

BILL ANALYSIS

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DIGEST AND PURPOSE

The Texas Sunset Commission's review of the Texas Ethics Commission (commission) found that the commission's ability to investigate complaints is limited, and the commission's hearing process is lengthy and has redundant elements. The review also found that the commission's electronic filing system, which allows the public greater access to financial disclosure reports through the Internet, is not being used to its fullest extent. As proposed, S.B. 268 expands the commission's authority to conduct investigations; removes unnecessary steps in the complaint process; expands the use of electronic filing for campaign finance and lobby activity information; and attempts to improve the clarity and accessibility of public information.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Ethics Commission in SECTION 1.06 (Section 571.1211, Government Code), SECTION 2.02 (Section 305.0064, Government Code), and SECTION 2.03 (Section 252.0131, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. OPERATION OF TEXAS ETHICS COMMISSION

SECTION 1.01. Amends Section 571.002, Government Code, by adding Subdivision (2-a), to define "executive director."

SECTION 1.02. Amends Section 571.022, Government Code, as follows:

Sec. 571.022. SUNSET PROVISION. Continues the Texas Ethics Commission (commission) for a 12-year period until 2015.

SECTION 1.03. Amends Chapter 571B, Government Code, by adding Sections 571.0231, 571.0271, and 571.030-571.0304, as follows:

Sec. 571.0231. GROUNDS FOR REMOVAL. (a) Updates standard Sunset language relating to grounds for removal of commission members.

Sec. 571.0271. COMMISSION MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program

occurs before or after the person qualifies for office.

Sec. 571.030. RESTRICTION ON COMMISSION MEMBERSHIP OR EMPLOYMENT AS GENERAL COUNSEL. Prohibits a person from being a member of the commission or acting as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 571.0301. SEPARATION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 571.0302. INFORMATION TO MEMBERS AND EMPLOYEES. Requires the executive director or the executive director's designee to provide to members and employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 571.0303. EQUAL EMPLOYMENT POLICY. (a) Updates standard Sunset language requiring the executive director to maintain an equal employment policy.

Sec. 571.0304. TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the State Employee Incentive Program.

SECTION 1.04. Amends Section 571.033, Government Code, by renumbering it as Section 571.0221, Government Code, and amending it as follows:

Sec. 571.0221. DISCRIMINATION PROHIBITED. Requires appointments to the commission to be made without regard to the race, color, disability, sex, age, national origin, or religion of the appointees.

SECTION 1.05. Amends Chapter 571C, Government Code, by adding Sections 571.0671 and 571.078, as follows:

Sec. 571.0671. PROPOSITION OF TECHNOLOGICAL SOLUTIONS. Requires the commission to develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. Requires the technological solutions to ensure that the public is able to easily find information about the commission on the Internet, ensure that persons who want to use the commission's services are able to interact with the commission through the Internet and access any service that can be provided effectively through the Internet, and be cost-effective and developed through the commission's planning processes.

Sec. 571.078. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the commission to develop and implement a policy to encourage the use of certain procedures.

(b) Requires the commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to coordinate the

implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the commission.

SECTION 1.06. Amends Chapter 571E, Government Code, by adding Section 571.1211, as follows:

Sec. 571.1211. RULES REGARDING COMPLAINT PROCEDURES. (a) Requires the commission to adopt rules governing the time in which and the manner by which the commission shall ensure the timely processing of complaints under this subchapter. Requires the rules to prescribe the maximum time permitted for a respondent to respond to correspondence from the commission and establish a process for the commission to determine what action the commission will take if the respondent does not respond within the prescribed time.

(b) Requires rules to require the commission, in making its determination, to consider the seriousness of the alleged violation and the respondent's previous history, if any, of violations of laws within the commission's jurisdiction.

SECTION 1.07. Amends Section 571.122(a), Government Code, to require the commission to make the complaint form provided for in this section available on the Internet.

SECTION 1.08. Amends Section 571.123, Government Code, by adding Subsection (b-1) to require the written notice, if the commission determines that the complaint complies with the form requirements, to also state whether the commission has jurisdiction over the violation alleged in the complaint.

SECTION 1.09. Amends Sections 571.124(c), (e), and (f), Government Code, as follows:

(c) Requires the executive director, rather than the commission by record vote, to determine in writing whether the commission has jurisdiction over the violation of law alleged in a sworn complaint processed under Section 571.123.

(e) Requires the notice under Section 571.123(b), if the executive director, rather than the commission, determines that the commission has jurisdiction, to include certain information.

(f) Makes conforming changes.

SECTION 1.10. Amends Chapter 571E, Government Code, by adding Section 571.1241, as follows:

Sec. 571.1241. APPEAL OF EXECUTIVE DIRECTOR'S DETERMINATION OF NO JURISDICTION. (a) Authorizes the complainant, if the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, to file an appeal to the commission. Requires an appeal under this section to be filed not later than the 30th day after the date the complainant receives the executive director's determination.

