

SUBJECT: Temporary removal of county officials convicted of official misconduct

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — R. Lewis, Gutierrez, Chisum, Hamric, Kamel, Munoz,  
Wohlgemuth

1 nay — G. Lewis

1 absent — Longoria

WITNESSES: For — none.

Against — none.

BACKGROUND: Sec. 87.031 and 87.032 of the Local Government Code provides for removing a county official from office for official misconduct.

DIGEST: CSHB 246 would amend the Local Government Code to require that an elected county official's removal be effective immediately if the official is found guilty of a felony or misdemeanor for official misconduct by a jury or trial court judge. The commissioners court would be required to immediately appoint a temporary replacement.

An appeal by the removed official would not affect removal from office. If the official was acquitted on appeal, the county would be required to reinstate the commissioner and provide back pay, including any increased compensation.

If an official is not acquitted on appeal, then the office would be filled as if the officer were vacant — the commissioners court would be required to appoint an interim official by majority vote until the next election.

The bill would take effect immediately if approved by a two-thirds vote of the membership of each house.

SUPPORTERS SAY: CSHB 246 is needed to clarify the procedure involved in removing a county official convicted of official misconduct. Current law has been interpreted as allowing a convicted official to remain in office pending appeal, which can take months if not years. In the meantime, the office

remains filled with an official found guilty of corruption whose ability to function effectively with public confidence is seriously undermined. CSHB 246 would provide a procedure for removing the official and appointing an interim successor pending resolution of any appeal. The rights of the convicted official would be protected, and the official would be restored to office, with back pay, if the conviction is subsequently overturned.

This law would prevent what happened recently in Hidalgo County from recurring in another county. A jury convicted the sheriff of Hidalgo County on felony charges of official misconduct involving money laundering, racketeering and bribery in 1994. The sheriff refused to resign from office, and county officials interpreted the law to allow the sheriff to remain in office until sentencing.

A 93rd District Court judge ruled the county official was a convicted felon when a jury found him guilty, and that under the law the official was required to relinquish his office. The sheriff appealed his case. Both political parties petitioned the 13th Court of Criminal Appeals to have the official removed from office. The court ruled a vacancy did not exist until the official resigned or was removed and that the conviction was not final until the official was sentenced.

CSHB 246 would provide an interim solution of removing a convicted county official from office temporarily pending appeal. If the appeal is overturned, the official would be restored to office. If the conviction is upheld, the office would be declared vacant and a permanent successor would be named.

**OPPONENTS  
SAY:**

This bill is unnecessary because other statutes address the temporary and immediate removal of a county official. The appropriate removal process procedures were not followed in Hidalgo County.

An elected county official should be allowed to appeal to the highest court before being required to resign. A county official should not lose an office granted by the vote of the people on the basis of just one decision by a lower court.

**NOTES:**

The committee substitute clarified that removal would be immediate upon conviction.

A related bill, SB 664 by Lucio, clarifying procedures for suspension and removal of county officials, passed the Senate on May 8 and has been referred to the House County Affairs Committee.