

PROPOSED AMENDMENT TO LOCAL GOVERNMENT CODE

ADD CHAPTER 161. COUNTY ETHICS COMMISSION

LOCAL GOVERNMENT CODE

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE B. COUNTY OFFICERS AND EMPLOYEES

CHAPTER 161. COUNTY ETHICS COMMISSION

SUBCHAPTER A. CREATION OF A COUNTY ETHICS COMMISSION IN CERTAIN
COUNTIES

Sec. 161.001. ELIGIBLE COUNTIES. A county with a population of 650,000 or more that is located on the international border may, in accordance with this subchapter, create an ethics code and ethics system to include all county officers, candidates for county offices, county employees, and county affiliates.

Sec. 161.002. DEFINITIONS. In this subchapter:

- (1) "commission" means a county ethics commission.
- (2) "commission staff" means county employees assigned to provide administrative support to the commission
- (3) "county office" or "county officer" means a county judge, county commissioner, county attorney, sheriff, county tax assessor-collector, county clerk, district clerk, [*county treasurer - none in EP but if others join in*], county auditor, county purchasing agent, and constable.
- (4) "County employee" does not include a person covered

by Subdivision (3).

(4) "County public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following of the County, even if he or she has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of the County government;

(B) an attorney at law or notary public when participating in the performance of a governmental function; or

(C) a candidate for nomination or election to public office; or

(D) a person who is performing a governmental function under a claim of right although he or she is not legally qualified to do so.

(5) "County agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office of the County.

(6) An "agent of the County" includes a County appointee to a County agency or to a multi-jurisdictional board, whether the position is compensated or not.

(7) "County affiliates" shall be as described and determined by order of the commissioners court, upon recommendation of the commission, but may include,

(a) All persons whose goods and services are purchased under the terms of a purchase order or contractual agreement with the County;

(b) Employees of the judicial branch of the county who are not specifically subject to the Code of Judicial Conduct; or

(c) As determined by the county, any other persons doing business with the county of El Paso.

Sec. 161.003. CREATION BY ORDER. (a) A county ethics system may be created by an order adopted by a majority of the members of the commissioners court of the county.

(b) A copy of an order adopted under this section shall be placed in the minutes of the court's proceedings. The copy of the order is public information.

Sec. 161.004. CREATION BY ELECTION. (a) A county ethics system may be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) The commissioners court by order may call an election on the question of the creation of a county ethics system.

(c) The commissioners court shall hold the election

called under this section on the first authorized uniform election date prescribed by Chapter 41, Election Code that allows sufficient time for publication of the notice required by Subsection (e) and for compliance with any other requirements established by law.

(d) The order calling the election must specify the date, time, and place of the election, the form of the ballots, and the name of the presiding judge for each voting place.

(e) In addition to the notice required by Chapter 4, Election Code, the commissioners court must publish in a newspaper of general circulation in the county, and on the home page of the county website, a substantial copy of the order calling the election. The first newspaper publication must be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks, and the notice on the county website shall remain on the homepage for the 15 days prior to the election.

Sec. 161.005. BALLOTS AND VOTING AT ELECTION TO CREATE SYSTEM. (a) Each qualified voter of the county is entitled to vote at the election.

(b) The commissioners court shall order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county ethics system."

Sec. 161.006. RESULT OF ELECTION TO CREATE SYSTEM. (a) The presiding judge of each voting place shall supervise the counting of votes cast at the election.

(b) Within 24 hours after the election, each judge shall certify to the commissioners court the results of the election at the voting place.

(c) A copy of the results of the election shall be filed with the county clerk. The copy on file with the county clerk is a public record.

(d) If the proposition is approved, the commissioners court shall declare the result and by order create the county ethics system. A copy of the order creating the system shall be placed in the minutes of the court's proceedings.

Sec. 161.007. APPOINTMENT OF COMMISSION; REMOVAL OF MEMBERS.

(a) If an ethics system is created under this subchapter, within 60 days of the commissioners court order creating the system as provided in Section 161.003 or Section 161.006 (the "court order"),

(i) the county judge and every county commissioner shall each appoint one person to serve as a member of the commission that administers the system (the "initial appointees"); and

(ii) the commissioners court shall order publication of a notice seeking applicants for two public representative

members of the commission.

