

BILL ANALYSIS

Senate Research Center

H.B. 2305
By: Guillen et al. (Estes)
Business & Commerce
5/17/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that the required methods for transmission and receipt of certain state agency reports and notices are too restrictive and neither cost-efficient nor timely. H.B. 2305 seeks to increase efficiency and transparency in this area by allowing certain state agencies to use the most efficient means available to transmit and receive documents, by evaluating the necessity of each state agency report, and by requiring the online publication of certain reports in the Texas Digital Archive.

H.B. 2305 amends current law relating to the operations, reports, records, communications, information technology, and notice procedures of state agencies and to the electronic publication of certain state legal materials.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to a state agency that transmits and receives state documents using the Internet or another electronic medium in SECTION 6 (Section 2052.402, Government Code) of this bill.

Rulemaking authority is expressly granted to the Department of Information Resources in SECTION 7 (Section 2054.159, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter G, Chapter 441, Government Code, to read as follows:

SUBCHAPTER G. STATE PUBLICATIONS AND REPORTS

SECTION 2. Amends Section 441.101, Government Code, by adding Subdivision (5) to define "Texas Digital Archive."

SECTION 3. Amends Subchapter G, Chapter 441, Government Code, by adding Sections 441.107 and 441.108, as follows:

Sec. 441.107. REPORT OF REPORTS. (a) Defines "state agency."

(b) Requires the Texas State Library and Archives Commission (TSLAC), not later than January 1 of every other odd-numbered year, to submit to the governor and the Legislative Budget Board (LBB) a written report regarding all statutorily required reports prepared by and submitted to a state agency. Authorizes TSLAC to consult with other state agencies in preparing the report. Requires a state agency to cooperate with TSLAC in securing the information necessary for preparing the report and to submit that information to TSLAC. Requires TSLAC to prescribe the time and manner in which a state agency transmits the information necessary to prepare the report, and is authorized to require the information to be submitted using the Texas Digital Archive. Requires that the report include for each statutorily required report the title of an the agency preparing the report, the statutory authority requiring the report, the recipient of

the report, the deadline for submitting the report, a brief description of the report, and an assessment from each recipient of the report whether the report is necessary.

(c) Requires that the report required by Subsection (b) be made available to the public and provide indices by preparing agency, title of report, and report recipient.

Sec. 441.108. STATE AGENCY USE OF TEXAS DIGITAL ARCHIVE FOR CERTAIN REPORTS. (a) Defines "state agency."

(b) Requires the agency, to the extent a report prepared by a state agency is not confidential or excepted from the requirements of Section 552.021 (Availability of Public Information), to use the Texas Digital Archive to submit or post the report if the report is required by statute, rule, or rider in the General Appropriations Act to be submitted to the governor, a member, agency, or committee of the legislature, another state agency, or the public.

(c) Requires TSLAC to develop and make accessible to each state agency guidelines that assist the agency in determining the reports prepared by the agency that are appropriate for submission through the Texas Digital Archive and the retention requirements for those reports.

(d) Requires TSLAC to monitor the effectiveness of state agency use of the Texas Digital Archive for the purposes provided under this section.

(e) Provides that a state agency that posts a report using the Texas Digital Archive satisfies any requirement in state law that the agency post the report on the agency's Internet website if the agency posts a direct link to the Texas Digital Archive on the agency's Internet website.

SECTION 4. Amends Section 2001.026, Government Code, as follows:

Sec. 2001.206. NOTICE TO PERSONS REQUESTING ADVANCE NOTICE OF PROPOSED RULES. Requires a state agency to provide, rather than mail, notice of a proposed rule to each person who has made a timely written request of the agency for advance notice of its rulemaking proceedings. Authorizes the agency to provide the notice by electronic mail if the person requests electronic delivery of the notice and includes an e-mail address in the person's written request submitted to the agency. Provides that failure to provide, rather than mail, the notice does not invalidate an action taken or rule adopted.

SECTION 5. Amends Chapter 2051, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Sec. 2051.151. SHORT TITLE. Authorizes this subchapter to be cited as the Uniform Electronic Legal Material Act.