(b) Requires the commission, on receipt of an appeal under Subsection (a), to promptly schedule the appeal for hearing and send to the complainant and the respondent written notice of the date, time, and place of the appeal hearing.

(c) Provides that during a hearing under this section the only issue that may be considered is whether the commission has jurisdiction over the violation alleged in the complaint and authorizes the commission to consider all submitted evidence related to the complaint and review any documents or material related to the complaint, and requires the commission to determine whether it has jurisdiction over the violation alleged in the complaint.

(d) Authorizes the respondent or complainant, during a hearing under this section, to appear before the commission with the assistance of counsel, if desired, and present any relevant evidence, including a written statement.

(e) Requires the commission, not later than the fifth business day after the date of a hearing under this section, to send written notice to the complainant and the respondent stating whether the commission has jurisdiction over the violation alleged in the complaint.

(f) Requires the notice, if the commission determines that the commission has jurisdiction, to include the items listed in Sections 571.124(e)(1) through (4).

(g) Requires the commission, if the commission determines that the commission does not have jurisdiction over the violation alleged in the complaint, to follow certain plans and procedures.

SECTION 1.11. Amends Section 571.125, Government Code, as follows:

Sec. 571.125. New heading: PRELIMINARY REVIEW HEARING: PROCEDURE. (a) Requires the commission to conduct a preliminary review hearing if following the preliminary review, the commission and the respondent cannot agree to the disposition of the complaint or motion or the respondent in writing requests a hearing.

(b) Requires the commission to provide written notice to the complainant, if any, and the respondent of the date, time, and place the commission will conduct the preliminary review hearing.

(c) Provides that during a preliminary review hearing, the commission may submit written questions and require those questions to be answered under oath in addition to other actions the commission is already authorized to take.

(d) Makes a conforming change.

SECTION 1.12. Amends the heading to Section 571.126, Government Code, to read as follows:

Sec. 571.126. PRELIMINARY REVIEW HEARING: RESOLUTION.

SECTION 1.13. Amends Sections 571.126(a), (b), and (d), Government Code, as follows:

(a) Requires the commission by record vote, as soon as practicable after the completion of a preliminary review hearing, to issue a decision with certain information.

(b) Adds items to the list of information and materials the commission is required to send to the complainant and respondent. Makes conforming changes.

(d) Makes conforming changes.

SECTION 1.14. Amends Chapter 571E, Government Code, by amending Sections 571.135 and 571.136 and adding Section 571.1351, as follows:

Sec. 571.135. New heading: PUBLIC INTEREST INFORMATION. (a) Requires the commission to develop plain-language materials as described by this section. Requires the commission to distribute the materials to the public and appropriate state agencies.

(b) Requires the materials to include certain information.

(c) Requires the commission to provide the materials described by this section to each complainant and respondent.

(d) Requires the commission to adopt a policy to effectively distribute materials as required by this section.

Sec. 571.1351. STATUS OF COMPLAINT. (a) Requires the commission to keep an information file about each sworn or other complaint filed with the commission. Requires the file to include certain information.

(b) Requires the commission to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) Requires the commission, at least quarterly until final disposition of a complaint, to notify the person who filed the complaint and each person who is a subject of the complaint, if any, of the status of the sworn or other complaint in addition to the notice required by Sections 571.124 through 571.132.

Sec. 571.136. EXTENSION OF DEADLINE. Makes a conforming change.

SECTION 1.15. Amends Section 571.137, Government Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Makes a conforming change.

(a-1) Authorizes the commission, for good cause and as authorized by this chapter, to subpoena documents that directly relate to a sworn complaint in connection with a preliminary review. Requires the commission to adopt guidelines for the issuance of subpoenas under this subsection.

(a-2) Requires a copy of a subpoena issued under this section to be delivered to the respondent.

SECTION 1.16. Amends Section 571.138, Government Code, to make a conforming change.

SECTION 1.17. Amends Sections 571.139(a) and (b), Government Code, to make conforming changes.

SECTION 1.18. Amends Section 571.140, Government Code, by amending Subsections (a) and (b) and adding Subsection (a-1) as follows:

(a) Makes conforming changes.

(a-1) Authorizes an employee of the commission to disclose information made confidential under Subsection (a) if the employee is investigating a sworn complaint or motion, disclosure of the information is necessary to conduct the investigation, and the employee acts in good faith to maintain the confidentiality of the information to the greatest extent possible.

(b) Makes a conforming change.

SECTION 1.19. Amends Chapter 571E, Government Code, by adding Sections 571.141 and 571.142, as follows:

Sec. 571.141. DISCLOSURE OF CONFIDENTIAL INFORMATION TO STATE COMMISSION ON JUDICIAL CONDUCT OR STATE BAR OF TEXAS. (a) Authorizes the commission to disclose to the State Commission on Judicial Conduct or the State Bar of Texas information relating to an investigation or proceeding under this chapter to the extent necessary for the recipient of the information to perform an official duty or function to certain entities.

(b) Authorizes the commission to disclose confidential information under this section on its own motion or at the request of the State Commission on Judicial Conduct or the state bar.

