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

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

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

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