

## **BILL ANALYSIS**

C.S.H.B. 5138  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that 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. The bill author has also informed the committee that 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. C.S.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.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 5138 amends the Government Code to require 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 under the Election Code to simultaneously submit a copy of that report to the attorney general. The bill 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 under the Election Code to assist the attorney general in performing duties required under the bill's provisions. The bill establishes that, notwithstanding any other law, the attorney general has jurisdiction to prosecute and requires the attorney general to represent the state in the prosecution of a criminal offense under the Election Code if the following conditions apply:

- a law enforcement agency submits a report described under these provisions 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 initiated proceedings to prosecute the offense.

C.S.H.B. 5138 amends the Election Code to replace the authorization for the attorney general to prosecute a criminal offense prescribed by state election laws with a provision establishing that the attorney general has the jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense prescribed by such laws as provided by the bill's provisions.

C.S.H.B. 5138 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

### **EFFECTIVE DATE**

September 1, 2026.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 5138 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

With respect to the requirement present in both the introduced and substitute for a local prosecuting attorney or law enforcement agency, on request of the attorney general, to provide information regarding investigations of criminal offenses under the Election Code, the substitute specifies that the information regarding those investigations includes all information requested, whereas the introduced does not. Whereas the introduced required the attorney general to prosecute a criminal offense under the Election Code if certain conditions apply, the substitute requires the attorney general to represent the state in the prosecution of that criminal offense if those conditions apply.

Whereas the introduced replaces the authorization for the attorney general to prosecute a criminal offense prescribed by state election laws with a requirement for the attorney general to prosecute a criminal offense prescribed by such laws as provided by the bill's provisions, the substitute replaces that authorization with a provision establishing that the attorney general has the jurisdiction to prosecute and is required to represent the state in the prosecution of such an offense.

The substitute changes the bill's effective date from September 1, 2025, as in the introduced, to September 1, 2026.