

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1368  
By: Shapleigh  
International Relations & Trade  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, El Paso County is authorized to establish an ethics board but without enabling legislation a county cannot authorize its ethics board to impose effective penalties against those who violate ethics standards. An ethics board can censure a public official, make a referral to a law enforcement agency or, if the violator is a county employee, recommend disciplinary action. An ethics board is prohibited from imposing a civil penalty and can take little action when an elected official, lobbyist, or vendor violates ethics standards.

C.S.S.B. 1368 authorizes the creation of an effective county ethics enforcement mechanism in El Paso County, with the power to adopt an ethics code governing county public servants, issue advisory opinions, review complaints, and impose penalties on violators.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the county ethics commission in SECTION 1 (Sections 161.101 and 161.166, Local Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 5, Local Government Code, by adding Chapter 161, as follows:

#### CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. **APPLICABILITY OF CHAPTER.** Provides that this chapter applies only to a county with a population of 650,000 or more that is located on the international border.

Sec. 161.002. **DEFINITIONS.** Defines "commission," "commission staff," "communicates directly with," "county affiliate," "county employee," "county office," "county officer," "county public servant," and "lobbyist."

[Reserves Sections 161.003-161.050 for expansion.]

##### SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION MEMBERS

Sec. 161.051. **CREATION OF COMMISSION BY ORDER.** (a) Authorizes the commissioners court of a county, by an order adopted by a majority of the court's full membership, to create a county ethics commission (commission).

(b) Requires that a copy of an order adopted under this section be placed in the minutes of the court's proceedings. Provides that the copy of the order is public information.

Sec. 161.052. **CREATION OF COMMISSION BY ELECTION.** (a) Authorizes a commission to be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) Authorizes the commissioners court by order to call an election on the question of the creation of a commission.

(c) Requires the commissioners court to hold the election called under this section on the first authorized uniform election date prescribed by Chapter 41 (Election Dates and Hours for Voting), Election Code, that allows sufficient time for publication of the notice required by Subsection (d) and for compliance with any other requirements established by law.

(d) Requires the commissioners court, in addition to the notice required by Chapter 4 (Notice of Election), Election Code, to publish in a newspaper of general circulation in the county, and on the home page of the county's Internet website, a substantial copy of the order calling the election. Requires that the first newspaper publication be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks. Requires that the notice on the county's Internet website remain on the home page each day beginning not later than the 16th day before the election and ending on the date of the election.

Sec. 161.053. **BALLOT.** Requires the commissioners court to order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county ethics commission."

Sec. 161.054. **RESULT OF ELECTION.** Requires the commissioners court, if the proposition is approved, to declare the result and by order create the commission. Requires that a copy of the order creating the commission be placed in the minutes of the court's proceedings.

Sec. 161.055. **APPOINTMENT OF COMMISSION.** (a) Sets forth the composition of the commission.

(b) Requires the county judge and each county commissioner, not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or 161.054, to each appoint one member of the commission. Requires the commissioners court, not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or 161.054, to order publication of a notice seeking applicants for four public representative members of the commission.

(c) Requires the commissioners court to set the date for the first meeting of the initial members appointed by the county judge and the commissioners court. Requires that the first meeting be set not earlier than the 60th day after the date of the order creating the commission and not later than the 90th day after the date of that order.

(d) Requires the initial members, at the first meeting of the commission, to elect one member as chair of the commission.

(e) Requires the initial members, not later than the 120th day after the date of the order creating the commission, to appoint four public representatives from the applications received pursuant to Subsection (b)(2). Requires the entire board, after the initial public representatives are appointed, to appoint the successor public representatives.

Sec. 161.056. **ELIGIBILITY.** (a) Requires a person, to be eligible for appointment to the commission, to be at least 25 years old and have resided in the county for the two years immediately preceding the date on which the person's term will begin.

(b) Provides that a person is not eligible for appointment to the commission if the person is an elected officer; a county employee; a county affiliate; a person

employed as a lobbyist; a person convicted of a misdemeanor involving moral turpitude or a felony; or a person who is delinquent in payment of local, state, or federal taxes.