(b) The county commissioners court shall set the date for the initial meeting of the initial appointees, to be set no sooner than the 60 days after the court order and no later than 90 days after the court order.

(c) At the initial meeting of the commission, the initial appointees shall elect one of the members as chair of the commission.

(d) No later than 120 days after the court order, the initial appointees to the commission shall elect two public representatives from the applications received pursuant to section 161.007(a)(ii). Thereafter the entire board shall select the two public representatives.

(e) Each member of the commission is appointed for a term of three years. However, the initial members of the commission shall determine by lot which four of them will serve a term of three years and which three of them will serve a term of two years.

(f) Vacancies in the commission shall be filled for the remainder of the unexpired term as follows:

(1) if named by an elected official, by appointment of that same elected official or the official's successor; however, if the elected official or successor does not name a replacement within 60 days of the vacancy, the commission may select the replacement member by a majority vote;

(2) if named by the commission, by the commission.

(g) The commission shall meet on a regular basis. Such meetings shall be subject to the provisions of the Open Meeting Act.

(h) To be eligible for appointment to the commission, a person must:

(1) be at least 30 years old; and

(2) have resided in the county for the three years immediately preceding the date on which the person's term will begin.

(i) The following persons are not eligible to be members of the commission:

(1) Elected officials;

(2) County employees;

(3) County affiliates;

(4) Persons employed as lobbyists;

(5) Persons convicted of a crime;

(6) Persons who are delinquent in payment of local, state, or federal taxes.

(j) Removal of commission members

(i) The commissioners court may remove for misconduct a commission member after a hearing at which the commission member and any interested person may appear. In order to remove a

commission member, the commissioners court must find after the hearing that (aa) the commission member engaged in misconduct; and (bb) issue an order removing the commission member.

(ii) The commission may remove a member for good cause. "Good cause" shall include (aa) failure to pay local, state, or federal taxes when due; (bb) violation of the ethics code adopted under this chapter; (cc) conviction of a crime; (dd) excessive absenteeism as determined by the board; and (ee) official misconduct.

(iii) A commission member may be removed as provided under Local Government Code Chapter 87.

(iv) As otherwise provided by law.

Sec. 161.0071 LEGAL REPRESENTATION.

(j) The county attorney, or district attorney, [*or criminal district attorney- if others join in legislation*], as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a commission located in a county with a population of 650,000 or more that is located on the international border;

SUBCHAPTER B. GENERAL POWERS;

Sec. 161.008 GENERAL POWERS.

(a) The commission shall adopt, publish, and enforce a county code of ethics.

(b) The commission may adopt or use as a guide any ethics law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this subchapter and serves the needs of the county.

(c) The commission may adopt bylaws, rules, forms, policies and/or procedures to assist in the administration of its duties under this subchapter. It may be guided by Robert's Rules of Order to the extent that it does not conflict with the Constitution and laws of the United States and this state, including the Open Meetings Act, or conflict with other guidelines adopted by the commission.

(d) The commission shall be assigned staff by the county and provided access to county resources to assist in its duties.

(e) The commission shall develop and implement policies that provide the public with information on the commission and the county code of ethics.

(f) The commission may adopt or use as a guide the provisions of Subchapter C. COMPLAINT PROCEDURES AND HEARINGS of this Chapter.

(g) The commission may adopt or use as a guide the provisions of Subchapter D. ENFORCEMENT of this Chapter.

(h) The commission shall enforce the provisions of the county ethics code by issuing appropriate orders, recommendations, or by imposing appropriate penalties.

(h) On its own initiative or upon the request of any person covered by the Ethics Code adopted under this Chapter, the commission may issue a written ethics advisory opinion regarding the application of the code to a specified existing or hypothetical factual situation. The commission may not issue an opinion that includes the name of any person who may be affected by the opinion. If made at the request of a person covered by the code, the name of that person shall be deemed confidential.

Sec. 161.0081. PUBLIC INTEREST INFORMATION.

(a) The commission shall develop plain-language materials as described by this section. The commission shall post the information on the county website and make the information otherwise available to the public.

