

By: Schofield

H.B. No. 42

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) an offense under Section 557.001;

(4) 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;

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

(6) an offense under Title 8, Penal Code; or

(7) an offense under Section 42.02, Penal Code.

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

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

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

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

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

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

25 (b) If the supreme court fails to appoint a successor to
26 fill a vacancy under Subsection (a), the governor may appoint, with
27 the advice and consent of the senate, a state special prosecutor to

fill the office for the remainder of the unexpired term.

Sec. 42A.005. STAFF. The attorney general and state special prosecutor may enter into a memorandum of understanding for the provision of staff or other resources to assist the special prosecutor in fulfilling the duties of the special prosecutor's office.

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

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

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

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

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

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

1 (1-a) the state special prosecutor;

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

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

17 SECTION 4. Sections 46.003(a) and (a-1), Government Code,
18 are amended to read as follows:

19 (a) The state prosecuting attorney,the state special
20 prosecutor, and each state prosecutor is entitled to receive from
21 the state:

22 (1) a salary in an amount equal to the state annual
23 salary as set by the General Appropriations Act in accordance with
24 Section 659.012 paid to a district judge with comparable years of
25 service as the state prosecuting attorney,state special
26 prosecutor, or state prosecutor; and

27 (2) a monthly amount of longevity pay based on the

1 state prosecuting attorney's, state special prosecutor's, or state
2 prosecutor's years of service that would be paid to the state
3 prosecuting attorney, state special prosecutor, or state
4 prosecutor under Section 659.0445 if the state prosecuting
5 attorney, state special prosecutor, or state prosecutor were a
6 judge or justice described by Section 659.0445(a).

7 (a-1) For purposes of this section, the years of service of
8 the state prosecuting attorney, state special prosecutor, or a
9 state prosecutor include any years of service as:

10 (1) a county attorney; or

11 (2) an appellate court justice, district judge, judge
12 of a statutory county court, judge of a multicounty statutory
13 county court, or judge or justice of a statutory probate court.

14 SECTION 5. Section 46.004, Government Code, is amended to
15 read as follows:

16 Sec. 46.004. EXPENSES. (a) The state prosecuting
17 attorney, the state special prosecutor, and each state prosecutor
18 is entitled to receive not less than \$22,500 a year from the state
19 to be used by the attorney or prosecutor to help defray the salaries
20 and expenses of the office. That money may not be used to
21 supplement the attorney's or prosecutor's salary.

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

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

1 (a) The state prosecuting attorney, the state special
2 prosecutor, or a state prosecutor may not engage in the private
3 practice of law but may complete all civil cases that are not in
4 conflict with the interest of the state or any of the counties of
5 the district in which the attorney or prosecutor serves and that are
6 pending in court before the attorney or prosecutor takes office.

7 (b) The state prosecuting attorney, the state special
8 prosecutor, or a state prosecutor may not accept a fee from an
9 attorney to whom the state prosecuting attorney, state special
10 prosecutor, or state prosecutor has referred a case.

11 SECTION 7. The office of the state special prosecutor is
12 created January 1, 2026.

13 SECTION 8. This Act takes effect January 1, 2026.