Sec. 161.057. TERMS. Sets forth the terms of members and initial members of the commission.

Sec. 161.058. VACANCIES. (a) Requires that a vacancy on the commission be filled for the remainder of the unexpired term in a certain manner.

(b) Authorizes the commission to fill the vacancy by a majority vote of the remaining members if the county judge or county commissioner, as applicable, does not fill the vacancy before the 60th day after the date the position becomes vacant.

Sec. 161.059. MEETINGS. (a) Requires the commission to meet on a regular basis.

(b) Provides that the commission is a governmental body for purpose of Chapter 551 (Open Meetings), Government Code.

Sec. 161.060. REMOVAL OF COMMISSION MEMBER. Authorizes a member of the commission to be removed as provided by Chapter 87 (Removal of County Officers from Office; Filling of Vacancies) if, after trial, the jury finds good cause for removal, including failure to pay local, state, or federal taxes when due; violation of the ethics code adopted by the commission; conviction of a felony or misdemeanor; excessive absenteeism as determined by the commission; and official misconduct.

Sec. 161.061. LEGAL REPRESENTATION. Requires the county attorney, or district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters to represent the commission in all legal matters.

[Reserves Sections 161.062-161.100 for expansion.]

#### SUBCHAPTER C. POWERS

Sec. 161.101. GENERAL POWERS. (a) Requires the commission to adopt, publish, and enforce an ethics code governing county public servants.

(b) Authorizes the commission to adopt or use as a guide any ethics law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county.

(c) Authorizes the commission to adopt bylaws, rules, forms, policies, or procedures to assist in the administration of the commission's duties under this chapter. Authorizes the commission to be guided by Robert's Rules of Order to the extent that it does not conflict with the constitution and laws of the United States and this state or conflict with other guidelines adopted by the commission.

(d) Requires the commission to be assigned staff by the county and provided access to county resources to assist in its duties.

(e) Requires the commission to develop and implement policies that provide the public with information on the commission and the ethics code.

(f) Authorizes the commission to adopt or use as a guide the provisions of Subchapter D or E.

(g) Requires the commission to enforce the provisions of the ethics code by issuing appropriate orders or recommendations or by imposing appropriate penalties.

Sec. 161.102. **ADVISORY OPINIONS.** Authorizes the commission, on its own initiative or on the request of any person covered by the ethics code adopted by the commission, to issue a written ethics advisory opinion regarding the application of the ethics code to a specified existing or hypothetical factual situation. Prohibits the commission from issuing an opinion that includes the name of any person who may be affected by the opinion. Requires that the name of a person covered by the ethics code be deemed confidential if made at the request of the person.

Sec. 161.103. **PUBLIC INTEREST INFORMATION.** (a) Requires the commission to develop plain-language materials as described by this section. Requires the commission to post the information on the county's Internet website and requires the commission to make the information otherwise available to the public.

(b) Requires that the materials include:

(1) a description of the commission's responsibilities, the types of conduct that constitute a violation of the ethics code adopted by the commission, the types of sanctions the commission may impose, the commission's policies and procedures relating to complaint investigation and resolution, and the duties of a person filing a complaint with the commission; and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(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. 161.104. **COMMISSION MEMBER EDUCATION AND TRAINING.** (a) Requires a person appointed to the commission to complete training on certain topics not later than the 60th day after the date of appointment.

(b) Requires a member of the commission to complete subsequent training programs on the ethics code adopted by the commission and the procedural rules adopted by the commission.

(c) Prohibits a person who is appointed to and qualifies for office as a member of the commission, other than the initial appointees and public representatives, 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.

Sec. 161.105. **EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE.** (a) Requires the commission and commission staff to provide periodic training for persons covered by the ethics code adopted by the commission on at least a quarterly basis.

(b) Requires the training program to provide information regarding the ethics code, the role and functions of the commission, and plain-language materials as further described by Section 161.103.