(b) The materials must include:

(1) a description of:

(A) the commission's responsibilities;

(B) the types of conduct that constitute a violation of the county ethics code;

(C) the types of sanctions the commission may impose;

(D) the commission's policies and procedures relating to complaint investigation and resolution; and

(E) the duties of a person filing a complaint with the commission; and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(c) The commission shall provide the materials described by this section to each complainant and respondent.

(d) The commission shall adopt a policy to effectively distribute materials as required by this section.

SUBCHAPTER C. COMPLAINT PROCEDURES AND HEARINGS

Sec. 161.009 COMPLAINT PROCEDURES AND HEARINGS. The commission may adopt the complaint procedures and hearings set forth in this subchapter.

Sec. 161.010 HEARINGS AND SETTLEMENT. (a) The commission may:

(1) hold hearings, on its own motion adopted by an affirmative vote of at least five commission members or on a sworn

complaint, and render decisions on complaints or reports of violations as provided by this chapter; and

(2) agree to the settlement of issues.

(b) The commission may not consider a complaint or vote to investigate a matter outside the commission's jurisdiction.

Sec. 161.011. DEFINITIONS. In this subchapter:

(1) "Category One violation" means a violation of a law within jurisdiction of the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:

(A) the failure by a person required to file a statement or report to:

(i) file the required statement or report in a manner that complies with applicable requirements; or

(ii) file the required statement or report in a timely manner;

(B) a misrepresentation in a report required under the ethics code; or

(C) a failure to respond in a timely manner to a written notice under Section 161.014 (b).

(3) "Category Two violation" means a violation of a law within the jurisdiction of the commission that is not a Category One violation.

Sec. 161.012. CATEGORIZATION OF VIOLATIONS. An allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the commission at any time determines that:

(1) the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or

(2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 161.016(a).

Sec. 161.013. FILING OF COMPLAINT; CONTENTS. (a) An individual may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the county ethics code has violated the ethics code. The commission shall make the complaint form available on the county website.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) the name of the complainant;

(2) the street or mailing address of the complainant;

(3) the name of each respondent;

(4) the position or title of each respondent;

(5) the nature of the alleged violation, including if possible the specific rule or provision of the ethics code alleged to have been violated;

(6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and

basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of the ethics code.

Sec. 161.014. PROCESSING OF COMPLAINT. (a) The commission shall determine whether a sworn complaint filed with the commission complies with the form requirements of Section 161.013.

(b) Not later than the tenth business day after the date a complaint is filed, the commission shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of Section 161.013.

(c) If the commission determines that the complaint does not comply with the form requirements, the commission shall 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. The complainant may resubmit the complaint not later than the 21st day after the date the notice under Subsection (b) is mailed. If the commission determines that the complaint is not resubmitted within the 21-day period, the commission shall:

- (1) dismiss the complaint; and
- (2) not later than the tenth 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) If the commission determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, the commission shall send the notice required under Subsection (c), and the complainant may resubmit the complaint under that subsection.

(e) If the commission determines that a complaint returned to the complainant under Subsection (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, the commission shall send the written notice under Subsection (b).

Sec. 161.015. PRELIMINARY REVIEW: INITIATION. (a) The commission staff shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 161.013.

(b) On a motion adopted by an affirmative vote of at least four commission members, the commission may initiate a preliminary review of the matter that is the subject of the motion without a sworn complaint.

(c) The commission shall determine in writing whether the commission has jurisdiction over the violation of the Ethics Code provision alleged in a sworn complaint processed under Section

161.013.

(d) If the commission determines that it has jurisdiction, it shall issue a notice under Section 161.013(b) that must include:

(1) a statement that the commission has jurisdiction over the violation of law alleged in the complaint;

(2) a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 161.012;

(3) the date by which the respondent is required to respond to the notice;

(4) a copy of the complaint and the rules of procedure of the commission;

(5) a statement of the rights of the respondent;

(6) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(7) a statement that a failure to timely respond to the notice will be treated as a separate violation.

(f) If the commission determines that the commission does not have jurisdiction over the violation alleged in the complaint, the commission shall:

(1) dismiss the complaint; and

(2) not later than the tenth 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.

Sec. 161.016. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT.

