

BILL ANALYSIS

Senate Research Center

S.B. 252
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Intergovernmental Relations
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As Filed

DIGEST

Currently, a county officer may be removed from office based on incompetency, official misconduct, or intoxication. A district judge appointed to a county officer's case is given the discretion to temporarily suspend and appoint a temporary replacement for the suspended officer, but the officer may only be removed following a trial by jury. S.B. 252 sets forth conditions and establishes processes whereby county officers may be removed from office, if certain acts are committed.

PURPOSE

As proposed, S.B. 252 sets forth conditions and establishes processes whereby county officers may be removed from office, if certain acts are committed.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 87A, Local Government Code, by amending Section 87.001 and adding Section 87.002, as follows:

Sec. 87.001. NO REMOVAL FOR PRIOR ACTION. Prohibits an officer from being removed under this chapter for an act committed before being elected to office, unless otherwise provided in Subsection (b). Provides that an officer may be removed if the committed act was unknown to the general public when the person was elected. Makes conforming changes.

Sec. 87.002. DURATION OF SUSPENSION. Provides that the suspension of an officer remains in effect and may not be enjoined until all removal actions in which the officer is a defendant are resolved.

SECTION 2. Transfers Sections 87.011 and 87.012, Local Government Code, to Chapter 87A, Local Government Code, and redesignates and amends Sections 87.003 and 87.004, Local Government Code, as follows:

Sec. 87.003. DEFINITIONS. Redesignated from existing Section 87.011.

Sec. 87.004. OFFICERS SUBJECT TO REMOVAL. Redesignated from existing Section 87.012. Makes a conforming change.

SECTION 3. Amends Section 87.013, Local Government Code, to set forth conditions for removal of an officer to include, public intoxication, or conduct that constitutes a misdemeanor offense involving moral turpitude or a felony offense. Provides that public intoxication is not a ground for removal if it was caused by a substance issued on the direction and prescription of a licensed physician practicing in this state. Makes conforming changes.

SECTION 4. Amends Section 87.015, Local Government Code, as follows:

Sec. 87.015. PETITION FOR REMOVAL. Authorizes a petition for the removal of an officer (removal petition) to be filed by an attorney authorized to represent the state in a removal proceeding, or any resident who has never been convicted of a misdemeanor involving moral turpitude or a felony offense. Sets forth requirements of the petition. Makes conforming changes.

SECTION 5. Amends Chapter 87B, Local Government Code, by adding Section 87.0155, as follows:

Sec. 87.0155. REPRESENTATION OF STATE. Requires the county attorney for the county in which the officer holds office to represent the state in a proceeding for the removal of an officer under this chapter, unless otherwise provided in this section. Requires the district attorney to represent the state in a proceeding to remove a county attorney from office. Requires the county attorney from an adjoining county who is selected by the commissioners court of the county in which the proceeding is pending to represent the state. Requires the county attorney from an adjoining county who is selected by the commissioners court of the county in which the proceeding is pending, to represent the state if the attorney who would otherwise represent the state is the subject of a pending removal proceeding. Requires the attorney representing the state in the criminal action to represent the state in the removal action unless the attorney is disqualified from representing the state in the removal action.

SECTION 6. Amends Section 87.016, Local Government Code, as follows:

Sec. 87.016. New heading: CITATION OF PARTIES. Requires the person filing a petition to apply in writing to the district judge to whom the case is assigned for an order requiring a citation and a certified copy of the petition to be served on the officer, after a petition for removal is filed and before a citation is issued. Requires the judge to issue the order of citation as requested in the application if the petition is filed by the state. Authorizes the judge to refuse to issue the order of citation if the petition is filed by a person other than the state. Requires the judge to issue the order by the third day after the date the application is submitted, if the order is granted. Requires the clerk to issue the citation to the defendant and, if the application is submitted by a person other than the state, a copy of the order for citation and a certified copy of the petition to the attorney designated to represent the state. Requires the judge to require the person other than the state filing the petition to post security for costs. Requires the citation to order the officer to appear and answer the petition after the fifth and before the 21st day after the date the citation is served. Makes conforming changes.

