

BILL ANALYSIS

Senate Research Center

S.B. 22
By: Ellis, Rodney
Government Organization
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As Filed

DIGEST AND PURPOSE

As proposed, S.B. 22 relates to the organization, board membership, and functions of certain state agencies and to the transfer of certain functions to other state agencies. This bill also provides penalties for certain actions.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Subset Advisory Commission is transferred to the Performance Review Commission in SECTION 6.04 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CREATION OF LEGISLATIVE INFORMATION SERVICES BOARD; ABOLITION OF TEXAS LEGISLATIVE COUNCIL AND TRANSFER OF ITS FUNCTIONS

SECTION 1.01. Amends Subtitle C, Title 3, Government Code, by adding Chapter 327, as follows:

CHAPTER 327. LEGISLATIVE INFORMATION SERVICES BOARD

Sec. 327.001. DEFINITIONS. Defines "board" and "director."

Sec. 327.002. CREATION. Provides that the Legislative Information Services Board (board) is an agency of the legislative branch of state government.

Sec. 327.003. LEGISLATIVE INFORMATION SERVICES BOARD. (a) Provides that the board consists of certain persons.

(b) Provides that the lieutenant governor and the speaker of the house of representatives serve alternate terms as the chairman and vice chairman of the board. Provides that the terms are for two years and expire on February 1 of each odd-numbered year.

(c) Provides that members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending meetings and performing official functions.

(d) Provides that actual and necessary expenses are paid from funds appropriated to the board.

Sec. 327.004. DIRECTOR. (a) Requires the board to appoint a director to serve at the pleasure of the board.

(b) Requires the board to set the salary of the director.

Sec. 327.005. PERSONNEL. (a) Authorizes the director, with the approval of the board, to employ professional and clerical personnel.

(b) Requires the board to set the salaries of the personnel employed by the director.

Sec. 327.006. GIFTS AND GRANTS. (a) Authorizes the board to accept gifts, grants, and donations from any organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purposes of funding any activity under this chapter.

(b) Requires all gifts, grants, and donations to be accepted in an open meeting by a majority of the voting members of the board and reported in the public record of the board with the name of the donor and purpose of the gift, grant, or donation.

Sec. 327.007. DUTIES. Requires the board to provide certain computer support services to the legislative branch of state government.

Sec. 327.008. ELECTRONIC AVAILABILITY OF LEGISLATIVE INFORMATION THROUGH THE INTERNET. (a) Defines "Internet" and "legislative information."

(b) Authorizes the board, to the extent it considers it to be feasible and appropriate, to make legislative information available to the public through the Internet.

(c) Authorizes the board to make available to the public through the Internet any documentation that describes the electronic digital formats of legislative information.

(d) Provides that the access to legislative information provided for under this section is in addition to the public's access to the information through other electronic or print distribution of the information, does not alter, diminish, or relinquish any copyright or other proprietary interest or entitlement of the State of Texas or a private entity under contract with the state, and is subject to Section 327.009.

Sec. 327.009. COMPUTER ACCESS, INFORMATION, AND USE. (a) Requires the board to consider each application for direct access to a computer under its control in which confidential information is stored or processed or that is connected with another computer in which confidential information is stored or processed and solely to determine whether or not to permit direct access by the applicant. Prohibits direct access to such a computer from being permitted unless protection of confidential information is ensured.

(b) Provides that if public information of the board is stored in a computer-readable form, the board has exclusive authority to determine the form in which the information will be reproduced for the requestor of the information.

(c) Provides that notwithstanding Subchapter F, Chapter 552, the board has exclusive authority to determine the charge for direct access to a computer under its control and the charge for information reproduced for a requestor.

(d) Authorizes the board to consider the needs of persons with disabilities when making decisions regarding the formats in which information is made available under this chapter.

Sec. 327.010. COMPUTER SECURITY; PENALTY. (a) Provides that a person commits an offense if the person intentionally or knowingly gains access to information stored or maintained by a computer under the control of the board and the person is not authorized by the board to have access to that information.

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly damages, destroys, deletes, or alters or impairs access to or use of information stored or maintained by a computer under the control of the

board and the person is not authorized by the board to do so.

(c) Provides that Subsection (b) does not apply to an interruption of utility service or other service that causes the damage, destruction, deletion, or alteration of or impairment of access to or use of the information unless the interruption was intended to have that result.

(d) Provides that an offense under this section is a Class A misdemeanor.

SECTION 1.02. Repealer: Section 276.008, Election Code; Chapter 323, Government Code; Section 2053.004, Government Code; and Section 6.14, Tax Code.