(a) If the alleged violation is a Category One violation:

(1) the respondent must respond to the notice required by Section 161.014(b) not later than the 10th business day after the date the respondent receives the notice; and

(2) 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 161.014(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(b) If the alleged violation is a Category Two violation:

(1) the respondent must respond to the notice required by Section 161.014(b) not later than the 25th business day after the date the respondent receives the notice under Section 161.014(b) and

(2) 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 161.014(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(c) A respondent's failure to timely respond as required by

Subsection (a)(1) or (b)(1) is a Category One violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) If the commission sets the matter for a preliminary review hearing, the commission shall promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 161.017. PRELIMINARY REVIEW: WRITTEN QUESTIONS. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 161.018. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. The commission shall adopt procedures for the conduct

of preliminary reviews and preliminary review hearings. The procedures must include:

(1) a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and

(2) the tolling or extension of otherwise applicable deadlines where:

(A) the commission issues a subpoena and the commission's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines; or

(B) the commission determines that, despite commission staff's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the commission staff's investigation or the rights of the respondent.

Sec. 161.019. PRELIMINARY REVIEW HEARING: PROCEDURE.

(a) The commission shall conduct a preliminary review hearing if:

(1) following the preliminary review, the commission and the respondent cannot agree to the disposition of the complaint or motion; or

(2) the respondent in writing requests a hearing.

(b) The commission shall provide written notice to the

complainant, if any, and the respondent of the date, time, and place the commission will conduct the preliminary review hearing.

(c) At or after the time the commission provides notice of a preliminary review hearing, the commission may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time.

(d) During a preliminary review hearing, the commission:

(1) may consider all submitted evidence related to the complaint or to the subject matter of a motion under Section 161.015(b);

(2) may review any documents or material related to the complaint or to the motion; and

(3) shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred.

(e) During a preliminary review hearing, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 161.020. PRELIMINARY REVIEW HEARING: RESOLUTION.

(a) As soon as practicable after the completion of a preliminary review hearing, the commission by vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the tenth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission shall:

(1) order a formal hearing to be held in accordance with Sections 161.021 through 161.024; and

(2) not later than the tenth business day after the date of the decision, send to the complainant, if any, and the respondent:

- (A) a copy of the decision;
 - (B) written notice of the date, time, and place of the formal hearing;
 - (C) a statement of the nature of the alleged violation;
 - (D) a description of the evidence of the alleged violation;
 - (E) a copy of the complaint or motion;
 - (F) a copy of the commission's rules of procedure;
- and
- (G) a statement of the rights of the respondent.

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

- (1) dismiss the complaint or motion; and
- (2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the commission determines that there is insufficient credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred, the

commission may dismiss the complaint or motion or promptly conduct a formal hearing under Sections 161.021 through 161.024. Not later than the fifth business day after the date of the commission's determination under this subsection, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

Sec. 161.021. FORMAL HEARING: STANDARD OF EVIDENCE. During a formal hearing, the commission shall determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

Sec. 161.022. FORMAL HEARING: SUBPOENAS AND WITNESSES.
(a) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Except as provided by Section 161.023(a)(1), the commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

(1) request to appear personally before the commission to testify in the person's own behalf; or

(2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing must be sworn.

Sec. 161.023. FORMAL HEARING: PROCEDURE. (a) 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, the commission shall provide to the complainant, if any, and to the respondent:

(1) a list of proposed witnesses to be called at the hearing;

(2) copies of all documents expected to be introduced as exhibits at the hearing; and

(3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001 of the Government Code.

Sec. 161.024. FORMAL HEARING: RESOLUTION. (a) Not later than the 30th business day after the date of the formal hearing, the commission shall convene a meeting and by motion shall issue:

(1) a final decision stating the resolution of the formal hearing; and

(2) a written report stating the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a civil penalty, if any.

(b) Five members of the commission are required for a quorum at a formal hearing.

(c) Not later than the tenth business day after the date the commission issues the final decision and written report, the commission shall:

(1) Send a copy of the decision and report to the

complainant, if any, and to the respondent; and

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

Section 161.025 DELETED.

Section 161.026 DELETED.

Sec. 161.027. STATUS OF COMPLAINT. (a) The commission shall keep an information file about each sworn or other complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) In addition to the notice required by Sections 161.014

through 161.024, the commission, at least quarterly until final disposition of a complaint, shall notify the person who filed the complaint and each person who is a subject of the complaint, if any, of the status of the sworn or other complaint.

