

**SUBJECT:** Establishing procedures for public integrity prosecutions

**COMMITTEE:** General Investigating and Ethics — committee substitute recommended

**VOTE:** 4 ayes — Kuempel, S. Davis, Hunter, Larson

3 nays — Collier, Moody, C. Turner

**SENATE VOTE:** On final passage, April 9 — 20-11 (Ellis, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

**WITNESSES:** (*On House companion bill, HB 1690*)

For — None

Against — Jules Dufresne, Common Cause Texas; Carol Birch, Public Citizen, Texans for Public Justice; Sara Smith, Texas Public Interest Research Group; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas)

On — Brantley Starr, Office of Attorney General; David Slayton, Office of Court Administration, Texas Judicial Council; Steven McCraw, Texas Department of Public Safety; Robert Kepple, Texas District and County Attorneys Association; Gregg Cox, Travis County District Attorney's Office, Public Integrity Unit

**BACKGROUND:** The Travis County District Attorney's Office established the Public Integrity Unit in 1978 to investigate and prosecute crimes related to state government. Cases include fraud and financial crimes targeting various state programs and public corruption cases against state employees and officials involving offenses in Travis County. The Legislature has funded the unit since the early 1980s. The unit's funding for fiscal 2014-15 was vetoed by the governor.

**DIGEST:** CSSB 10 would add to Government Code, ch. 41 a new subchapter establishing procedures for public integrity prosecutions involving elected and appointed state officials and state agency employees.

The bill would include the following as offenses against public administration:

- offenses listed in Title 8 of the Penal Code, such as bribery and coercion, when committed by a state officer or state employee in connection with the powers and duties of the state office or employment;
- conduct that violates Government Code requirements for the members of the Legislature, including campaign finance and personal financial disclosure requirements;
- violations of nepotism laws committed by state officers; and
- violations of Election Code regulations of political funds and campaigns committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

The bill would not limit the authority of the attorney general to prosecute election law offenses.

**Investigations.** Officers of the Texas Rangers would be required to investigate formal or informal complaints alleging an offense against public administration, unless another state agency is designated as having primary responsibility. The Rangers would be required to provide assistance if requested by a state agency with primary responsibility.

*Conflicts of interest.* If there were a conflict of interest involving an investigation of a member of the executive branch, the Rangers could refer an investigation to the local law enforcement agency that would otherwise have authority to investigate the complaint. Local law enforcement would have to comply with all the bill's requirements.

If, in the course of an investigation, the Rangers would determine that an individual who is assigned to the security detail of a state official is a fact witness or has knowledge of facts underlying the complaint, the Rangers must refer the investigation to another law enforcement agency. If a

formal or informal complaint made allegations against the public safety director or a deputy or assistant director of the Department of Public Safety, the Rangers would be required to refer the investigation to another law enforcement agency.

**Prosecutions.** The bill would provide different venues for the prosecution of complaints that have been referred by the Texas Rangers, depending on whether the individual being prosecuted was a statewide elected official, member of the Legislature, or a state agency employee.

If a defendant in a public integrity prosecution was an elected official required to reside in the state capital, venue would be the county in which the defendant resided at the time the defendant was elected to statewide office.

If a defendant was a state officer — defined as an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency — venue would be the county in which the defendant resided at the time the offense was committed.

If a defendant was a state employee who is not a state officer, venue would be the county in which the conduct constituting the offense against public administration occurred.

If a complaint alleged an offense committed by two or more defendants, venue would be any county in which the conduct occurred.

*Recusal.* A prosecutor or defendant could request to be recused from a case for good cause. A prosecutor who had a current or past financial or other business relationship with the defendant would be required to request to be recused. A prosecutor would be required to disclose any campaign contributions made to or received 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. The court would consider such a disclosure in determining whether good cause

existed for recusal.

If the court with jurisdiction over the complaint approved the request, an alternate prosecutor would be selected by a majority vote of the presiding judges of the state's nine administrative judicial regions. The administrative judges would be required to select an alternate prosecutor from the same administrative judicial region and would have to consider the proximity of the county or district represented by the alternate prosecutor to the county in which venue is proper. An alternate prosecutor must consent to the appointment.

*Statute of limitations.* The alternate prosecutor could pursue a waiver to extend the statute of limitations for the offense by no more than two years.

*Notice.* Not later than the 90th day before the expiration of the statute of limitations for prosecution of an offense alleged in a complaint, the prosecutor would be required to notify the Rangers of the status of the case. If a prosecutor did not provide the status notification, the Rangers would be required to immediately notify the Legislature.

The bill would remove the Travis County district attorney and add the "appropriate prosecuting attorney" to prosecutions for contempt of the Legislature under Government Code, sec. 301.027. Upon receiving a statement of facts concerning contempt allegations, the Senate president or House speaker would be required to certify it to the appropriate prosecuting attorney under the bill's venue provisions. The prosecuting attorney or an alternate prosecutor selected under the bill's recusal provisions would have to bring the matter before the grand jury for action and, if the grand jury returned an indictment, would have to prosecute the indictment.