ARTICLE 2. TRANSFER OF FINANCIAL AUDIT FUNCTIONS FROM STATE AUDITOR TO LEGISLATIVE BUDGET BOARD

SECTION 2.01. Amends Chapter 322, Government Code, by adding Section 322.002, as follows:

Sec. 322.002. DEFINITIONS. Defines "board" and "department"

SECTION 2.02. Amends Chapter 322, Government Code, by adding Sections 322.015 through 322.026, as follows:

Sec. 322.015. FINANCIAL AND COMPLIANCE AUDITS: POWERS AND DUTIES.

(a) Requires the Legislative Budget Board (LBB) to conduct financial audits of all departments, including institutions of higher education, as specified in the audit plan required under Subsection (c). Authorizes LBB to conduct an audit or investigation of any entity receiving funds from the state.

(b) Requires LBB to conduct the audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.

(c) Requires LBB to devise an audit plan for the state for each fiscal year. Requires LBB, in the plan, to consider recommendations concerning coordination of agency functions made by representatives of the Performance Review Commission. Requires LBB to also consider the extent to which a department has received a significant increase in appropriations, including a significant increase in federal or other money passed through to the department, and shall review procurement activities for compliance with Section 2161.123. Requires the plan to provide for the auditing of federal programs at least once in each fiscal biennium and to ensure that audit requirements of all bond covenants and other credit or financial agreements are satisfied.

(d) Authorizes LBB, at any time during an audit or investigation, to require the assistance of the administrative head, official, auditor, accountant, or other employees of the entity being audited or investigated.

(e) Provides that LBB is entitled to access to all of the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department or entity subject to audit, including access to all electronic data.

(f) Provides that LBB has access to information and data the release of which is restricted under federal law only with the approval of the appropriate federal administrative agency. Requires LBB to have access to copyrighted or restricted information obtained by the office of the comptroller under subscription agreements and used in the preparation of economic estimates only for audit

purposes.

(g) Authorizes LBB to conduct compliance and financial audits as defined by Sections 322.016 and 322.017 and specified in the audit plan.

(h) Requires LBB, to the extent that the performance of the powers and duties of the board under law is not impeded, to make reasonable efforts to coordinate requests for employee assistance under Subsection (d) or requests for access to books, accounts, vouchers, records, or data under Subsection (e) or (f) so as not to hinder the daily operations of the audited entity.

(i) Prohibits LBB from conducting audits of private entities concerning collection or remittance of taxes or fees to the state if the entity is subject to audit by another state agency for the taxes or fees.

(j) Requires LBB, if the board determines that a change in an accounting system is necessary, to consider the present system of books, records, accounts, and reports to ensure that the transition will be gradual and that the past and present records will be coordinated into the new system.

Sec. 322.016. COMPLIANCE AUDIT. Provides that a compliance audit is an audit to determine certain information.

Sec. 322.017. FINANCIAL AUDIT. Provides that a financial audit is an audit to determine certain information.

Sec. 322.018. FINANCIAL AND COMPLIANCE AUDIT REPORTS. (a) Requires LBB to prepare a written report for each financial or compliance audit it conducts.

(b) Requires the written report to include a management letter with comments about internal controls, compliance with state or federal laws, and recommendations for improving operations or program effectiveness, as applicable. Requires the report to also include an opinion on fair presentation of financial statements if the board considers an opinion to be necessary.

(c) Requires LBB to file a copy of each report prepared under this section with certain persons.

(d) Requires LBB to maintain a complete file containing copies of each audit report and audit work papers and other evidence relating to its work.

(e) Requires LBB to maintain the file required by Subsection (d) for at least eight years after the date on which the information is filed.

(f) Requires each audited department or entity to report on the manner in which the department or entity addressed the findings and recommendations that are included in a report prepared by the board under this section. Requires LBB to prescribe the form and schedule for a report by the department or entity under this subsection.

(g) Requires the department or entity, if a department or entity does not implement a change recommended by the LBB's report, to file a report with the persons specified by Subsection (c). Requires the report to identify the recommendation the department or entity did not implement and state the reason the department or entity did not implement the recommendation.

Sec. 322.019. IMPROPER PRACTICES AND ILLEGAL TRANSACTIONS. (a) Requires LBB, if in the course of an audit it finds evidence of improper practices of financial administration, inadequate fiscal records, or uneconomical use of resources after

consulting with the head of the department being audited, to immediately report the evidence to the governor and to the administrative head and the chairman of the governing body of the affected department.