Sec. 161.028. EXTENSION OF DEADLINE. The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing.

Sec. 161.029. SUBPOENA. (a) In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(a-1) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least five members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

(1) is likely to be determinative as to whether the subject of an investigation has violated a provision of the ethics

code;

(2) Can be determined from the documents or is known by the witnesses; and

(3) Is not reasonably available through a less intrusive means.

(a-2) The commission shall adopt procedures for the issuance of subpoenas under this section.

(a-3) A copy of a subpoena issued under this section must be delivered to the respondent.

(b) At the written request of at least five members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(c) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission shall report that fact to a district court in El Paso County. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(d) A respondent has the right to quash a subpoena as provided by law.

(e) A subpoenaed witness who attends a commission hearing is

entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

Sec. 161.030. STATUS OF COMPLAINANT. The complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

Sec. 161.031. APPLICABILITY OF OTHER ACTS. (a) Except as provided by Section 161.032(b), Chapter 552 of the Government Code does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.

(b) Chapter 551 of the Government Code does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion, but does apply to a formal hearing held under Sections 161.021 through 161.023.

(c) Subchapters C through H, Chapter 2001 of the Government Code, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Sec. 161.032. CONFIDENTIALITY; OFFENSE. (a) Except as provided by Subsection (b) or (b-1) or by Section 161.034, proceedings at a preliminary review hearing performed 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 or motion are confidential and may not be 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) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(b-1) Commission staff may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

(1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;

(2) the employee's determination under Subdivision (1) is objectively reasonable;

(3) the commission specifically authorizes the

disclosure; and

(4) the employee discloses only the information necessary to conduct the investigation.

(c) A person commits an offense if the person willfully destroys, mutilates, or alters information obtained under this chapter; or removes said information without permission as provided by this chapter.

(c-1) An offense under this section is a misdemeanor punishable by:

(i) a fine of not less than \$25 or more than \$4,000;

(ii) confinement in the county jail for not less than three days or more than three months; or

(iii) both the fine and confinement.

(d) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(d-1) A person who obtains access to confidential information under this chapter commits an offense if that person knowingly:

(1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including solicitation of political contributions or solicitation of clients;

(2) permits inspection of the confidential information

by a person who is not authorized to inspect the information; or

(3) discloses the confidential information to a person who is not authorized to receive the information.

(d-2) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than \$1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(e) A violation under this section constitutes official misconduct.

(f) In addition to other penalties, the respondent may commence a civil action for damages on his own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Any action under this chapter shall be brought in a district court in El Paso County. The court may award costs and attorney's fees. .

(g) A county employee may be disciplined up to and including termination for disclosing information under this chapter.

(h) A employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), (e), (f), and (g).

Sec. 161.033. AVAILABILITY OF COMMISSION ORDERS ON INTERNET.

(a) As soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet:

(1) a copy of the commission's order stating the determination; or

(2) a summary of the commission's order.

(b) This section does not apply to a determination of a violation that is technical or de minimis.

SUBCHAPTER D. ENFORCEMENT

Sec. 161.034. INITIATION AND REFERRAL. (a) On a motion adopted by an affirmative vote of at least six commission members, the commission may initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.

(b) On receipt of a sworn complaint, if the commission reasonably believes that the person who is the subject of the complaint has violated Chapter 36, 37, or 39, Penal Code, the commission may refer the matter to the appropriate prosecuting attorney for criminal prosecution.

(c) In making a referral to a prosecuting attorney under this

section, the commission may disclose confidential information.

Sec. 161.035. ORDER. The commission may:

(1) issue and enforce a cease and desist order to stop a violation; and

(2) issue an affirmative order to require compliance with the laws administered and enforced by the commission

(3) issue an order of public censure with or without penalty as provided pursuant to Section 161.036.

Sec. 161.036. CIVIL PENALTY FOR DELAY OR VIOLATION.

(a) The commission may impose a civil penalty of not more than \$500 for each delay in complying with a commission order.

(b) The commission may impose a civil penalty of not more than \$4,000 for a violation of the county ethics code.