**Confidentiality.** The bill would require state agencies and local law enforcement agencies to cooperate with public integrity prosecutions by providing information requested by the prosecutor and would exempt disclosed information from state public information laws.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date. An investigation classified as ongoing or pending on the effective date would remain with the entity that was conducting the investigation, unless the entity consented to transfer the investigation to the Rangers.

The bill states that if any provision in the bill or its application to any person or circumstance was held invalid, the invalidity would not affect other provisions or applications.

**SUPPORTERS  
SAY:**

CSSB 10 would establish a fairer process for investigating and prosecuting elected state officials for public corruption crimes, such as bribery and violations of ethics laws. Complaints would be investigated by the Texas Rangers and prosecuted in the home county of the elected official. This process would disperse power from a single district attorney's office in the state capital to prosecutors around the state. This spreading of authority could help alleviate concerns that politics has played a role in certain high-profile prosecutions of state officials in Travis County.

The Texas Rangers are an elite law enforcement agency with sufficient training and experience to conduct public integrity investigations. The Rangers already have a unit dedicated to public corruption cases and could easily absorb the small number of complaints brought against state officials each year. The Rangers also have civil service protections that could give them an added layer of independence from political pressure that could be connected to an investigation.

The bill would guard against possible conflicts of interest during an investigation and prosecution. The Rangers would be required to refer certain cases to another law enforcement agency. A prosecutor who had financial or business relationships with a defendant would be required to turn the case over to an alternate prosecutor. A prosecutor also would have to disclose campaign contributions made to or received from a defendant.

The bill would create a neutral venue and would allow defendants to be

tried by a jury of their peers. Contrary to opponents' suggestions that the hometown venue would favor a defendant, the criminal prosecution likely would be more accessible to local voters and covered by local media. There is precedent in state law for trying defendants in the county where they reside for offenses committed elsewhere. For example, Code of Criminal Procedure, art. 13.10 provides that certain offenses committed outside Texas by a state officer acting under state authority may be prosecuted in the county where the officer resides.

The bill would not disturb Travis County's jurisdiction over offenses involving insurance fraud and motor fuels tax collections. The Travis County D.A.'s Public Integrity Unit would continue to prosecute fraud and financial crimes targeting various state programs and certain crimes committed by state employees. These cases make up the vast majority of the Public Integrity Unit's caseload.

Concern about the confidentiality of information provided in connection with public integrity prosecutions is overstated. Current law contains exceptions from public information laws for records and information if the release of the information would interfere with a criminal investigation or prosecution.

OPPONENTS  
SAY:

CSSB 10 could result in less accountability in public corruption cases by giving elected state officials a "home-field advantage" during a prosecution. The bill would make a significant change from the usual prosecution of crimes in the county where they occurred.

Placing venue in an official's home county could set the stage for crony politics. For example, the local prosecutor overseeing the case may be friends or political acquaintances with the official being prosecuted.

In the event that a prosecution was transferred to another county, the bill also could increase costs for public corruption prosecutions if witnesses were required to travel to a county far from where the crime occurred.

There could be conflicts of interest involving the Texas Rangers, which is a division of the Texas Department of Public Safety (DPS). The DPS

director is hired by the Public Safety Commission, whose five members are appointed by the governor. Many other high-ranking state executives also are appointed by the governor. While the Rangers could refer an investigation involving a member of the executive branch to a local law enforcement agency, they would not be required to transfer the case.

The bill would exempt from state public information laws information from state agencies and local law enforcement provided in connection with public integrity prosecutions. This blanket exemption could result in information that normally would be available to the public through open records laws becoming off limits when a local prosecutor takes over a case.

The bill is based on incorrect perceptions that the Travis County District Attorney has made partisan decisions in public corruption prosecutions. Since its inception, the D.A.'s Public Integrity Unit has prosecuted elected officials from both political parties. Additionally, the bill could complicate the Travis County D.A.'s ability to pursue certain charges involving employees who lived outside Travis County.

OTHER  
OPPONENTS  
SAY:

CSSB 10 contains confusing and potentially overbroad language that would require a prosecutor who has or had a financial or business relationship with a defendant to seek a recusal. This could force a prosecutor to step aside in cases where the relationship with a defendant was minimal or had occurred many years earlier. It would be best to leave decisions about whether to seek a recusal to prosecutors' sound discretion, a standard that has historically worked well.

Provisions allowing a defendant to ask for a prosecutor's recusal could create an opportunity for a defendant to continually attack a prosecutor. Existing law covers circumstances in which a defendant might be able to show a due process violation and seek the recusal of a prosecutor.

The bill would require the Texas Rangers to refer cases to another agency under certain circumstances that could present conflicts of interest. Instead of trying to address specific potential conflict, the bill should allow the Rangers to exercise common sense and decide when to refer a case.