

SUBJECT: Categorizing alleged violations of laws enforced by Ethics Commission

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 6 ayes — Kuempel, Collier, S. Davis, Hunter, Larson, C. Turner

0 nays

1 absent — Moody

WITNESSES: For — Tom “Smitty” Smith, Public Citizen, Inc.; (*Registered, but did not testify*: Joanne Richards, Anti-Corruption Campaign; Liz Wally, Clean Elections Texas; Jesse Romero, Common Cause Texas; Karen Hadden)

Against — None

BACKGROUND: Government Code, subch. E outlines the complaint procedures used by the Texas Ethics Commission to resolve alleged law violations as civil matters. Government Code, sec. 571.1211 outlines two categories for alleged violations. “Category One violations” are violations for which it generally is not difficult to ascertain whether the violation occurred or not. “Category Two violations” are those violations that are not Category One violations.

DIGEST: CSHB 3682 would revise the enforcement process used by the Texas Ethics Commission to place alleged violations in categories.

The bill would repeal the current “Category One” and “Category Two” violation categories and replace them with three categories of violations:

- technical, clerical, or de minimis violations;
- administrative or filing violations; and
- more serious violations.

Commission staff would be required to categorize, in ascending order of seriousness, each violation alleged in a sworn complaint or on a motion by

the commission staff. The Ethics Commission would be required to adopt rules defining what violations were included in each category.

The bill would provide the following resolutions for the violation categories:

- a letter of acknowledgement for technical, clerical, or de minimis violations;
- a notice of administrative or filing error for administrative or filing violations; and
- a notice of violation for a complaint or motion alleging a more serious violation.

The commission would be required to resolve sworn complaints or motions in the form corresponding to the most serious category of an alleged violation.

The bill would make several changes to apply the new violation categories to the procedures in current law. In general, technical, clerical, and de minimis violations would fall under the procedures for current Category One violations, and administrative or filing violations and more serious ones would be handled under Category Two procedures.

The bill would take effect September 1, 2015, and would apply to sworn complaints filed and motions adopted by the commission on or after December 1, 2015.

**SUPPORTERS
SAY:**

CSHB 3682 would revise the Ethics Commission's process for handling alleged violations to better align the violations into categories that reflect their nature and seriousness. The bill would implement recommendations of the Sunset Advisory Commission that were included in the agency's 2013 Sunset bill that was approved by the 83rd Legislature but vetoed by the governor.

Current procedures place alleged violations into one of two categories based on the complexity of evaluating the violation. Category One

includes violations for which it generally is not difficult to ascertain whether the violation occurred, and all other violations are in Category Two. This can result in minor violations being in the same category as serious violations, making it hard for the public and others to distinguish between simple, honest mistakes and more significant violations.

The bill would address this issue by establishing a three-tier violation system that would help the commission, the public, and parties distinguish minor infractions from more serious violations. This could help mitigate the issue of minor complaints carrying the stigma of an ethics violation. The new system also could allow technical and administrative violations to be processed more quickly and efficiently, resulting in more time and resources available to process allegations of more serious violations. The categories established by the bill would be broad enough to make determinations of where to place a violation clear.

The bill would not alter the general procedures used by the commission for handling complaints. It would ensure alleged violations were handled appropriately by applying current Category One procedures to the technical, clerical, and de minimis violation category created by the bill and Category Two procedures to the categories created for administrative or filing violations and more serious violations.

**OPPONENTS
SAY:**

It might be difficult for the commission to make initial the determinations about the category in which alleged violations should be placed. The current categories are broad enough to allow accurate sorting at the front end of the enforcement process, something that might be difficult with the narrower categories that would be established by the bill.