(b) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

(e) This section is cumulative of any other available sanctions under this chapter.

Sec. 161.037. WAIVER OR REDUCTION OF PENALTY. (a) A person may request the waiver or reduction of a civil penalty by submitting an affidavit to the commission that states the filer's reasons for requesting a waiver or reduction.

(b) The commission may waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. The commission shall consider the following before acting to waive or reduce a civil penalty:

(1) the facts and circumstances supporting the person's request for a waiver or reduction;

(2) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty;

(3) any history of previous violations by the person;

(4) the demonstrated good faith of the person, including actions taken to rectify the consequences of the violation;

(5) the penalty necessary to deter future violations;

and

(6) any other matter that justice may require.

(c) After hearing the waiver request, the commission may affirm, reduce, or waive the civil penalty.

Sec. 161.038 DELETED.

Sec. 161.039. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY. The commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on

Judicial Conduct, the senate, the house of representatives, or the State Bar of Texas, of a violation of the county ethics code.

Sec. 161.040. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT. (a) The commission may impose a civil penalty of not more than \$4,000 for the filing of a frivolous or bad-faith complaint. In this subsection, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.

(b) In addition to other penalties, the respondent may commence a civil action on his own behalf against any person who filed a frivolous complaint against him or her. Any action under this chapter shall be brought in a district court in El Paso County. The court may award costs and attorney's fees. (c) A person may file a sworn complaint with the commission, in accordance with Section 161.013, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. A complaint may be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. The commission shall act on a complaint made under this subsection as provided by Subchapter D.

Sec. 161.041. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION.

The commission shall consider the following factors in assessing a sanction:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(2) the history and extent of previous violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;

(4) the penalty necessary to deter future violations;
and

(5) any other matters that justice may require.

Sec. 161.042. APPEALS. (a) A respondent may appeal the decision by filing a petition in a district court in El Paso County within 30 days after the date of the decision.

(b) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) If the district court renders judgment for the petitioner, and the petitioner is a county employee, the court may order reinstatement of the county employee, payment of back pay, or other appropriate relief.

(d) If the district court renders judgment for the petitioner,

the court may order appropriate relief, including costs and attorney's fees.

Sec. 161.043. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. In an appeal under Section 161.041, the district court may not substitute its judgment for the judgment of the commission on the weight of the evidence on questions committed to the commission's discretion but:

(1) may affirm the commission's decision in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the commission's authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious, characterized by abuse of discretion, or clearly an unwarranted exercise of discretion.

Sec. 161.044. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a) After service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, the commission shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review. The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation. The court may require or permit later corrections or additions to the record.

(b) A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission on conditions determined by the court. The commission may change its findings and decisions by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

(c) The party seeking judicial review shall offer, and the reviewing court shall admit, the commission record into evidence as

an exhibit.

(d) The court shall conduct the review sitting without a jury and is confined to the commission record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the commission that are not reflected in the record.

Sec. 161.045. COST OF PREPARING COMMISSION RECORD. (a) The commission may require a party who appeals a final decision under Section 161.042 to pay one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Sec. 161.046. DISSOLUTION OF SYSTEM. (a) If, after a ethics system created pursuant to section 161.004 under this chapter has been in effect for at least one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the system, the commissioners court shall call an election to determine whether the system will be dissolved.

(b) An election under this section must be held in the manner provided for an election to create a county ethics system.

(c) The ballot for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the county ethics system."

(d) If the proposition is approved by a majority of the qualified voters voting at the election, the commissioners court shall declare the result and by order dissolve the ethics system. A copy of the order dissolving the system shall be placed in the minutes of the court's proceedings.

Sec. 161.047. CRIMINAL PENALTY. (a) A county officer, candidate for county office, county employee, county affiliate, or county public servant commits an offense under this chapter if he or she violates a provision of the ethics code adopted under this chapter.

(b) an offense under this chapter is a misdemeanor punishable by a fine of not less than \$25 nor more than \$4,000.

(c) This section is cumulative of any other available sanctions under this chapter.

Sec. 161.048. VENUE. An offense under this subchapter, including perjury, may be prosecuted in any county in which it may be prosecuted under the Code of Criminal Procedure.