(b) Requires LBB, if in the course of an audit it finds evidence of an illegal transaction, to immediately report the transaction to the governor and the appropriate legal authority, after consulting with the head of the department.

(c) Provides that LBB, immediately after receiving a report alleging improper practices of financial administration or uneconomical use of resources, shall review the report and shall consult with and may hold hearings with the administrative head and the chairman of the governing body of the affected department regarding the report.

(d) Requires LBB, if the administrative head or the governing body of the affected department refuses to make the changes recommended by the board at a hearing under Subsection (c) or refuses to provide any additional information or reports requested, to report the refusal to the legislature.

Sec. 322.020. REVIEW AND OVERSIGHT OF FUNDS AND ACCOUNTS

RECEIVING COURT COSTS. (a) Authorizes LBB to review each fund and account into which money collected as a court cost is directed by law to be deposited to determine whether the money is being used for the purpose for which the money is collected and the amount of the court cost is appropriate, considering the purpose for which the cost is collected.

(b) Authorizes LBB to perform reviews under this section as specified in the audit plan developed under Section 322.015.

(c) Requires LBB to make the findings of a review performed under this section available to the public and report the findings to the governor, the chief justice of the supreme court, and the presiding judge of the court of criminal appeals. Authorizes the report to include LBB's recommendations for legislation or policy changes.

Sec. 322.021. SUBPOENAS. (a) Authorizes LBB to subpoena witnesses or any books, records, or other documents reasonably necessary to conduct an examination under this chapter.

(b) Requires each subpoena to be signed by the chairman or the secretary of the LBB.

(c) Requires the sergeant at arms or an assistant sergeant at arms of either house of the legislature or any peace officer to serve the subpoena in the manner prescribed for service of a district court subpoena, on the request of the chairman or the secretary of the LBB.

(d) Authorizes LBB, if the person to whom a subpoena is directed fails to comply, to bring suit in district court to enforce the subpoena. Requires the court, if the court determines that good cause exists for the issuance of the subpoena, to order compliance. Authorizes the court to modify the requirements of a subpoena that the court determines are unreasonable. Provides that failure to comply with the order of the district court is punishable as contempt.

(e) Authorizes LBB to provide for the compensation of subpoenaed witnesses. Prohibits the amount of compensation from exceeding the amount paid to a witness subpoenaed by a district court in a civil proceeding.

Sec. 322.022. INTERFERENCE WITH AUDIT OR INVESTIGATION. (a) Provides

that an officer or employee of this state or of an entity subject to audit or investigation by LBB commits an offense if the officer or employee takes certain actions.

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 322.023. COORDINATION OF CERTAIN AUDITS. (a) Authorizes a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), notwithstanding any other law, to employ a private auditor to audit the state agency or corporation only if certain conditions apply.

(b) Requires LBB, at the joint direction of the lieutenant governor and the speaker of the house of representatives, to provide contract management services to the agency or corporation for an audit described by this section.

Sec. 322.024. GIFTS AND GRANTS. (a) Authorizes LBB to accept gifts, grants, and donations from any organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purpose of funding any activity under this chapter.

(b) Requires all gifts, grants, and donations to be accepted in an open meeting by a majority of the voting members of LBB and reported in the public record of the committee with the name of the donor and purpose of the gift, grant, or donation.

Sec. 322.025. COORDINATION OF INVESTIGATIONS. (a) Requires the administrative head of a department or entity that is subject to audit by the board, if the person has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, to report the reason and basis for the belief to the board. Authorizes the board to investigate the report or to monitor any investigation conducted by the department or entity.

(b) Requires LBB, in consultation with state agencies and institutions, to prescribe the form, content, and timing of a report required by this section.

(c) Provides that all records of a communication by or to LBB relating to a report to LBB under Subsection (a) are audit working papers of the board.

(d) Defines "audit working papers."

Sec. 322.026. SEAL. Requires LBB to obtain a seal with "Legislative Budget Board, State of Texas" engraved around the margin and a five-pointed star in the center to be used to authenticate official documents issued by LBB.

SECTION 2.03. Repealer: Chapter 321, Government Code.

ARTICLE 3. CREATION OF PERFORMANCE REVIEW COMMISSION; ABOLITION OF SUNSET ADVISORY COMMISSION AND TRANSFER OF FUNCTIONS TO PERFORMANCE REVIEW COMMISSION

SECTION 3.01. Amends Section 325.002, Government Code, as follows:

Sec. 325.002. DEFINITIONS. Defines "department." Makes nonsubstantive changes.

