

SENATE AMENDMENTS

2nd Printing

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

H.B. No. 17

A BILL TO BE ENTITLED

1 AN ACT
2 relating to official misconduct by and removal of prosecuting
3 attorneys.

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

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

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

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

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

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

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

23 (iii) to provide for diversion or similar
24 conditional dismissals of cases when not otherwise prohibited by

1 state law; or

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

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

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

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

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

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

26 (c) A [The] petition for removal of an officer other than a
27 prosecuting attorney must be addressed to the district judge of the

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

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

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

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

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

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

1 pending, shall represent the state.

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

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

18 (h) A prosecuting attorney who prevails in a proceeding
19 under this section is entitled to reasonable attorney's fees and
20 costs that the prosecuting attorney personally expended in the
21 proceeding.

22 SECTION 5. The changes in law made by this Act apply only to
23 an action taken or public statement made by a prosecuting attorney
24 on or after the effective date of this Act.

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

H.B. No. 17

1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2023.

ADOPTED

MAY 19 2023

H. Lacey Spaw
Secretary of the House
H.B. No. 17

By: Joan Huffman

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

By: Bryan Hughes

C.S. H.B. No. 17

A BILL TO BE ENTITLED

AN ACT

1 relating to the enforcement of criminal offenses by district
2 attorneys, criminal district attorneys, and county attorneys.

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

4 SECTION 1. Subchapter B, Chapter 87, Local Government Code,
5 is amended by adding Section 87.0135 to read as follows:

6 Sec. 87.0135. OFFICIAL MISCONDUCT GROUNDS: POLICY OF
7 NONENFORCEMENT OF CRIMINAL OFFENSES. (a) In this section:

8 (1) "Policy" includes an instruction or directive
9 expressed in any manner.

10 (2) "Prosecuting attorney" means a district attorney
11 or a county attorney with criminal jurisdiction.

12 (b) A prosecuting attorney may not adopt or enforce a policy
13 under which the prosecuting attorney refuses to prosecute a class
14 or type of criminal offense for any reason other than to comply with
15 an injunction, judgment, or order issued by a court.

16 (c) In compliance with Subsection (b), a prosecuting
17 attorney may not permit an attorney who is employed by or otherwise
18 under the direction or control of the prosecuting attorney to
19 refuse to prosecute a class or type of criminal offense for any
20 reason other than to comply with an injunction, judgment, or order
21 issued by a court.

22 (d) A prosecuting attorney who violates this section
23 commits official misconduct for purposes of removal under this
24

1 subchapter.

2 SECTION 2. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2023.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 20, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (Relating to the enforcement of criminal offenses by district attorneys, criminal district attorneys, and county attorneys.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JMc, SD, SMAT, JPa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 17, 2023

TO: Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (relating to the enforcement of criminal offenses by district attorneys, criminal district attorneys, and county attorneys.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JMc, SMAT, JPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 11, 2023

TO: Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (Relating to official misconduct by and removal of prosecuting attorneys.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JMc, SMAT, JPa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 17, 2023

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (Relating to official misconduct by and removal of prosecuting attorneys.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JMc, DDel, MW, JPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

March 27, 2023

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (Relating to the official misconduct and removal of district attorneys and county attorneys.), **As Introduced**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JMc, DDeI, BC, DPE