

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2189  
By: Huffman  
State Affairs  
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Committee Report (Substituted)

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

The Code of Criminal Procedure and the Texas Government Code specify who may serve as an attorney pro tem. That is, who may stand in as an attorney for the state when such an attorney is disqualified to act in a case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of their office.

S.B. 2189 provides that only prosecutors (county attorneys with criminal jurisdiction, district attorneys, or criminal district attorneys—or their assistants) and assistant attorneys general may serve as attorneys pro tem. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 2189 amends current law relating to the appointment of an attorney pro tem for certain criminal proceedings.

### **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 Articles 2.07(a), (b), (b-1), and (d), Code of Criminal Procedure, as follows:

(a) Authorizes the judge of the court in which an attorney represents the state, under certain circumstances, to appoint, from any county or district, an attorney for the state or an assistant attorney general, rather than appoint any competent attorney, to perform the duties of the office during the absence or disqualification of the attorney for the state. Makes nonsubstantive changes.

(b) Provides that, except as otherwise provided by this subsection, rather than except as otherwise provided by this subsection and if the appointed attorney is also an attorney for the state, the duties of the appointed office are additional duties of the appointed attorney's present office, and the attorney is not entitled to additional compensation. Provides that this subsection does not prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to an attorney who is appointed to perform additional duties. Deletes existing text requiring nothing herein to prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to an attorney for the state who is appointed to perform additional duties.

(b-1) Authorizes an attorney for the state who is not disqualified to act to request the court to permit the attorney's recusal in a case for good cause, and provides that on approval by the court the attorney is disqualified, rather than to request the court to permit him to recuse himself in a case for good cause and upon approval by the court is disqualified.

(d) Redefines "attorney for the state."

SECTION 2. Amends Article 52.09(c), Code of Criminal Procedure, to provide that an attorney pro tem appointed under Article 52.01(d) (relating to requiring the district judge to appoint one attorney pro tem to assist in the proceeding under certain circumstances) is entitled to compensation in the same amount and manner as an attorney appointed to represent an indigent person, rather than provides that an attorney pro tem appointed under Article 52.01(d) of this code is entitled to compensation in the same manner as an attorney pro tem appointed under Article 2.07 (Attorney Pro Tem) of this code.

SECTION 3. Amends Section 574.004, Government Code, as follows:

Sec. 574.004. ASSISTANCE BY ATTORNEY GENERAL. Provides that this chapter (Dual Office Holding) does not prevent the Texas attorney general (attorney general) from providing assistance to certain attorneys on request by allowing assistant attorneys general to serve as duly appointed and deputized assistant prosecutors, nor does this chapter prohibit the appointment of an assistant attorney general as an attorney pro tem pursuant to Article 2.07, Code of Criminal Procedure. Deletes existing text requiring that nothing in this chapter prevent the attorney general from providing assistance to certain attorneys on request by allowing assistant attorneys general to serve as duly appointed and deputized assistant prosecutors, nor does this chapter prohibit a certain appointment.

SECTION 4. Repealers: Articles 2.07(c) (relating to the qualification of the appointed attorney, if the appointed attorney is not an attorney for the state, to perform the duties of the office for a certain period), (e) (relating to providing that “attorney for the state” includes an assistant attorney general in certain subsections of this article), (f) (relating to providing that “competent attorney” includes an assistant attorney general in Subsection (a) of this article), and (g) (relating to authorizing a certain appointed attorney to be paid a reasonable fee for performing certain duties), Code of Criminal Procedure.

SECTION 5. Makes application of Article 2.07, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 6. Effective date: September 1, 2017.