SECTION 3.02. Amends Section 325.003, Government Code, by amending the section heading and Subsections (a), (d), and (i) to read as follows:

Sec. 325.003. New heading: PERFORMANCE REVIEW COMMISSION. Deletes

existing text in heading relating to the Sunset Advisory Commission (Sunset).

(a) Provides that the Performance Review Commission (commission), rather than Sunset, consists of the lieutenant governor, three members, rather than four members, of the senate, one public member appointed by the lieutenant governor, the speaker of the house of representatives, three members of the house of representatives, and one public member appointed by the speaker of the house. Deletes existing text authorizing each appointing authority to designate himself as one of the legislative appointees. Makes a conforming change.

(d) Provides that legislative members other than the lieutenant governor and the speaker of the house of representatives serve four-year terms, with terms staggered so that the terms of one-half of the legislative members appointed by the lieutenant governor and the terms of one-half of the legislative members appointed by the speaker expire September 1 of each odd-numbered year. Requires the lieutenant governor and, rather than or, the speaker to serve on the commission until resignation from the commission or until the lieutenant governor or speaker ceases to hold the office. Provides that public members serve two-year terms expiring September 1 of each odd-numbered year. Makes nonsubstantive changes.

(i) Provides that the speaker of the house of representatives is the chairman of the commission. Deletes existing text relating to the chairman, vice-chairman, and presiding officers of the commission.

SECTION 3.03. Amends Section 325.008(a), Government Code, to require the commission, before September 1 of the even-numbered year before the year in which a state agency subject to this chapter and its advisory committees are abolished, to take certain actions.

ARTICLE 4. POWERS AND FUNCTIONS OF THE STATE PRESERVATION BOARD

SECTION 4.01. Amends Section 443.007, Government Code, by adding Subsection (e), to authorize the State Preservation Board (SPB) to adopt any management or oversight method or procedure reasonably necessary to ensure that the requirements under Subsection (a) are met in the most economical and efficient manner.

SECTION 4.02. Amends Chapter 443, Government Code, by adding Section 443.0232, as follows:

Sec. 443.0232. CONSULTATION WITH THE LEGISLATIVE INFORMATION SERVICES BOARD. (a) Requires SPB to consult with the Legislative Information Services Board regarding the installation of information technology equipment in the Capitol, the General Land Office Building, and their grounds. Requires the interest of preservation to be balanced against the need of the legislative branch of state government for computer hardware and other types of office machinery and communication tools.

(b) Requires the consultation under Subsection (a) to include an analysis of the extent of any permanent changes in the appearance of the buildings or their grounds likely to be caused by the installation of information technology equipment, including wiring and antennas, methods for minimizing the impact of the installation on the appearance of the buildings or grounds, and ways to ensure that any necessary alterations in the appearance of the buildings or grounds conform, to the extent reasonably practicable, with the architectural and historical integrity of the buildings or grounds.

ARTICLE 5. CONFORMING AMENDMENTS

SECTION 5.01. Amends Section 81.113(a), Government Code, to make conforming changes.

SECTION 5.02. Amends Section 301.021(a), Government Code, to make conforming changes.

SECTION 5.03. Amends Section 301.028(a), Government Code, to make conforming changes.

SECTION 5.04. Amends Sections 301.041(a) and (d), Government Code, to make conforming changes.

SECTION 5.05. Amends Section 302.032, Government Code, to make conforming changes.

SECTION 5.06. Amends Section 302.033, Government Code, to make conforming changes.

SECTION 5.07. Amends Section 306.007, Government Code, to make a conforming change.

SECTION 5.08. Amends Section 326.001, Government Code, to redefine "legislative agency."

SECTION 5.09. Amends Sections 326.003(a) and (b), Government Code, as follows:

(a) Makes conforming changes.

(b) Requires the director of the LBB, rather than the state auditor, to call each meeting.

SECTION 5.10. Amends Section 468.003(b), Government Code, to make a conforming change.

SECTION 5.11. Amends Section 531.203(d), Government Code, to make conforming changes.

SECTION 5.12. Amends Subdivision (11), Section 572.002, Government Code, to redefine "state employee."

SECTION 5.13. Amends Section 660.203(a), Government Code, to provide that an individual is entitled to reimbursement for the actual expense of meals and lodging incurred while performing the duties of the individual's office or employment if the individual meets certain conditions.

SECTION 5.14. Amends Section 660.206, Government Code, to make conforming changes.

SECTION 5.15. Amends Section 762.003(a), Government Code, to make conforming and nonsubstantive changes.

SECTION 5.16. Amends Section 762.011, Government Code, to make a conforming change.

