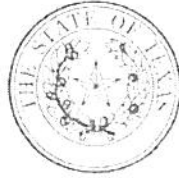


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COMMITTEE ON GENERAL INVESTIGATING  
HOUSE OF REPRESENTATIVES

MEMORANDUM

May 26, 2023

**TO: Members of the House of Representatives**  
**FROM: House Committee on General Investigating**  
**RE: Impeachment Process**

As announced yesterday, House Resolution 2377, calling for the impeachment of Attorney General Warren Kenneth Paxton, has been filed. The Committee intends to call up the resolution on Saturday, May 27, at 1 p.m., for the House's consideration. This memorandum summarizes the impeachment process, includes proposed debate guidelines, and answers some questions from Members.

First, the Committee wishes to note that its inquiry was initiated in March 2023 because Ken Paxton and his agency asked the Legislature for \$3.3 million of public funds to settle a wrongful termination lawsuit brought by whistleblowers in the Office of the Attorney General. Over the course of several months, the Committee and staff set out to determine if payment of the settlement was warranted because of the lack of discovery in the litigation and because Paxton and his office were not forthcoming about his conduct regarding the whistleblower's good faith reports of his violations of his constitutional and statutory duties. **We cannot over-emphasize the fact that, but for Paxton's own request for a taxpayer-funded settlement over his wrongful conduct, Paxton would not be facing impeachment by the House.**

Second, the Constitution vests the power to impeach in the House of Representatives, and the power to try the accused officer and render judgment is vested in the Senate, sitting as a Court of Impeachment.<sup>1</sup> Impeachment is not a criminal process. **"The primary purpose of an impeachment is to protect the state, not to punish the offender."** *Ferguson v. Maddox*, Southwestern Reporter, vol. 263, pg. 888 (Texas Supreme Court, 1924). "In the matter of impeachment the House acts somewhat in the capacity of a grand jury . . . and determines whether or not there is sufficient ground to justify the presentment of charges, and, if so, it adopts appropriate articles and prefers them before the Senate." *Id.* The Committee believes that the Texas Constitution provides for the suspension of an impeached officer because of the need to protect the public. Because of Paxton's long-standing pattern of abuse of office and public trust, disregard and dereliction of duty, and obstruction of justice and abuse of judicial process, it is imperative that the House proceed with impeachment so that Paxton is prevented from using the significant powers granted to the attorney general to further obstruct and delay justice, not just by avoiding accountability for his wrongdoings, but by undermining the integrity of our state government.

Third, **the so-called "forgiveness doctrine" (or "prior-term" doctrine) under Section 665.081, Government Code, does not apply to impeachment.** The Texas Supreme Court has held that this provision does not apply when the Texas Constitution authorizes a procedure for removing a state officer. *In re Carrillo*, Southwestern Reporter, 2d Series, vol. 542, pg. 110 (1976) (stating "[t]his proceeding for removal is authorized by the Constitution, and for that reason [the statutory forgiveness doctrine] is not applicable"). The Court explained that Section 665.081 only applies when the Legislature enacts a statutory

<sup>1</sup> The impeachment process is governed by Sections 1 through 5, Article XV, Texas Constitution. Because the Legislature is not in continuous session, Chapter 665, Government Code, provides guidance for the impeachment process to account for session and interim activities.

method for removal under Section 7, Article XV, Texas Constitution. *Id.* Finally, as a matter of constitutional practice, the House in 1917 adopted at least four articles of impeachment against Governor James P. Ferguson for conduct that occurred before and during the 1916 election and the Senate convicted Ferguson on those counts. *Record of Proceedings of the High Court of Impeachment on the Trial of Hon. James E. Ferguson* at 862–865 (1917). Additionally, the House in 1975 adopted an article of impeachment against Judge O.P. Carrillo for conduct that occurred before the 1972 election and the Senate convicted Carrillo on that count. *Record of Proceedings of the High Court of Impeachment on the Trial of O.P. Carrillo* at 68, 1571 (1975).

## A. GROUNDS FOR IMPEACHMENT

Impeachment has been characterized as a judicial power granted to the Legislature and therefore it is not subject to constitutional restrictions on the exercise of legislative powers. Put another way, each chamber may convene and pursue impeachment powers regardless of whether the Legislature is in session or not.