Sec. 2051.152. DEFINITIONS. Defines "electronic," "legal material," "official publisher," "publish," "record," and "state."

Sec. 2051.153. APPLICABILITY. (a) Provides that this subchapter applies to all legal material in a certain electronic record.

(b) Provides that the official publisher is not required to publish legal material on or before the date on which the legal material takes effect.

Sec. 2051.154. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. (a) Requires the official publisher, if the official publisher publishes legal material only in an

electronic record, to designate the electronic record as official and comply with Sections 2051.155, 2051.157, and 2051.158.

(b) Authorizes the official publisher, if the official publisher publishes legal material in an electronic record and also publishes the material in a record other than an electronic record, to designate the electronic record as official if the official publisher complies with Sections 2051.155, 2051.157, and 2051.158.

Sec. 2051.155. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. (a) Requires the official publisher, if the official publisher designates an electronic record as official in accordance with Section 2051.154, to authenticate the record.

(b) Provides that the official publisher authenticates an electronic record by providing a method with which a person viewing the electronic record is able to determine that the electronic record is unaltered from the official record published by the official publisher.

Sec. 2051.156. EFFECT OF AUTHENTICATION. (a) Provides that legal material in an electronic record that is authenticated as provided by Section 2051.155 is presumed to be an accurate copy of the legal material.

(b) Provides that if another state has adopted a law that is substantially similar to this subchapter, legal material in an electronic record that is authenticated in that state is presumed to be an accurate copy of the legal material.

(c) Provides that a party contesting the authenticity of legal material in an electronic record authenticated as provided by Section 2051.155 has the burden of proving by a preponderance of the evidence that the record is not authentic.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. (a) Requires the official publisher of legal material in an electronic record designated as official in accordance with Section 2051.154 to provide for the preservation and security of the record in an electronic form or in a form that is not electronic.

(b) Requires the official publisher, if legal material is preserved under Subsection (a) in an electronic record, to ensure the integrity of the record, provide for backup and disaster recovery of the record, and ensure the continuing usability of the legal material in the record.

Sec. 2051.158. PUBLIC ACCESS. Requires the official publisher of legal material in an electronic record that is required to be preserved under Section 2051.157 to ensure that the material is reasonably available for use by the public on a permanent basis.

Sec. 2051.159. STANDARDS. Requires the official publisher of legal material in an electronic record, in implementing this subchapter, to consider the standards and practices of other jurisdictions, the most recent standards regarding authentication, preservation, and security of and public access to legal material in an electronic record and other electronic records, as adopted by national standard-setting bodies, the needs of users of legal material in electronic records, the views of governmental officials and entities and other interested persons, and to the extent practicable, the methods and technologies for the authentication, preservation, and security of and public access to legal material that are compatible with the methods and technologies used by official publishers in other states that have adopted a law that is substantially similar to this subchapter.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires that consideration, in applying and construing this subchapter, be given to the need to promote uniformity of the law with respect to the subject matter of this subchapter among the states that enact a law similar to this subchapter.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this subchapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

SECTION 6. Amends Chapter 2052, Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. TRANSMISSION AND RECEIPT OF AGENCY DOCUMENTS

Sec. 2052.401. DEFINITION. Defines "state agency."

Sec. 2052.402. TRANSMISSION AND RECEIPT OF DOCUMENTS. (a) Authorizes a state agency to transmit and receive state documents in a format prescribed by the agency and in any manner that the agency determines will increase agency efficiency without compromising the delivery of the agency's program to the public.

(b) Requires a state agency that transmits and receives state documents using the Internet or another electronic medium to by rule develop electronic communication procedures for the agency.

(c) Authorizes a state agency, notwithstanding Subsection (a), to continue to use established procedures prescribed by state law or agency policy for the transmission and receipt of documents, including the delivery of certain publications that exist in physical format to a depository library as required by Section 441.103 (State Agency Duties).

(d) Provides this section does not authorize the electronic transmission or receipt of documents that are prohibited from being electronically transmitted or received under federal law.

(e) Provides that to the extent of any conflict, this section prevails over any other state law relating to the transmission and receipt of state agency documents.