SECTION 5.17. Amends Section 2052.0021(c), Government Code, to make a conforming change.

SECTION 5.18. Amends Section 2056.002(d), Government Code, to make a conforming and nonsubstantive change.

SECTION 5.19. Amends Section 2056.010, Government Code, to make a conforming change.

SECTION 5.20. Amends Section 2102.009, Government Code, to make conforming changes.

SECTION 5.21. Amends Sections 2102.0091(a) and (c), Government Code, to make conforming changes.

SECTION 5.22. Amends Section 2155.203, Government Code, to make conforming changes.

SECTION 5.23. Amends Section 2158.065, Government Code, to make conforming changes.

SECTION 5.24. Amends Section 201.403(c), Transportation Code, to make a conforming change.

SECTION 5.25. Amends Section 41.060(c), Utilities Code, to make conforming changes.

SECTION 5.26. Amends Section 12(a), Chapter 357, Acts of the 64th Legislature, Regular Session, 1975 (Article 4413(32e), V.T.C.S.), to make conforming changes.

SECTION 5.27. Amends Section 11(a), Chapter 672, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(42a), V.T.C.S.), to make conforming changes.

ARTICLE 6. TRANSITION

SECTION 6.01. (a) Provides that the Texas Legislative Council is abolished effective September 1, 2003.

(b) Provides that on September 1, 2003:

(1) all functions and activities assigned to or performed by the information systems division of the Texas Legislative Council immediately before that date are transferred to the Legislative Information Services Board;

(2) all funds, obligations, contracts, property, and records of the Texas Legislative Council relating to the services performed by the information systems division of the Texas Legislative Council are transferred to the Legislative Information Services Board;

(3) all employees of the information systems division of the Texas Legislative Council become employees of the Legislative Information Services Board;

(4) all of the property and records of the Texas Legislative Council relating to the services performed by the legal and research divisions of the Texas Legislative Council are transferred to either the senate or the house of representatives, as determined by the lieutenant governor and the speaker of the house of representatives;

(5) all employees of the legal and research divisions of the Texas Legislative Council become employees of either the senate or house of representatives, as determined by the lieutenant governor and the speaker of the house of representatives; and

(6) a reference in law to the Texas Legislative Council that relates to the services performed by the information systems division of the Texas Legislative Council means the Legislative Information Services Board.

SECTION 6.02. (a) Provides that the office of state auditor and the legislative audit committee are abolished but continue in effect until December 1, 2003, for the sole purpose of transferring to LBB all the rights, powers, duties, and functions exercised by the state auditor and the legislative audit committee immediately before the effective date of this Act. Requires the transfer to be completed not later than December 1, 2003.

(b) Provides that all the funds, contracts, property, personnel, and records of the office of the state auditor and the legislative audit committee are transferred to LBB for the purpose of performing the audit functions that the state auditor was authorized or required to perform immediately before the effective date of this Act.

(c) Provides that a reference in law or in an administrative rule to the state auditor or the office of the state auditor or the legislative audit committee means LBB.

(d) Provides that a reference in law to a financial or compliance audit under Chapter 321, Government Code, as repealed by this Act, means an audit under Chapter 322, Government Code, as amended by this Act.

(e) Provides that a reference in law to an efficiency audit, an economy audit, or a program audit under Chapter 321, Government Code, as repealed by this Act, means an audit under Chapter 325, Government Code (Texas Sunset Act), as amended by this Act.

SECTION 6.03. (a) Provides that Sunset is abolished and the offices of the Sunset members serving on the effective date of this Act are abolished.

(b) Provides that the validity of an action taken by Sunset before it is abolished under Subsection (a) of this section is not affected by the abolishment.

SECTION 6.04. Provides that on September 1, 2003:

(1) a rule, standard, or form adopted by Sunset is a rule, standard, or form of the Performance Review Commission and remains in effect until changed by the Performance Review Commission;

(2) a reference in law to Sunset means the Performance Review Commission;

(3) all money, contracts, leases, rights, and obligations of Sunset are transferred to the Performance Review Commission;

(4) all property, including records, in the custody of Sunset becomes the property of the Performance Review Commission; and

(5) all funds appropriated by the legislature to Sunset are transferred to the Performance Review Commission.

SECTION 6.05. Requires the lieutenant governor, on September 1, 2003, to assume the chairmanship of the Legislative Information Services Board and the speaker of the house of representatives to assume the vice chairmanship of the board. Provides that the initial terms of the lieutenant governor and the speaker of the house of representatives expire February 1, 2005.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. Effective date: September 1, 2003, or the 91st day after the last day of the legislative session.