

SUBJECT: Department of Protective and Regulatory Services revisions

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Naishtat, Davila, J. Jones, Krusee, Maxey,
Wohlgemuth

0 nays

2 absent — Denny, Park

WITNESSES: For — None

Against — None

On — Howard Baldwin, Department of Protective and Regulatory Services

BACKGROUND: In 1991 Texas reorganized its health and human service agencies. As part of this reorganization, the Legislature determined the need for a separate agency to oversee programs providing protective services for children, the elderly and disabled. The Department of Protective and Regulatory Services (DPRS) was created to oversee these functions.

The DPRS enabling statute was located in Article 4413 (503) of the Revised Statutes, although many of the programs the agency administers are located in the Human Resources Code. As Legislative Council attempted to codify the provisions relating to DPRS, several discrepancies in the Human Resources Code were identified.

DIGEST: CSHB 1662 amends Subtitle D, Title 2, Human Resources Code by adding a new Chapter 40 to enable DPRS to carry out its statutory duties and responsibilities.

CSHB 1662 would create three subsections including General Provisions, Administrative Provisions and General Functions of the Department.

Subchapter A. General Provisions:

CSHB 1662 would :

- declare the DPRS is composed of a board, the executive director, administrative staff and other officers and employees necessary to carry out the purposes of the chapter.
- declare that DPRS is the primary agency responsible for providing protective services to children, elderly and disabled; providing family preservation services; and regulating child-care facilities and administrators.
- require the DPRS as state agency designated to cooperate with the federal government in administration of Parts B and E, Title IV of the federal Social Security Act, and requires DPRS to cooperate with certain federal agencies as need to qualify for federal funds to deliver services.
- permit DPRS to adopt policies and rules necessary to comply with federal law in order to receive and spend federal funds.
- provide that DPRS will be abolished as of September 1, 1999, unless reauthorized.
- require DPRS to provide the public with opportunity to comment about DPRS policy.
- require DPRS by rule to establish methods to notify the public about complaint procedures, keep information about complaints relating to licensee or regulated entities and services delivered by the agency, and requires DPRS to notify parties of pending complaints.
- require that DPRS establish and enforce rules governing the custody, use and preservation of DPRS' records, files, papers and communications. The bill would create a Class A misdemeanor offense for persons disclosing confidential information without authorization.
- require DPRS to prescribe safeguards governing the use or disclosure of information relating to recipients or services or investigations conducted

and instructs DPRS by rule to prescribe a process by which an administrative law judge could disclose requested confidential information in the agency's possession, under certain circumstances.

DPRS would be subject to the Open Meeting Act and Administrative Procedures Act.

Subchapter B. Administrative Provisions:

CSHB 1662 would :

- provide a six-member Board of Protective and Regulatory Services appointed by the governor and require that four members have a demonstrated interest in the services provided by DPRS and two members representing the public. Each member is designated to a six year term, with the terms of two members expiring February 1 of each odd-numbered year. Board members are required to meet at least quarterly. The board would appoint an executive director, with the approval of the governor, to perform duties assigned by the Board and state law.
- provide standard language for restrictions on board appointees and standard provisions for removal from the board and allow the board to appoint an advisory committee. When board members are performing their duties, they are entitled to a per diem as provided for in the General Appropriations Act.
- outline duties of the Board including supervising the executive director's administrative and enforcement duties; and development and implementation of policies that clearly separate the respective responsibilities of the board and the staff of DPRS.
- require the board to adopt rules that ensure the department's compliance with state and federal law, and the facilitation of departmental programs.
- allow the board to establish divisions within the department as necessary for the efficient administration and discharge of the department's functions.