“In the matter of impeachment the House acts somewhat in the capacity of a grand jury. It investigates, hears witnesses, and determines whether or not there is sufficient ground to justify the presentment of charges, and, if so, it adopts appropriate articles and prefers them before the Senate.” *Ferguson v. Maddox*, Southwestern Reporter, vol. 263, pg. 888 (Texas Supreme Court, 1924). Put another way, impeachment in the House is analogous (but not identical) to a criminal indictment, and must be followed by trial in the Senate. **The House decides only if there is sufficient evidence to justify further legal proceedings.**

Unlike the U.S. Constitution’s impeachment provisions (and its references to “treason, bribery, or other high crimes and misdemeanors”), the Texas Constitution does not include a list of impeachable offenses. In fact, the Texas Supreme Court has expressly stated that no requirement exists that impeachment must be for a violation of criminal law. Rather, the Court has stated:

“The power granted to the House to “impeach,” and the Senate to try “impeachment,” carries with it, by inevitable implication, the power to the one to prefer and to the other to try **charges for such official delinquencies, wrongs, or malfeasances as justified impeachment according to the principles established by the common law and the practice of the English Parliament and the parliamentary bodies in America**. The grant of the general power of “impeachment” properly and sufficiently indicates the causes for its exercise.”

*Ferguson*, Southwestern Reporter, vol. 263, pg. 888 (Texas Supreme Court, 1924) (emphasis added).

The last impeachment in Texas was conducted against District Judge O. P. Carrillo, 229th District Court for Duval County, in 1975. A committee report from this House during that impeachment has succinctly summarized:

In reviewing American law on impeachments, “[e]mphasis has been on the significant effects of the conduct: **undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of governmental process, and adverse impact on the system of government**. Such effects in many instances have no relation to the criminal law, and in this sense **impeachment is designed to cope with both the inadequacy of criminal standards and the inability of the court system to deal with the conduct of great public figures.**”

Report of the House Select Committee on Impeachment, pg. 8, July 23, 1975 (emphasis added).

## **B. PROCEDURE IN THE HOUSE**

In adopting our rules resolution this session, the House expressly granted jurisdiction to the Committee to investigate impeachable conduct by state officers and to “propose articles of impeachment.” House Rule 3, Section 13(c), House Rules of Procedure, adopted by H.R. 4, 88th Legis, 2023. Thus, unlike prior Houses where no standing committee had jurisdiction over impeachment and required the adoption of individual resolutions and special procedures, the Committee has operated under its grant of authority from the House under the Rules and under Subchapter B, Chapter 301, Government Code.

H.R. 2377 may be called up at any time because a resolution impeaching a state officer is highly privileged under the Texas Constitution and therefore supersedes other pending business. H.R. 2377 is debatable under the House Rules of Procedure. The ordinary debate rules do not provide either proponents or opponents of the resolution with a meaningful opportunity to make their case in a cohesive manner. The Committee proposes that four hours of debate be allocated to the consideration of the resolution, allocated equally between proponents and opponents. The Committee also proposes that the House use the procedure used for the general appropriations bill, and authorize 40 minutes for opening presentations and 20 minutes for closing statements by the Committee. The remaining time, equally allocated between proponents and opponents, will be reserved for general debate.

A simple majority vote is required for the House to prefer articles of impeachment.

Section 5, Art. XV, Texas Constitution provides that an officer against whom articles of impeachment are preferred by the House “shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment.” Additionally, the Constitution clarifies that “[t]he Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.” Section 5, Art. XV, Texas Constitution.

In the event that the House presents impeachment charges to the Senate, the House must also conduct the trial in the Senate through a selected group of House members called managers.

## **C. PROCEDURE IN THE SENATE**

If the House prefers articles of impeachment, the articles are delivered to the Senate. “When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.” Section 3, Article XV, Texas Constitution. “Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law.” Section 4, Article XV, Texas Constitution.

**APPENDIX: Timeline of Committee Investigation**

- February 10, 2023: Ken Paxton and whistleblowers enter into settlement agreement, with provisions for \$3.3 million settlement
- February 21, 2023: Office of the Attorney General and Ken Paxton testify before Appropriations subcommittee on Articles 1, 4 and 5 asking for \$3.3 million
- March 8-20, 2023: General Investigating Committee organizational hearing; experienced lawyer with extensive experience as senior prosecutor designated as committee counsel; "Matter A," relating to Warren Kenneth Paxton and proposed settlement with office of the attorney general whistleblowers and conduct related thereto, is opened as a committee matter
- March - May 2023: Following interview processes, committee investigating attorneys and investigators are retained for the committee; investigative process initiated
- April 14, 2023: Based on progress in the investigation, committee meeting held to authorize issuance of subpoenas related to "Matter A"
- May 10, 2023: Based on progress in the investigation, committee meeting held to authorize issuance of additional subpoenas related to "Matter A"
- May 19, 2023: Public notice posted for May 24, 2023 committee public hearing
- May 23, 2023: Based on progress in the investigation, committee meeting held to authorize issuance of additional subpoenas related to "Matter A"
- May 24, 2023: Committee holds public hearing to hear presentation of the evidence by committee investigative attorneys and personnel regarding "Matter A"
- May 25, 2023: Based on the presentation of the evidence, committee meeting held to adoption proposed articles of impeachment and authorize their filing with the chief clerk