

- SUBJECT:** Allowing the creation of an ethics commission in El Paso County
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 6 ayes — Coleman, Berman, Castro, J. Davis, Marquez, W. Smith
0 nays
3 absent — Morrison, Bolton, Sheffield
- WITNESSES:** For — Anna Perez, El Paso County; Jose Rodriguez, El Paso County;
(*Registered, but did not testify:* Steve Bresnen, El Paso County; Chuck Rice, Jr., Texas Land Developers Association; GK Sprinkle, Daily Court Review, Daily Commercial Record)
Against — None
- BACKGROUND:** El Paso County has a voluntary code of ethics, which provides guidelines for the appropriate manner for officials, lobbyists, and other persons to conduct county business. However, without enabling legislation, Texas counties cannot legally enact ethics codes that can be enforced by civil or criminal sanctions.
- DIGEST:** CSHB 2301 would amend the Local Government Code to authorize the commissioners court of El Paso County to create a county ethics commission by an order adopted by a majority of the court's full membership or by election by a majority of qualified voters of the county.
- Creation and dissolution of commission by election.** The bill would allow the commissioners court of El Paso County to call an election on whether to create a county ethics commission. After an ethics commission had been in effect for at least one year, voters of El Paso County could petition the commissioners court to call an election to dissolve the commission.
- Appointment of commission.** CSHB 2301 would establish procedures for the appointment and composition of an ethics commission, and appointment procedures in the event of a vacancy. The commission would consist of five members appointed by the El Paso county judge or county

commissioner and four public representative members. The members would serve staggered terms of two years, except that four of the initial members would serve a one year term, as determined by lot.

Eligibility requirements and removal. The bill would prescribe certain eligibility requirements for commission members. The bill would prescribe conditions for the removal of commission members.

Commission powers and duties.

CSHB 2301 would generally allow the ethics commission to:

- adopt, publish, and enforce an ethics code governing county public servants, using any ethics law for reference or guidance;
- adopt administrative provisions; and
- employ staff.

The bill specifically would grant the ethics commission the power to:

- issue advisory opinions regarding the application of the ethics code, upon request;
- adopt procedures for the filing, processing, investigation, preliminary review, and formal hearing of ethics complaints;
- agree to the settlement of issues related to a complaint;
- subpoena witnesses and documents;
- adopt rules for discovery of evidence;
- extend deadlines for any action relating to a complaint, preliminary review, or formal hearing;
- issue and enforce a cease and desist order to stop a violation;
- issue an affirmative order to require compliance with the laws administered and enforced by the commission; and
- issue an order of public censure with or without a civil penalty.

CSHB 2301 would require the commission to:

- provide the public with plain-language materials describing the commission's duties, procedures, and any provisions adopted by the commission;
- provide training to commission members regarding the ethics commission and its provisions;

- provide periodic training to persons covered by the ethics code, including lobbyists; and
- maintain the confidentiality of documents and statements associated with a complaint throughout preliminary review proceedings until the commission entered the information into the record of a formal hearing, unless a commission staff member made a good faith determination that disclosure to a complainant, respondent, or witness was necessary to further the complaint investigation.

The commission could not consider a complaint or investigate a matter outside the commission's jurisdiction. The commission also could not initiate an investigation except in response to a sworn complaint.

Violations of ethics code. CSHB 2301 would create two categories of violations of the ethics code adopted by the commission. A Category One violation would mean an easily ascertainable violation of the ethics code, such as a failure to file a required statement or report. All other violations would be Category Two violations.

Filing of complaints. A complaint of an ethics violation filed with the commission would have to be in writing and made under oath. If the commission dismissed a complaint, the commission would have to give written notice informing the complainant of the reasons for dismissal. A complainant could resubmit a complaint. The commission would have to resolve a complaint within six months of its receipt, unless it made a determination that further time for resolution was needed.

Complaint review procedures; preliminary review. Upon receiving a complaint that satisfied the initial information requirements, the commission would have to conduct a preliminary review. Depending on the complaint category, a respondent would have a certain number of days to acknowledge or deny a alleged violation, or enter into an assurance of voluntary compliance. Failure to respond would constitute a Category One violation.

Complaint review procedures; formal hearing. If the commission could not resolve a complaint during the preliminary review, it would have to order a formal hearing and provide notice and a copy of the decision to the complainant and respondent.

The commission would have to convene to issue a written decision on a complaint not later than the 30th day after the date of the formal hearing. The decision would have to be made public not later than the 10th business day after the commission issued the decision.

Criminal and civil violations. The bill would create misdemeanor offenses and provide penalties for persons who:

- destroyed, mutilated, or altered any information related to a complaint (punishable by a fine of not less than \$25 and not more than \$4,000, or by confinement in the county jail for not less than three days or more than three months, or both a fine and confinement); or
- knowingly obtained and used or disclosed confidential information for an unauthorized purpose (punishable by a fine of not more than \$1,000, or confinement in the county jail for not more than six months, or both).

The commission could impose a civil penalty of not more than \$500 for each delay in complying with a commission order and not more than \$4,000 for a violation of the ethics code adopted by the omission or for the filing of a frivolous or bad-faith complaint.

The commission could consider several factors in assessing a civil or criminal sanction, such the seriousness of the violation, the history and extent of previous violations, or any other matter that justice may require.

Appeals. A respondent could appeal a decision by the commission by filing with the district court in El Paso county within 30 days after the date of the decision. The district court's decision could be appealed as in other civil cases.

Retaliation against county employees prohibited. CSHB 2301 would prohibit the county from taking any adverse action against an employee who in good faith filed a complaint or otherwise reported a violation of the ethics code to the commission.

Not applicable to civil service agreements. The provisions of CSHB 2301 and the provisions of any ethics code adopted by El Paso County would not apply to an agreement authorized by Local Government Code, ch. 174 between the county and a county employee or to a civil service

statute applicable to a county employee. If a provision of CSHB 2301 or an ethics code provision conflicted with an agreement under ch. 174 or a civil service statute, the agreement or statute would prevail.

Effective date. The bill would take effect September 1, 2009.

NOTES:

The companion bill, SB 1368 by Shapleigh, passed the Senate by 31-0 on April 9 and was reported favorably as substituted by the House County Affairs Committee on May 12.