

BILL ANALYSIS

Senate Research Center

H.B. 5138
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In *State v. Stephens*, the Texas Court of Criminal Appeals held that current Election Code provisions authorizing the attorney general to prosecute election law violations were invalid. While the attorney general can typically prosecute with the permission of the local prosecutor, the attorney general's lack of jurisdiction can pose threats to election integrity, especially when local prosecutors decline to prosecute Election Code violations. H.B. 5138 seeks to resolve this issue by granting the attorney general the power to prosecute election crimes if a local prosecutor has not initiated proceedings in the six months after a violation has been reported.

H.B. 5138 amends current law relating to the duty of the attorney general to prosecute criminal offenses prescribed by the election laws of this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 402, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. PROSECUTION OF CRIMINAL OFFENSES PRESCRIBED BY STATE ELECTION LAWS

Sec. 402.101. **APPLICABILITY.** Provides that this subchapter applies to a criminal offense under the Election Code.

Sec. 402.102. **PROVISION OF INFORMATION TO ATTORNEY GENERAL.** (a) Requires a law enforcement agency that submits to a local prosecuting attorney a report stating there is probable cause to believe an identified person has committed a criminal offense described by Section 402.101 to simultaneously submit a copy of that report to the attorney general.

(b) Requires a local prosecuting attorney or law enforcement agency, on request of the attorney general, to provide all information requested regarding investigations of criminal offenses described by Section 402.101 to assist the attorney general in performing duties required under this subchapter.

Sec. 402.103. **PROSECUTION.** (a) Provides that, notwithstanding any other law, the attorney general has jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense described by Section 402.101 if a law enforcement agency submits a report described by Section 402.102(a) to the local prosecuting attorney and the attorney general and six months have elapsed from the date the report was submitted and the local prosecuting attorney has not taken prosecutorial action to prosecute the offense.

(b) Authorizes a local prosecuting attorney to file a motion in a district court objecting to the attorney general's representation of the state under Subsection (a)

in the prosecution of a criminal offense described by Section 402.101. Requires the court, in response to a motion filed under this subsection, to make a finding as to whether the local prosecuting attorney has taken prosecutorial action to prosecute the offense and if the court finds the local prosecuting attorney has not taken prosecutorial action to prosecute the offense, issue an order stating the attorney general shall represent the state in the prosecution of the offense.

SECTION 2. Amends Sections 273.021(a) and (b), Election Code, as follows:

(a) Provides that the attorney general has jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense prescribed by the election laws of this state as provided by Subchapter D, Chapter 402 (Attorney General), Government Code. Deletes existing text authorizing the attorney general to prosecute a certain criminal offense.

(b) Authorizes the attorney general to appear before a grand jury in connection with a criminal offense the attorney general is authorized to prosecute under Subsection (a). Makes a nonsubstantive change.

SECTION 3. Amends Section 273.022, Election Code, as follows:

Sec. 273.022. COOPERATION WITH LOCAL PROSECUTOR. Authorizes the attorney general to direct the county or district attorney serving the county in which the offense is to be prosecuted to prosecute a criminal offense that the attorney general is authorized to prosecute under Section 273.021 (Prosecution by Attorney General Authorized) or to assist the attorney general in the prosecution. Makes a nonsubstantive change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2026.