(c) Requires an officer, principal, or other person with the authority to bind the vendor, in addition to the qualifications under Subchapter C (Competitive Bidding in General), Chapter 262 (Purchasing and Contracting Authority of Counties) before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, to complete training on the ethics code.

(d) Requires a lobbyist intending to meet with a person covered by the ethics code to complete training on the ethics code.

[Reserves Sections 161.106-161.150 for expansion.]

#### SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

Sec. 161.151. DEFINITIONS. Defines "Category One violation" and "Category Two violation."

Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. Authorizes the commission to adopt the complaint procedures and hearings set forth in this subchapter.

Sec. 161.153. HEARINGS AND SETTLEMENT. (a) Authorizes the commission to hold hearings, on its own motion adopted by an affirmative vote of at least six commission members or on a sworn complaint, and render decisions on complaints or reports of violations as provided by this chapter; and agree to the settlement of issues.

(b) Prohibits the commission from considering a complaint or voting to investigate a matter outside the commission's jurisdiction.

Sec. 161.154. CATEGORIZATION OF VIOLATIONS. Requires that an allegation of a violation listed as a Category One violation be treated as a Category Two violation if the commission at any time determines that the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 161.159(a).

Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) Authorizes an individual to file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. Requires the commission to make the complaint form available on the county website.

(b) Requires that a complaint filed under this section be in writing, under oath, and set forth in simple, concise, and direct statements certain complainant and respondent information and documentation.

(c) Requires that the complaint be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred. Requires that the complaint, if the complaint is based on information and belief, state the source and basis of the information and belief. Authorizes the complainant to swear the facts by oath before a notary public or other authorized official.

(d) Requires that the complaint state on its face an allegation that, if true, constitutes a violation of the ethics code.

Sec. 161.156. PROCESSING OF COMPLAINT. (a) Requires the commission to determine whether a sworn complaint filed with the commission complies with the form requirements of Section 161.155.

(b) Requires the commission, not later than the 10th business day after the date a complaint is filed, to send written notice to the complainant and the respondent. Requires that the notice state whether the complaint complies with the form requirements of Section 161.155 and include the information required by Section 161.158(d).

(c) Requires the commission, if the commission determines that the complaint does not comply with the form requirements, to send the complaint to the

complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. Authorizes the complainant to resubmit the complaint not later than the 21st day after the date the notice under Subsection (b) is mailed. Requires the commission, if the commission determines that the complaint is not resubmitted within the 21-day period, to dismiss the complaint and not later than the 10th business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) Requires the commission, if the commission determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, to send the notice required under Subsection (c), and authorizes the complainant to resubmit the complaint under that subsection.

(e) Requires the commission, if the commission determines that the complaint returned to the complainant under Subsections (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, to send the written notice under Subsection (b).

Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) Prohibits the county from suspending or terminating the employment of or taking other adverse action against a county employee who in good faith files a complaint or otherwise reports to the ethics commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.

(b) Prohibits the county from suspending or terminating the employment of or taking other adverse action against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.

(c) Provides that a commission created by a county under this chapter is a part of the "local government entity" for purposes of Section 554.002 (Retaliation Prohibited for Reporting Violation of Law), Government Code.

(d) Provides that an ethics code adopted by a commission pursuant to this chapter is a "law" as defined by Section 554.001 (Definitions).

Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) Requires the commission staff to promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 161.155.

(b) Authorizes the commission, on a motion adopted by an affirmative vote of at least six commission members, to initiate a preliminary review of the matter that is the subject of the motion without a sworn complaint.

(c) Requires the commission to determine in writing whether the commission has jurisdiction over the violation of the ethics code provision alleged in a sworn complaint processed under Section 161.156.

(d) Requires the commission, if the commission determines that it has jurisdiction, to issue a notice under Section 161.156(b) that is required to include a statement that the commission has jurisdiction over the violation alleged in the complaint; a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 161.154; the date by which the respondent is required to respond to the notice; a copy of the complaint and the rules of procedure of the commission a statement of the rights of the respondent, a statement inviting the respondent to provide to the commission any information relevant to the complaint; and a

statement that a failure to timely respond to the notice will be treated as a separate violation.