SECTION 7. Amends Chapter 87B, Local Government Code, by adding Section 87.0161, as follows:

Sec. 87.0161. APPOINTMENT OF VISITING JUDGE. Requires the judge to request the presiding judge of the court to assign another judge who is not a resident of the county to dispose of the suit and to take no further action in the case, if the petition is not dismissed. Authorizes the judge ordering service of citation to order the suit dismissed, if the attorney for the state files a motion to dismiss the case before the other judge is appointed.

SECTION 8. Amends Section 87.017, Local Government Code, as follows:

Sec. 87.017. SUSPENSION PENDING TRIAL; TEMPORARY APPOINTEE. Requires the district judge appointed to the case to order the officer to appear and show why the officer should not be suspended from office during the pendency of the removal suit. Requires the judge to temporarily suspend and enjoin the officer from performing official duties, if the judge finds that suspension of the officer is necessary to ensure orderly performance of the duties of the office. Sets forth responsibilities and actions the judge shall take, if the officer is suspended. Requires the appointing authority to appoint a person to perform temporarily the duties of the suspended officer after receiving the order of suspension under Subsection (a). Requires the temporary appointee to perform the duties of the

suspended officer until the officer is removed from office, the removal action is dismissed, the final judgment establishes the officer's right to the office, or the office becomes vacant and is filled. Requires the temporary appointee to possess qualifications for the office. Requires the pay of the temporary appointee to come from the general fund of the county and to be equal to that of the suspended officer. Requires the county to reinstate the officer if the removal action is dismissed. Deletes text requiring the appointee to execute a bond. Makes conforming changes.

SECTION 9. Amends Chapter 87B, Local Government Code, by adding Section 87.0171, as follows:

Sec. 87.0171. ABATEMENT OF PROCEEDINGS PENDING CRIMINAL PROSECUTION. Authorizes the judge to abate the proceedings under this subchapter, excluding the issuance of a citation under Section 87.016, and the temporary suspension under Section 87.017, until certain court decisions are made, if a criminal prosecution is pending against the officer and the act serves as grounds for removal.

SECTION 10. Amends Section 87.018, Local Government Code, as follows:

Sec. 87.018. TRIAL. Authorizes an officer to be removed without a trial by jury if the officer, with the written consent of the state and the judge, files a written waiver of the officer's right to trial by jury. Requires the judge to indicate in the judgment which grounds are sustained by the evidence and which are not. Makes conforming changes.

SECTION 11. Amends Section 87.019, Local Government Code, as follows:

Sec. 87.019. New heading: NEW TRIAL OR APPEAL. Authorizes a party to a removal action other than the state to move for a new trial or appeal the final judgment to the court of appeals. Requires the state to file a motion for new trial or perfect its appeal by the 10th day after the date the court enters its written judgment. Requires the trial court by order to expedite the preparation of all documents required for an appeal. Requires the court of appeals to accelerate an appeal. Requires the appellate court, rather than the court of appeals, to issue its mandate, if the trial court judgment is not set aside or suspended. Makes conforming changes.

SECTION 12. Amends 87C, Local Government Code, by amending Sections 87.031 and 87.032 and by adding Section 87.033, as follows:

Sec. 87.031. IMMEDIATE REMOVAL. Sets forth conditions stated in a court of record that provide for removal of officers from office and for vacancy of the office unless an appeal is filed. Requires the court rendering judgment in such a case to include an order documenting the removal of the officer in the judgment. Makes conforming changes.

Sec. 87.032. New heading: APPEAL. Requires the order of removal to remain in effect if the officer appeals the judgment.

Sec. 87.033. SUSPENSION FOLLOWING INDICTMENT FOR CRIMINAL OFFENSE. Authorizes a district or county attorney in the county where the officer holds office to apply in writing to a district judge for an order to suspend the officer pending the criminal prosecution, if an indictment by a grand jury is returned or an information is filed against an officer for a crime involving official misconduct. Requires the application to include a statement of criminal charges for the officer along with the request that the person be temporarily suspended from office and enjoined from performing official duties pending criminal prosecution. Requires a certified copy of the indictment to be attached to the application. Requires the judge to order the clerk of the court to issue a citation and a certified copy of the application to be served on the officer. Sets forth requirement for appearance of the officer as ordered by the court. Requires the court to proceed with the suspension hearing as provided by Subchapter B. Requires the court to reinstate an officer suspended under this section if the officer is acquitted of all charges, except as provided by

Section 87.002.

SECTION 13. Emergency clause.
 Effective date: 90 days after adjournment.