(c) Provides that information disclosed to the State Commission on Judicial Conduct or the state bar under this section remains confidential, and Section 571.140 applies to an officer or employee of the State Commission on Judicial Conduct or the state bar as if the person were an officer or employee of the commission.

Sec. 571.142. AVAILABILITY OF COMMISSION ORDERS ON INTERNET. (a) Requires the commission, as soon as practicable following a preliminary review hearing or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, to make available on the Internet certain information.

(b) Provides that this section does not apply to a determination of a violation that is technical or de minimis.

SECTION 1.20. Amends Section 571.171, Government Code, as follows:

Sec. 571.171. INITIATION AND REFERRAL. (a) Created from existing text.

(b) Requires the executive director, if after a preliminary investigation of a complaint the executive director reasonably believes that the person who is the subject of the complaint has violated a criminal statute, to refer the matter to the appropriate prosecuting attorney for criminal prosecution.

(c) Authorizes the commission or executive director to disclose confidential information in making a referral to a prosecuting attorney under this section.

ARTICLE 2. LOBBYIST AND CAMPAIGN FINANCE REPORTING

SECTION 2.01. Amends Section 305.006(a), Government Code, to require each registrant to file with the commission a written, verified report concerning the activities described by this section. Deletes the requirement that the report be on a form prescribed by the commission.

SECTION 2.02. Amends Chapter 305A, Government Code, by adding Section 305.0064, as follows:

Sec. 305.0064. ELECTRONIC FILING OF ACTIVITY REPORTS. (a) Requires each report filed under Section 305.006 to be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format except as provided by Subsection (b) or (c).

(b) Requires the commission to adopt rules under which a registrant may file paper reports on a form prescribed by the commission. Requires the rules to be designed to ensure that use of the electronic filing system under Subsection (a) is maximized and registrants may file paper reports for good cause only.

(c) Requires the commission to implement an electronic filing system under Subsection (a) not later than January 1, 2005. Requires the commission by rule to identify the first reporting period under Section 305.007 for which a report must be made as required by Subsection (a). Provides that this subsection expires January 1, 2005.

(d) Provides that a registration fee under Section 305.005(c)(1) or (2) for the calendar years 2004 and 2005 is increased by an amount determined by the commission as sufficient to generate additional revenue necessary to develop and implement an electronic filing system under Subsection (a). Authorizes the commission to impose a different increase for each fee under Section 305.005(c). Provides that this subsection expires January 1, 2006.

SECTION 2.03. Amends Chapter 252, Election Code, by adding Section 252.0131, as follows:

Sec. 252.0131. **TERMINATION OF CANDIDATE'S CAMPAIGN TREASURER APPOINTMENT BY COMMISSION.** (a) Requires the commission by rule to adopt a process by which the commission may terminate the campaign treasurer appointment of a candidate who meets certain criteria.

(b) Requires the commission, before the commission may terminate a candidate's campaign treasurer appointment, to consider the proposed termination in a regularly scheduled open meeting.

(c) Requires rules adopted under this section to specify the minimum time following a candidate's last report under Chapter 254 before the commission may propose terminating the candidate's campaign treasurer appointment and require written notice to the affected candidate regarding certain information.

(d) Provides that the termination of a campaign treasurer appointment under this section takes effect on the 30th day after the date of the commission meeting at which the commission votes to terminate the appointment. Requires the commission, following that meeting, to promptly notify the affected candidate that the appointment has been terminated. Requires the notice to state the effective date of the termination.

SECTION 2.04. Amends Section 254.036(c), Election Code, to authorize a candidate, officeholder, or political committee that is required to file reports with the commission to file reports that comply with Subsection (a) if the candidate, officeholder, or campaign treasurer of the committee files with the commission an affidavit stating that in addition to other exceptions permitted by this Subsection candidate, officeholder, or committee does not in a calendar year accept political contributions that in the aggregate exceed the amount prescribed by commission rule or make political expenditures that in the aggregate exceed the amount prescribed by commission rule. Makes conforming changes.

SECTION 2.05. Amends Section 254.0361, Election Code, by transferring it to Chapter 571C, Government Code, redesignating it as Section 571.0671, Government Code, and amending it as follows:

Sec. 571.0671. **REQUIREMENTS FOR ELECTRONIC FILING SOFTWARE.** (a) Makes conforming changes.

(b) Makes conforming changes.

(c) Authorizes the commission to provide software for use under Section 254.036(b), Election Code, or Section 305.0064 by making the software available on the Internet. Provides that if the commission makes the software available on the Internet, the

commission is not required to provide the software on computer diskettes, CD-ROMs, or other storage media without charge to persons required to file reports under that section but may charge a reasonable fee for providing the software on storage media.

ARTICLE 3. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 3.01. Repealer: Sections 571.124(d), 571.127, and 571.128, Government Code, and Section 254.036(g), Election Code.

SECTION 3.02. Makes application of Section 571.0271 and 571.030, Government Code, as added by this Act (regarding commission membership), prospective.

SECTION 3.03. Effective date: September 1, 2003.