(f) Requires a state agency to include in the agency's legislative appropriations request submitted to LBB for the state fiscal biennium beginning September 1, 2019, a report on any cost savings or achievements in efficiency recognized from implementing a change in the agency's procedures for the transmission and receipt of state documents during the state fiscal biennium ending August 31, 2019. Provides that this subsection expires September 1, 2020.

SECTION 7. (a) Amends Section 2054.1183, Government Code, as follows:

Sec. 2054.1183. ANNUAL REPORT ON MAJOR INFORMATION RESOURCES PROJECTS. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires that the annual report include the current status of each major information resources project and information regarding the performance indicators developed under Section 2054.159 for each major information resources project at each stage of the project's life cycle.

(b) Amends Subchapter G, Chapter 2405, Government Code, by adding Section 2054.159, as follows:

Sec. 2054.159. MAJOR INFORMATION RESOURCES PROJECT MONITORING. (a) Requires the quality assurance team, for the entire life cycle of each major information resources project, to monitor and report

on performance indicators for each project, including schedule, cost, scope and quality.

(b) Requires the Department of Information Resources (DIR) by rule to develop the performance indicators the quality assurance team is required to monitor under Subsection (a). Requires DIR, in adopting rules under this subsection, to consider applicable information technology industry standards.

(c) Requires the quality assurance team, if the quality assurance team determines that a major information resources project is not likely to achieve the performance objectives for the project, to place the project on a list for more intense monitoring by the quality assurance team.

(d) Requires the quality assurance team to closely monitor monthly reports for each major information resources project identified under Subsection (c) and, based on criteria developed by DIR, determine whether to recommend to the executive director of DIR the need to initiate corrective action for the project.

(e) Requires DIR to create and maintain on DIR's Internet website a user-friendly data visualization tool that provides an analysis and visual representation of the performance indicators developed under Subsection (b) for each major information resources project.

(c) Requires DIR, not later than December 1, 2017, to adopt rules to implement Section 2054.159, Government Code, as added by this section.

(d) Provides that this section takes effect January 1, 2018.

SECTION 8. Amends Subchapter C, Chapter 2171, Government Code, by adding Section 2171.106, as follows:

Sec. 2171.106. MANAGEMENT OF VEHICLE FLEET BY STATE AGENCY. (a) Requires each state agency to:

(1) as the state agency considers necessary, evaluate the effectiveness and efficiency of the agency's vehicle fleet management, including the agency's vehicle acquisition methods and interagency agreements to operate vehicle maintenance and repair facilities that are owned or operated by this state; and

(2) establish and maintain a schedule for replacing the agency's vehicles.

(b) Requires the agency, based on the state agency's findings from the evaluation conducted under Subsection (a)(1), to implement any measures that will increase the agency's effectiveness and efficiency in managing the agency's vehicle fleet.

(c) Requires a state agency to conduct the first evaluation required by Subsection (a)(1) and implement the findings from that evaluation as required by Subsection (b) not later than August 31, 2019. Provides that this section expires December 31, 2019.

SECTION 9. Amends Subchapter A, Chapter 2176, Government Code, by adding Section 2176.007, as follows:

Sec. 2176.007. COMPTROLLER STUDY ON MAIL OPERATIONS. (a) Requires the Texas comptroller of public accounts (comptroller) to conduct a study on the mail operations of each state agency in the executive branch of state government that receives

an appropriation. Requires that the study identify provisions of law relating to the mailing requirements for the agency that impede the efficient transmission and receipt of documents by the agency.

(b) Requires the comptroller, in conducting the study, to collaborate with other state agencies to consider the needs or concerns specific to those agencies.

(c) Requires the comptroller, not later than November 1, 2018, to post the findings of the study conducted under this section on the comptroller's Internet website.

(d) Provides that this section expires September 1, 2019.

SECTION 10. Amends Section 243.015, Health and Safety Code, by amending Subsection (e) and adding Subsections (e-1) and (e-2), as follows:

(e) Requires the Department of State Health Services (DSHS), if DSHS initially determines that a violation occurred, to give written notice of the report to the person, rather than by certified mail to the person. Authorizes the notice, notwithstanding any other law, to be provided by any certified delivery method, including certified mail or certified electronic mail.

