

## **BILL ANALYSIS**

Senate Research Center

H.B. 1690  
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State Affairs  
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Engrossed

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

Currently, certain criminal investigations of public officials are conducted by a single agency in Travis County, even though most often the public official under investigation is elected to office in a county other than Travis County and the acts alleged occur outside of Travis County. Interested parties assert that transferring the responsibility for investigations into allegations of criminal conduct against a public official to a law enforcement agency with statewide jurisdiction and statewide personnel would mitigate the possibility of political intervention in this criminal justice process. H.B. 1690 seeks to ensure appropriate accountability in this process.

H.B. 1690 amends the Government Code to require the investigation of a formal or informal complaint alleging an offense against public administration specified under the bill's provisions to be conducted by an officer of the Texas Rangers. The bill requires an officer of the Texas Rangers conducting an investigation of such a complaint that demonstrates a reasonable suspicion that the offense alleged in the complaint occurred to refer the complaint to the appropriate prosecutor of the county in which venue is proper as established by the bill.

H.B. 1690 authorizes a prosecutor to whom such a complaint has been referred to request that the court with jurisdiction over the complaint permit the prosecutor to be recused from the case for good cause and establishes that the prosecutor is considered disqualified if the court approves the request. The bill requires the presiding judges of the administrative judicial regions, following the recusal of such a prosecutor, to select the replacement prosecutor by a majority vote. The bill authorizes the replacement prosecutor to pursue a waiver to extend the statute of limitations for the offense.

The bill authorizes an officer of the Texas Rangers to investigate offenses against public administration and authorizes the Texas Rangers to refer the investigation of a complaint alleging such an offense involving a person who is a member of the executive branch to the local law enforcement agency that would otherwise have authority to investigate the complaint, if a conflict of interest arises from the conduct of an investigation by the officers of the Texas Rangers. The bill requires local law enforcement to comply with all of the bill's requirements regarding public integrity prosecutions in conducting an investigation of a complaint alleging an offense against public administration.

H.B. 1690 establishes venue for a public integrity prosecution in the county in which the defendant resides, if the defendant is a natural person, or, if the defendant holds an office of the executive branch subject to a constitutional residency requirement, in the county in which the defendant resided at the time of election to that office or another executive branch office subject to that residency requirement that the defendant held immediately before election to the office being held by the defendant. The bill prohibits its provisions regarding public integrity prosecution from being construed as limiting the attorney general's authority to prosecute Election Code offenses.

H.B. 1690 changes from the Travis County district attorney to the appropriate prosecuting attorney as provided under the bill's public integrity prosecution provisions the entity to which the president of the senate or speaker of the house of representatives must certify a statement of facts relating to a prosecution for contempt of the legislature by failing to cooperate with an applicable legislative committee. The bill transfers from the Travis County district attorney to the prosecuting attorney to whom such a statement of facts is certified or the prosecutor selected

under the bill's provisions by the presiding judges of the administrative judicial regions following recusal, if applicable, the requirement to bring the matter relating to a prosecution for contempt of the legislature before the grand jury for action and the requirement to prosecute any such indictment returned by the grand jury

H.B. 1690 amends current law relating to the prosecution of offenses against public administration, including ethics offenses.

### **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 Chapter 41, Government Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. PUBLIC INTEGRITY PROSECUTIONS**

Sec. 41.351. DEFINITIONS. Defines "offense," "prosecute," "public integrity prosecution," "state agency," "state employee," and "state officer."

Sec. 41.352. OFFENSES AGAINST PUBLIC ADMINISTRATION. Provides that for purposes of this subchapter, the following are offenses against public administration:

(1) an offense under Title 8 (Offenses Against Public Administration), Penal Code, committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment;

(2) an offense under Chapter 301 (Legislative Organization), 302 (Speaker of the House of Representatives), 571 (Texas Ethics Commission), 572 (Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest), or 2004 (Representation Before State Agencies) committed by a state officer or a state employee in connection with the powers and duties of the state office or state employment or by a candidate for state office;

(3) an offense under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions) committed by a state officer in connection with the powers and duties of the state office; and

(4) an offense under Title 15 (Regulating Political Funds and Campaigns), Election Code, committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

Sec. 41.353. INVESTIGATION OF PUBLIC INTEGRITY OFFENSES. (a) Requires that an investigation of a formal or informal complaint alleging an offense against public administration under this subchapter, unless another state agency is designated as having primary responsibility for an investigation of a complaint alleging an offense against public administration, be conducted by an officer of the Texas Rangers. Requires the Texas Rangers, if a state agency other than the Texas Rangers has primary responsibility for an investigation of a complaint alleging an offense against public administration, to provide assistance if assistance is requested by that state agency.