(e) Requires the commission, if the commission determines that the commission does not have jurisdiction over the violation alleged in the complaint, to dismiss the complaint; and not later than the 10th business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT. (a) Provides that if the alleged violation is a Category One violation, the respondent is required to respond to the notice required by Section 161.156(b) not later than the 10th business day after the date the respondent receives the notice; and if the matter is not resolved by agreement between the commission and the respondent receives the notice under Section 161.156(b), the commission is required to set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(b) Requires the respondent, if the alleged violation is a Category Two violation, to respond to the notice required by Section 161.156(b) not later than the 25th business day after the date the respondent receives the notice under Section 161.156(b); and requires the commission, if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 161.156(b), to set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(c) Provides that a respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a Category One violation.

(d) Requires that the response required by Subsection (a) or (b) include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. Authorizes the respondent to acknowledge the occurrence or commission of a violation; deny the allegations contained in the complaint and provide evidence supporting the denial; or agree to enter into an assurance of voluntary compliance or other agreed order, which is authorized to include an agreement to immediately cease and desist.

(e) Requires the commission, if the commission sets the matter for a preliminary review hearing, to promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS. Authorizes the commission staff, during a preliminary review, to submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. Requires the commission to adopt procedures for the conduct of preliminary reviews and preliminary review hearings. Requires that the procedures include a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and the tolling or extension of otherwise applicable deadlines where the commission issues a subpoena and the commission's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines or the commission determines that, despite the commission staff's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the commission staff's investigation or the rights of the respondent.

Sec. 161.162. 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) Authorizes the commission, at or after the time the commission provides notice of a preliminary review hearing, to submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time.

(d) Authorizes the commission, during a preliminary review hearing, to consider all submitted evidence related to the complaint or to the subject matter of a motion under Section 161.158(b) and review any documents or material related to the complaint or to the motion. Requires the commission, during a preliminary review hearing, to determine whether there is credible evidence that provides cause for the commission to conclude that the violation within the jurisdiction of the commission has occurred.

(e) Authorizes the respondent, during a preliminary review hearing, to appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION. (a) Requires the commission by vote, as soon as practicable after the completion of a preliminary review hearing, to issue a decision stating whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis or that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) Requires the commission, if the commission determines that there is credible evidence for the commission to determine that a violation has occurred, to resolve and settle the complaint or motion to the extent possible. Requires the commission, if the commission successfully resolves or settles the complaint or motion, not later than the 10th business day after the date of the final resolution of the complaint or motion, to send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. Requires the commission, if the commission is unsuccessful in resolving and settling the complaint or motion, to order a formal hearing to be held in accordance with Sections 161.164 through 161.167; and not later than the 10th business day after the date of the decision, send to the complainant, if any, and the respondent certain documents.

(c) Requires the commission, if the commission determines that there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has not occurred, to dismiss the complaint or motion; and, not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(d) Authorizes the commission, if the commission determines that there is insufficient credible evidence for the commission to determine that the violation within the jurisdiction of the commission has occurred, to dismiss the complaint or motion or promptly conduct a formal hearing under Sections 161.164 through 161.167. Requires the commission, not later than the fifth business day after the date of the commission's determination under this subsection, to send to the



complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE. Requires the commission, during a formal hearing, to determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES. (a) Requires that a subpoena or other request to testify be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Authorizes the commission, except as provided by Section 161.166(a)(1), to order that a person is prohibited, except as specifically authorized by the presiding officer, from making public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) Authorizes a witness to read a written statement or present a brief oral opening statement at a formal hearing.

(d) Authorizes a person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, commission staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation to request to appear personally before the commission to testify in the person's own behalf or file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) Requires a witness who testifies at a formal hearing to be sworn.

Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Requires the commission, not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, to provide to the complainant, if any, and to the respondent a list of proposed witnesses to be called at the hearing, copies of all documents expected to be introduced as exhibits at the hearing, and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) Prohibits the respondent from being compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) Requires the commission to adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001 (Administrative Procedure), Government Code.

Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) Requires the commission, not later than the 30th business day after the date of the formal hearing, to convene a meeting and by motion issue a final decision stating the resolution of the formal hearing; and a written report stating the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a civil penalty, if any.

(b) Requires six members of the commission for a quorum at a formal hearing.

(c) Requires the commission, not later than the 10th business day after the date the commission issues the final decision and written report, to send a copy of the decision and report to the complainant, if any, and to the respondent; and make a copy of the decision and report available to the public during reasonable business hours.

Sec. 161.168. STATUS OF COMPLAINT. (a) Requires the commission to keep an information file about each sworn or other complaint filed with the commission. Requires that the file 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 commissioner's policies and procedures relating to complaint investigation and resolution.

(c) Requires the commission, in addition to the notice required by Sections 161.156 and 161.167, 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.

(d) Requires the commission to resolve a complaint within six months of its receipt unless it makes a determination that additional time is required to resolve the matter. Authorizes the commission, on a determination that additional time is required, to extend the investigation in three-month increments. Provides that each extension requires separate approval by the commission.

(e) Requires that the complaint, if the commission does not resolve the matter within six months or within an authorized extension, be deemed to have been dismissed without prejudice.

Sec. 161.169. EXTENSION OF DEADLINE. Authorizes the commission, on its own motion or on the reasonable request of a respondent, to extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing.

Sec. 161.170. SUBPOENA. (a) Authorizes the commission, in connection with a formal hearing, as authorized by this chapter, to subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(b) Authorizes the commission, in connection with a preliminary review, for good cause and as authorized by this chapter, to subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least five members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information is likely to be determinative as to whether the subject of an investigation has violated a provision of the ethics code, can be determined from the documents or is known by the witnesses; and is not reasonably available through a less intrusive means.

(c) Requires the commission to adopt procedures for the issuance of subpoenas under this section.

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

(e) Requires a peace officer, at the written request of at least five members of the commission, to serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(f) Requires the commission, if a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, to report that fact to a district court in the county. Requires the district court to enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(g) Provides that a respondent has the right to quash a subpoena as provided by law.

(h) Entitles a subpoenaed witness who attends a commission hearing to the same mileage and per diem payments as a witness who appears before a grand jury. Entitles a person who provides subpoenaed documents to the commission to reimbursement from the commission for the person's reasonable cost of producing the documents.

Sec. 161.171. STATUS OF COMPLAINANT. Provides that the complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Provides that except as provided by Section 161.173(b), Chapter 552 (Public Information), Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.

(b) Provides that Chapter 551 (Open Meetings), Government Code, does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion, but does apply to a formal hearing held under Sections 161.164 through 161.167.

(c) Provides that Subchapters C through H, Chapter 2001, Government Code, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Provides that, except as provided by Subsection (b) or (c) or by Section 161.201, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and are prohibited from being disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) Provides that an order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(c) Authorizes commission staff, for the purpose of investigating a sworn complaint or motion, to disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if the employee makes a good faith determination that the disclosure is necessary to conduct the investigation; the employee's determination under Subdivision (1) is objectively reasonable; the commission specifically authorizes the disclosure; and the employee discloses only the information necessary to conduct the investigation.

(d) Provides that a person commits an offense if the person intentionally destroys, mutilates, or alters information obtained under this chapter or removes information obtained under this chapter without permission as provided by this chapter.

(e) Provides that an offense under Subsection (d) is a misdemeanor punishable by a fine of not less than \$25 or more than \$4,000, confinement in the county jail for not less than three days or more than three months, or both the fine and confinement.

(f) Provides that a person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(g) Provides that a person who obtains access to confidential information under this chapter commits an offense if that person knowingly uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including solicitation of political contributions or solicitations of clients; permits inspection of the confidential information by a person who is not authorized to inspect the information; or discloses the confidential information to a person who is not authorized to receive the information.

