

BILL ANALYSIS

Senate Research Center
82R16223 ATP-F

H.B. 2002
By: Marquez (Rodriguez)
International Relations & Trade
5/4/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent legislation authorized certain counties, such as El Paso County, to establish an ethics commission with the power to develop and enforce an ethics code governing county officials, employees, contractors, and lobbyists. Some county ethics commissions, in the course of performing their duties, have become aware of minor inefficiencies or administrative matters, such as deadlines for action, staggering of board terms, and complaint processing, that are not adequately addressed in statute and have made recommendations for statutory changes. H.B. 2002 intends to incorporate commission recommendations on these matters by revising administrative provisions governing a county ethics commission in certain counties.

H.B. 2002 amends current law relating to the county ethics commission for certain counties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.057, Local Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that members of the county ethics commission (commission) serve terms of two years. Provides that members appointed as provided by Section 161.055(a)(1) (relating to members appointed by the county judge or a county commissioner) serve terms beginning on February 1 of each odd-numbered year. Provides that members appointed as provided by Section 161.055(a)(2) (relating to members appointed by the commissioners court) serve terms beginning on February 1 of each even-numbered year.

(a-1) Requires the commissioners court, to replace or reappoint the commission members appointed as provided by Section 161.055(a)(2) whose terms expire on January 31, 2013, to appoint commission members as provided by Section 161.055(a)(2) for one-year terms to begin on February 1, 2013. Requires the members appointed as provided by Section 161.055(a)(2) to thereafter serve two-year terms. Provides that, to the extent of a conflict between this subsection and Subsection (a), this subsection controls. Provides that this subsection expires September 1, 2014.

SECTION 2. Amends Section 161.0591, Local Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that the position of chair is selected from the commission members by a majority vote of the commission members. Provides that the chair serves a term of six months. Deletes existing text providing that the position of chair alternates every six months between members appointed under Section 161.055(a)(1) and members appointed under Section 161.055(a)(2) and rotates so that each position on the commission serves as chair, and text providing for the manner of rotation.

(c) Authorizes a commission member to decline to serve as chair.

SECTION 3. Amends Sections 161.104(a) and (c), Local Government Code, as follows:

(a) Requires a person, not later than the 30th, rather than the 60th, day after the date a person is appointed to the commission, to complete training on certain matters.

(c) 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 after the 30th day after the date the person is appointed to the commission unless the person has completed a training program as required by Subsection (a), rather than until the person completes a training program that complies with this section.

SECTION 4. Amends Section 161.105, Local Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires the commission and commission staff to make available periodic training for persons covered by the ethics code adopted by the commission. Deletes existing text requiring that the periodic training for persons covered by the ethics code adopted by the commission be provided on at least a quarterly basis.

(e) Requires a person covered by the ethics code or a lobbyist or vendor required by this section to complete training to complete the training as determined by the commission.

SECTION 5. Amends Section 161.1551(d), Local Government Code, as follows:

(d) Provides that after the end of a commission member term on the standing preliminary review committee (committee), service on the committee rotates so that each position on the commission serves on the committee, beginning with the initial members of the standing preliminary review committee chosen under Subsection (c) (relating to selection of a committee member by lot) and succeeded by the next member on the list as described below:

(1) for the rotation of members appointed under Section 161.055(a)(1), the order of service is the member appointed by the county judge, followed by the members appointed by the county commissioners in order of precinct number; and

(2) for the rotation of members appointed under Section 161.055(a)(2), the order of service is the order listed by that section.

Deletes existing text providing that after the end of a commission member term on the committee, service on the committee rotates as provided by Section 161.0591 (Chair) for the rotation of the chair, except that the rotation begins with the initial members of the committee chosen under Subsection (c).

SECTION 6. Amends Sections 161.156(b), (c), (d), and (e), Local Government Code, as follows:

(b) Requires the standing preliminary review committee, not later than the 14th day, rather than the 10th business day, after the date a complaint is filed, to send written notice to the complainant and the respondent.

(c) Requires the committee, if the committee 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 14th day, rather than not later than the 21st day, after the date the notice under Subsection (b) is mailed. Requires the committee, if the committee determines that the complaint is not resubmitted within the 14-day, rather than the 21 day, period, to:

(1) dismiss the complaint; and

(2) not later than the 14th day, rather 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 committee, if the committee determines that a complaint is resubmitted under Subsection (c) within the 14-day period, rather than the 21-day period, but is not in proper form, to send the notice required under Subsection (c), and the authorizes the complainant to resubmit the complaint under that subsection.

(e) Makes a conforming change.

SECTION 7. Amends Sections 161.157(a) and (b), Local Government Code, as follows:

(a) Prohibits a county public servant, rather than the county, from suspending or terminating the employment of or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.

(b) Makes a conforming change.