(b) Provides that nothing in this subchapter shall prevent the state auditor from conducting an investigation under Chapter 321 (State Auditor), including an investigation of a formal or informal complaint alleging an offense against public administration.

(c) Requires the officer of the Texas Rangers conducting the investigation, if an investigation conducted by the Texas Rangers of a complaint alleging an offense

against public administration demonstrates a reasonable suspicion that the offense alleged in the complaint occurred, to refer the complaint to the appropriate prosecutor of the county in which venue is proper under Section 41.357.

(d) Requires the prosecutor to whom the complaint was referred, not later than the 90th day before the expiration of the statute of limitations for the prosecution of an offense against public administration alleged in a complaint referred by the Texas Rangers under Subsection (c), to notify the Texas Rangers of the status of the case. Requires the Texas Rangers to immediately notify the legislature if a prosecutor does not provide the status notification to the Texas Rangers within the time provided in this subsection.

Sec. 41.354. RECUSAL OF PROSECUTOR. (a) Defines "judges" for purposes of this section.

(b) Authorizes a prosecutor to whom a complaint has been referred under Section 41.353(c) or the defendant to request that the court with jurisdiction over the complaint order the prosecutor to be recused from the case for good cause. Requires the prosecutor, if the court approves the request, to be considered disqualified.

(c) Requires a prosecutor to whom a complaint has been referred under Section 41.353(c) and who has, either currently or in the past, a financial or other business relationship with the defendant to request that the court with jurisdiction over the complaint permit the prosecutor to be recused from the case for good cause. Requires the prosecutor, if the court approves the request, to be considered disqualified.

(d) Requires a prosecutor to whom a complaint has been referred under Section 41.353(c) to disclose to the court if the prosecutor, in either a personal or professional capacity, has ever made a campaign contribution to or received a campaign contribution from the person against whom the complaint was made or a political committee organized for the benefit of the person against whom the complaint was made. Requires the court to consider a disclosure made under this subsection in determining whether good cause exists for recusal.

(e) Requires the presiding judges of the administrative judicial regions (judges), following the recusal of a prosecutor under Subsection (b) or (c), to select the prosecutor for prosecution of the complaint by a majority vote. Requires the prosecutor for an offense against public administration to represent another county within the same administrative judicial region as the county in which venue is proper under Section 41.357. Authorizes a prosecutor to be selected under this section only with the prosecutor's consent to the appointment.

(f) Requires the judges, in selecting a prosecutor under this section, to consider the proximity of the county or district represented by the prosecutor to the county in which venue is proper under Section 41.357.

(g) Authorizes the prosecutor selected to prosecute the public integrity offense under this section to pursue a waiver to extend the statute of limitations by no more than two years. Authorizes the prosecutor, if the waiver adds less than two years to limitations, to pursue a successive waiver for good cause shown to the court, providing that the total time of all waivers does not exceed two years.

Sec. 41.355. COOPERATION OF STATE AGENCIES AND LOCAL LAW ENFORCEMENT AGENCIES. (a) Requires a state agency or local law enforcement agency, to the extent allowed by law, to cooperate with the prosecutor of a public integrity prosecution by providing information requested by the prosecutor as necessary to carry out the purposes of this subchapter.

(b) Provides that information disclosed under this section is confidential and not subject to disclosure under Chapter 552 (Public Information).

Sec. 41.356. CONFLICT OF INTEREST. (a) Authorizes the Texas Rangers to refer the investigation of a complaint alleging an offense against public administration involving a person who is a member of the executive branch to the local law enforcement agency that would otherwise have authority to investigate the complaint, if a conflict of interest arises from the conduct of an investigation by the officers of the Texas Rangers.