(h) Provides that an offense under Subsection (f) or (g) is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and confinement.

(i) Provides that a violation under this section constitutes official misconduct.

(j) Authorizes the respondent, in addition to other penalties, to commence a civil action for damages on the respondent's own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Requires that any action under this chapter be brought in a district court in the county. Authorizes the court to award costs and attorney's fees.

(k) Provides that a county employee is subject to discipline, including termination of employment, for disclosing confidential information under this chapter.

(l) Provides that a county employee who discloses confidential information in compliance with Subsection (c) is not subject to Subsections (d)-(k).

Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON INTERNET. (a) Requires the commission, as soon as practicable following a preliminary review, 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 a copy of the commissioner's order stating the determination, or a summary of the commission's order.

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

[Reserves Sections 161.175-161.200 for expansion.]

#### SUBCHAPTER E. ENFORCEMENT

Sec. 161.201. INITIATION AND REFERRAL. (a) Authorizes the commission, on a motion adopted by an affirmative vote of at least six commission members, to initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.

(b) Authorizes the commission, on receipt of a sworn complaint, if the commission reasonably believes that the person who is the subject of the complaint has violated Chapter 36 (Bribery and Corrupt Influence), 37 (Perjury and Other Falsification), or 39 (Abuse of Office), Penal Code, to refer the matter to the appropriate prosecuting attorney for criminal prosecution.

(c) Requires that a penalty paid under this section be deposited to the credit of the general fund of the county.

Sec. 161.202. ORDER. Authorizes the commission to 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 penalty as provided pursuant to Section 161.203.

Sec. 161.203. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) Authorizes the commission to impose a civil penalty of not more than \$500 for each delay in complying with a commission order.

(b) Authorizes the commission to impose a civil penalty of not more than \$4,000 for a violation of the ethics code adopted by the commission.

(c) Requires that a penalty paid under this section be deposited to the credit of the general fund of the county.

(d) Provides that this section is cumulative of any other available sanctions under this chapter.

Sec. 161.204. WAIVER OR REDUCTION OF PENALTY. (a) Authorizes a person to request the waiver or reduction of a penalty by submitting an affidavit to the commission that states the filer's reasons for requesting a waiver or reduction.

(b) Authorizes the commission to waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. Requires the commission to consider the following before acting to waive or reduce a civil penalty: the facts and circumstances supporting the person's request for a waiver or reduction, the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty; any history of previous violations by the person; the demonstrated good faith of the person, including actions taken to rectify the consequences of the violations; the penalty necessary to deter future violations; and any other matter that justice may require.

(c) Authorizes the commission, after hearing the waiver request, to affirm, reduce, or waive the civil penalty.

Sec. 161.205. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY. Authorizes the commission to notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, or the State Bar of Texas, of a violation of the ethics code adopted by the commission.

Sec. 161.206. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT. (a) Authorizes the commission to impose a civil penalty of not more than \$4,000 for the filing of a frivolous or bad-faith complaint. Defines "frivolous complaint."

(b) Authorizes the respondent, in addition to other penalties, to commence a civil action on the respondent's own behalf against any person who filed a frivolous complaint against the respondent. Requires that any action under this chapter be brought in a district court in the county. Authorizes the court to award costs and attorney's fees.

(c) Authorizes a person to file a sworn complaint with the commission, in accordance with Section 161.155, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. Authorizes a complaint to be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. Requires the commission to act on a complaint made under this subsection as provided by Subchapter D.

Sec. 161.207. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION. Requires the commission to consider the following factors in assessing a sanction: the seriousness of the violation; including nature, circumstances, consequences, extent, and gravity of the violation; the history and extent of previous violations; the demonstrated

good faith of the violator, including actions taken to rectify the consequences of the violation, the penalty necessary to deter future violations; and any other matters that justice may require.

Sec. 161.208. APPEALS. (a) Authorizes a respondent to appeal the decision by filing a petition in district court in the county within 30 days after the date of the decision.