SECTION 8. Amends Section 161.158(d), Local Government Code, as follows:

(d) Requires the committee, if the committee determines that the commission does not have jurisdiction over the violation alleged in the complaint, to:

(1) dismiss the complaint; and

(2) not later than the 14th day, rather 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.

SECTION 9. Amends Sections 161.159(a) and (b), Local Government Code, as follows:

(a) Provides that if the alleged violation is a Category One violation:

(1) the respondent is required to respond to the notice required by Section 161.156(b) (relating to notice from the committee regarding whether the complaint complies with form requirements) not later than the 14th day, rather than the 10th business day, after the date the respondent receives the notice; and

(2) the committee is required to set the matter for a preliminary review hearing to be held at the next committee meeting if the matter is not resolved by agreement between the committee and the respondent before the 30th day after the date the respondent receives the notice under Section 161.156(b). Deletes existing text requiring the committee to set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 161.156(b). Makes a nonsubstantive change.

(b) Provides that if the alleged violation is a Category Two violation:

(1) the respondent is required to respond to the notice required by Section 161.156(b) not later than the 14th day, rather than the 25th business day, after the date the respondent receives the notice under Section 161.156(b); and

(2) the committee is required to set the matter for a preliminary review hearing to be held at the next committee meeting if the matter is not resolved by agreement between the committee and the respondent before the 30th day after the date the respondent receives the notice under Section 161.156(b). Deletes existing text requiring the standing preliminary review committee to set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted 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). Makes a nonsubstantive change.

SECTION 10. Amends Sections 161.163(b), (c), and (d), Local Government Code, as follows:

(b) Requires the committee, not later than the 14th day after the date of the final resolution of the complaint, rather than not later than the 10th business day after the date of the final resolution of the complaint, to send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the resolution and the terms of the resolution if the committee successfully resolves and settles the complaint. Requires the committee, if the committee is unsuccessful in resolving and settling the complaint, to:

(1) Makes no changes to this subdivision; and

(2) not later than the 14th day after the date of the order, rather than not later than the 10th business day after the date of the order, send to the complainant and the respondent certain documents.

(c) Requires the committee, if the committee determines that there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has not occurred, to:

(1) Makes no changes to this subdivision; and

(2) not later than the 10th day after the date of the dismissal, rather than not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the dismissal and the grounds for dismissal.

(d) Requires the committee, not later than the 10th day after the date of the committee's determination under this subsection, rather than not later than the fifth business day after the date of the committee's determination under this subsection, to send to the complainant and the respondent a copy of the decision stating the committee's determination and written notice of the grounds for the determination.

SECTION 11. Amends Section 161.166(a), Local Government Code, to require the commission, not later than the 10th day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, rather than 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 certain documents to the respondent.

SECTION 12. Amends Sections 161.167(a) and (c), Local Government Code, as follows:

(a) Authorizes the commission, at the conclusion of the formal hearing or not later than the 40th 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 imposition of a civil penalty, if any. Deletes existing text requiring 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 imposition of a civil penalty, if any.

(c) Requires the commission, not later than the 14th day after the date the commission issues the final decision and written report, rather than not later than the 10th business day after the date the commission issues the final decision and written report, to:

(1) send a copy of the decision and report to the complainant and to the respondent; and

(2) make a copy of the decision and report available to the public during reasonable business hours.

SECTION 13. Amends Sections 161.168(d) and (e), Local Government Code, as follows:

(d) Requires the commission to resolve a complaint within three months of its receipt unless it makes a determination that additional time is required to resolve the matter, rather than within six months of its receipt unless it makes a determination that additional time is required to resolve the matter.

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

SECTION 14. Amends Section 161.172(b), Local Government Code, as follows:

(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, but does apply to the conduct of a formal hearing held under Sections 161.164 (Formal Hearing: Standard of Evidence), 161.165 (Formal Hearing: Subpoenas and Witnesses), 161.166 (Formal Hearing: Procedure), and 161.167 (Formal Hearing: Resolution). Provides that Chapter 551, Government Code, does not apply to the deliberation by the commission regarding a contested complaint following the conclusion of a formal hearing, but does apply to the meeting at which the commission issues a final decision stating the resolution of the final hearing.

SECTION 15. Amends Sections 161.173(a) and (b), Local Government Code, as follows:

(a) Provides that, except as provided by Subsection (b), (c) (relating to authorizing commission staff, for the purpose of investigating a sworn complaint, to disclose to certain persons' confidential information), or (m) (relating to authorizing the commission to disclose confidential information in making a referral to a prosecuting attorney concerning an offense under this section), proceedings at a preliminary review hearing performed by the standing preliminary review committee, rather than 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 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 standing preliminary review committee, rather than by the commission, after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimus violation has occurred is not confidential.

SECTION 16. Makes application of the change in law made by this Act to Section 161.057, Local Government Code, prospective.

SECTION 17. Effective date: September 1, 2011.