(b) Requires the Texas Rangers if, in the course of conducting an investigation of a complaint, the Texas Rangers determine that an individual who is assigned to the security detail of a state official is a fact witness or has knowledge of the facts underlying the complaint, to refer the investigation of the complaint to another law enforcement agency. Requires the public safety director to notify the chair of the Public Safety Commission of the referral of a complaint to another law enforcement agency within 24 hours after the referral is made.

(c) Requires the Texas Rangers, if a formal or informal complaint alleges that the public safety director or a deputy or assistant director of the Department of Public Safety has committed an offense against public administration, to refer the investigation of the complaint to another law enforcement agency. Requires the public safety director to notify the chair of the Public Safety Commission of the referral of a complaint to another law enforcement agency within 24 hours after the referral is made.

(d) Requires that local law enforcement comply with all requirements of this subchapter in conducting an investigation of a complaint alleging an offense against public administration as provided by this section.

Sec. 41.357. VENUE. (a) Provides that, notwithstanding Chapter 13 (Venue), Code of Criminal Procedure, or any other law, and except as provided by Subsection (c) or (d), if the defendant is a state officer, venue for a prosecution under this subchapter is the county in which the defendant resided at the time the offense was committed.

(b) Provides that, notwithstanding any other law, if the defendant is a state employee who is not a state officer, venue for a prosecution under this subchapter is the county in which the conduct constituting the offense against public administration occurred.

(c) Provides that if the defendant holds an office of the executive branch subject to a residency requirement under Article IV (Executive Department), Texas Constitution, venue for a prosecution under this subchapter is the county in which the defendant resided at the time the defendant was elected to the term of that office during which the offense was committed.

(d) Provides that a complaint alleging an offense against public administration under this subchapter alleges that an offense was committed by two or more defendants, venue for the prosecution of all defendants under this subchapter is any county in which the conduct constituting the offense against public administration occurred.

Sec. 41.358. PROSECUTION OF CERTAIN OFFENSES BY ATTORNEY GENERAL. Provides that nothing in this subchapter shall be construed as limiting the authority of the attorney general to prosecute offenses under Section 273.021 (Prosecution by Attorney General Authorized), Election Code.

SECTION 2. Amends Sections 301.027(b) and (c), Government Code, as follows:

(b) Requires the president of the senate or speaker, if the president of the senate or speaker receives a report or statement of facts as provided by Subsection (a) (providing

that if a person is summoned by either house or any legislative committees as prescribed by certain sections and fails to appear or, refuses to answer relevant questions, or fails to produce required books, papers, records, or documents while the legislature is in session, the fact of the failure may be reported to either house), to certify the statement of facts the appropriate prosecuting attorney, rather than the Travis County district attorney, as provided under Section 41.353(c) under the seal of the senate or house of representatives, as appropriate.

(c) Requires the prosecuting attorney, rather than the Travis County district attorney, to whom a statement of facts is certified under Subsection (a) or the prosecutor selected under Section 41.354(e), if applicable, to bring the matter before the grand jury for action. Requires the prosecuting attorney, rather than the district attorney, if grand jury returns an indictment, to prosecute the indictment.

SECTION 3. Amends Section 411.022, Government Code, by adding Subsection (c), as follows:

(c) Provides that an officer of the Texas Rangers has the authority to investigate offenses against public administration prosecuted under Subchapter F, Chapter 41.

SECTION 4. Provides that Subchapter F, Chapter 41, Government Code, as added by this Act, applies only to the prosecution of an offense against public administration committed on or after September 1, 2015. Provides that, for purposes of this section, an offense is committed before September 1, 2015, if any element of the offense occurs before that date.

SECTION 5. Requires that the investigation of an offense against public administration that is classified as ongoing or pending on the effective date of this Act remain with the entity that is conducting the investigation, unless the entity consents to transfer the investigation to the Texas Rangers.

SECTION 6. Severability clause.

SECTION 7. Effective date: September 1, 2015.