- allow the executive director of DPRS to employ personnel as necessary to administer the department's duties and provides other standard language including an intradepartmental career ladders program, performance review, preparation of a policy statement ensuring equal opportunity employment, personnel policies and analysis of DPRS' workforce consistent with federal and state law. The policy statement would be required to be filed with the governor and updated annually. The governor would be required to incorporate it as part of his biennial report to the legislature.
- provide for a merit system for DPRS employees and prohibit for one year after the date on which a former officer of employee terminates service or employment with DPRS, the individual from directly or indirectly attempting to aid in an attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned while with DPRS. It would make a violation of this revolving door prohibition a Class A misdemeanor

Subchapter C. General Functions of the Department:

CSHB 1662 would:

- require that DPRS establish a strategic plan for the department.
- require that DPRS propose and implement a service delivery standards program, provide training and technical assistance to regional and local service providers, develop and implement systems for monitoring departmental program performance and service delivery, promote innovative service delivery at the local level and cooperate and coordinate as appropriate with other governmental entities in the delivery of services.
- require DPRS to submit legislative appropriation requests to HHSC for comment and incorporation into the consolidated HHS budget recommendation.
- authorize DPRS to extend the scope of its programs as necessary to ensure that federal matching funds are available. Permits DPRS to accept, spend, and transfer federal and state funds for federally authorized programs and funds from other sources.

- permit DPRS to accept gifts or grants from public or private sources to perform its duties.
- authorize DPRS to set and charge fees in the administration and delivery of services.
- provide employees of DPRS with indemnification in cases where they are criminally prosecuted for actions taking place during the course of their employment and are subsequently acquitted. It would provide department employees and volunteers with immunity from civil or criminal liability for good faith actions taken in the course and scope of their duties and responsibilities.

Access to Criminal History:

Subject to the availability of funds, DPRS would be entitled to obtain the criminal history information from records maintained by the Department of Public Safety, another law enforcement agency in this state, or federal agencies as provided by federal law.

The bill would:

- authorize DPRS to obtain from the Department of Public Safety the criminal history record information maintained by the department that relates to a person who is:
 - an employee, volunteer or applicant with a business entity or person that contracts with DPRS in a position of direct delivery of protective services for children, elderly or people with disabilities;
 - a person who provides child care for a child in the care of DPRS and who is or will be receiving adoptive, foster or in-home care;
 - a person providing, at the parent's request, in-home care for a child who is the subject of a report that alleges child abuse or neglect;
 - an applicant for a license, registration or certification by DPRS;

- an owner or employee of or an applicant for employment by a child-care facility licensed, registered, or certified by DPRS;
- a resident of a registered family home, but not a child in the home's care of a parent of the child;
- an applicant for employment with DPRS, the duties of which would include direct delivery of protective services to children, elderly persons or persons with disabilities;
- a volunteer or applicant volunteer with DPRS, this state's Big Brothers/Big Sisters of America program or with the "I Have a Dream/Houston" program or the Texas chapter of "Make-A-Wish" foundation.

The bill would:

- prohibit DPRS from using information obtained to harass an employee or volunteer. It would require DPRS to adopt rules to prevent such harassment.
- provide that criminal history record information obtained by DPRS may not be released to anyone except by court order, with the consent of the person, for purposes of an administrative hearing held by DPRS concerning the person who is the subject of the criminal history record information.
- provide exceptions to this prohibition. This information could be released to the person who is the subject of the information, a child-care facility that employs or is considering employing the person who is the subject of the information, or a person or business entity intending to use volunteers or employing person who are the subject of criminal history records information, or an adult residing with a child and a person who is the subject of the criminal history records information, if DPRS determines that the release of the information is necessary to ensure the safety and welfare of the child or adult.

Other provisions:

The bill would repeal Sections 22.006 and 22.0065 of the Human Resources Code pertaining to access to Criminal History Information Records; Section 21.017 dealing with indemnification for legal expenses and Article 4413 (503), Revised Statutes.

This act would take effect September 1, 1995

NOTES:

The substitute made technical corrections to the original version. The committee substitute also added a new section of the bill relating to criminal records history checks for certain employees and applicants for programs and services regulated by DPRS.