(b) Provides that an appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) Authorizes the court, if the district court renders judgment for the petitioner, and the petitioner is a county employee, to order reinstatement of the county employee, payment of back pay, or other appropriate relief.

(d) Authorizes the court, if the district court renders judgment for the petitioner, to order appropriate relief, including costs and attorney's fees.

Sec. 161.209. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. Prohibits the district court, in an appeal under Section 161.208, from substituting its judgment for the judgment of the commission on the weight of the evidence on questions committed to the commission's discretion but authorizes the court to affirm the commission's decision in whole or in part and requires the court to reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are in violation of a constitutional or statutory provision; in excess of the commission's authority; made through unlawful procedure; affected by other error of law; not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or arbitrary or capricious, characterized by abuse of discretion, or clearly an unwarranted exercise of discretion.

Sec. 161.210. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a) Requires the commission, after service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, to send to the reviewing court the original or a certified copy of the entire record of the proceeding under review. Requires that the record be filed with the clerk of the county. Authorizes the record to be shortened by stipulation of all parties to the review proceedings. Authorizes the court to assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation. Authorizes the court to require or permit later corrections or additions to the record.

(b) Authorizes a party to apply to the court to present additional evidence. Authorizes the court, if the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the commission, to order that the additional evidence be taken before the commission on conditions determined by the court. Authorizes the commission to change its findings and decisions by reason of the additional evidence and requires the commission to file the additional evidence and any changes, new findings, or decisions with the reviewing court.

(c) Requires the party seeking judicial review to offer, and requires the reviewing court to admit, the commission record into evidence as an exhibit.

(d) Requires the court to conduct the review sitting without a jury and is confined to the commission record, except that the court is authorized to receive evidence of procedural irregularities alleged to have occurred before the commission that are not reflected in the record.

Sec. 161.211. COST OF PREPARING COMMISSION RECORD. (a) Authorizes the commission to require a party who appeals a final decision under Section 161.208 to pay

one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) Provides that change imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Sec. 161.212. CRIMINAL PENALTY. (a) Provides that a county public servant or county affiliate commits an offense under this chapter if the person knowingly violates a provision of the ethics code adopted by the commission.

(b) Provides that an offense committed under this chapter is a misdemeanor punishable by a fine of not less than \$25 and not more than \$4,000.

(c) Provides that this section is cumulative of any other available sanctions under this chapter.

Sec. 161.213. VENUE. Authorizes an offense under this subchapter, including perjury, to be prosecuted in any county in which it is authorized to be prosecuted under the Code of Criminal Procedure.

[Reserves Sections 161.214-161.300 for expansion.]

#### SUBCHAPTER F. DISSOLUTION OF COMMISSION

Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. Requires the commissioners court, if after an ethics commission created pursuant to Section 161.052 has been in effect for at least one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the commission, to call an election to determine whether the commission will be dissolved.

Sec 161.302. DISSOLUTION ELECTION. (a) Requires that an election under this subchapter be held in the manner provided for an election to create a county ethics commission.

(b) Requires that the ballot for the election be printed to provide for voting for or against the proposition. Sets forth the language for the ballot.

Sec. 161.303. DISSOLUTION OF COMMISSION. Requires the commissioners court, if the proposition is approved by a majority of the qualified voters voting at the election, to declare the result and by order dissolve the ethics commission. Requires that a copy of the order dissolving the commission be placed in the minutes of the court's proceedings.

Sec. 161.304. SAVING PROVISIONS. Provides that the dissolution of a county ethics commission under this subchapter does not affect the prior operation of the ethics code adopted by the commission or any prior action taken under it; any violation of the ethics code or any penalty, forfeiture, or punishment incurred for a violation of the ethics code before the effective date of the dissolution; or any investigation, proceeding, or remedy concerning any penalty, forfeiture, or punishment, and the investigation, proceeding, or remedy is authorized to be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the commission had not been dissolved.

SECTION 2. Effective date: September 1, 2009.