(e-1) Provides that if the notice under Subsection (e) is sent by certified electronic mail it is required to be sent to the person's last known e-mail address as provided by the person to DSHS, and DSHS is required to maintain proof that the notice was sent.

(e-2) Provides that for purposes of Subsection (e), a person's provision of an e-mail address to DSHS is considered consent to electronically deliver notices and correspondence to the person.

SECTION 11. Amends Sections 21.010(a), (d), and (e), Labor Code, as follows:

(a) Requires each state agency to provide to employees of the agency a training program on the prevention of employment discrimination. Deletes existing text requiring each state agency to provide to employees of the agency an employment discrimination training program that complies with this section.

(d) Requires the Texas Workforce Commission (TWC) to develop materials for use by state agencies in providing the training program, rather than employment discrimination training, required by this section. Makes a nonsubstantive change.

(e) Requires each state agency to require an employee of the agency who completes the training program required by this section to verify the employee's completion of the training program in the manner prescribed by the agency. Requires the agency to file a document that verifies the employee's completion of the training program in the employee's personnel file or retain an electronic record that verifies the employee's completion of the training program in accordance with the record retention requirements applicable to the agency. Deletes existing text requiring each state agency to require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee's attendance at the training program.

SECTION 12. Amends Section 11.082(a), Natural Resources Code, as follows:

(a) Requires that the notice of the proposed action be delivered on or before the state agency's or political subdivision's formal initiation of the action by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office or certified electronic mail to an e-mail address specified by the deputy commissioner for the purpose of receiving the notice. Deletes existing text requiring that the notice of the proposed action be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset

management division of the Central Land Office on or before the state agency's or political subdivision's formal initiation of the action.

SECTION 13. Amends Section 301.160, Occupations Code, by adding Subsection (k), to authorize the Texas Board of Nursing (BON) to deliver the report under that subsection by certified electronic mail if the recipient provides an e-mail address to BON for the purpose of receiving the report.

SECTION 14. Amends Section 228.0545, Transportation Code, by adding Subsection (e), to authorize the Texas Department of Transportation to provide that the notice under Subsection (c), instead of being sent by first class mail, be sent as an electronic record to a registered owner that agrees to the terms of the electronic record transmission of the information.

SECTION 15. (a) Amends Section 552.139, Government Code, by amending Subsection (b) and adding Subsections (b-1) and (d), as follows:

(b) Provides that the following information is confidential:

(1) makes no change to this subdivision;

(2) and (3) makes nonsubstantive changes; and

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

(b-1) Provides that Subsection (b)(4) does not affect the notification requirements related to a breach of system security as defined by Section 521.053 (Notification Required Following Breach of Security of Computerized Data), Business & Commerce Code.

(d) Requires a state agency to redact from a contract posted on the agency's Internet website under Section 2261.253 (Required Posting of Certain Contracts; Enhanced Contract and Performance Monitoring) information that is made confidential by, or excepted from required public disclosure under, this section. Provides that the redaction of information under this subsection does not exempt the information from the requirements of Section 552.021 (Availability of Public Information) or 552.221 (Application for Public Information; Production of Public Information).

(b) Amends Subchapter C, Chapter 2054, Government Code, by adding Section 2054.068, as follows:

Sec. 2054.068. INFORMATION TECHNOLOGY INFRASTRUCTURE REPORT. (a) Defines "information technology."

(b) Requires DIR to collect from each state agency information on the status and condition of the agency's information technology infrastructure, including information regarding the agency's information security program, an inventory of the agency's servers, mainframes, cloud services, and other information technology equipment, identification of vendors that operate and manage the agency's information technology infrastructure, and any additional related information requested by DIR.

(c) Requires a state agency to provide the information required by Subsection (b) to DIR according to a schedule determined by DIR.

(d) Requires DIR, not later than November 15 of each even-numbered year, to submit to the governor, chair of the house appropriations

committee, chair of the senate finance committee, speaker of the house of representatives, lieutenant governor, and staff of LBB a consolidated report of the information submitted by state agencies under Subsection (b).

(e) Requires that the report required by Subsection (b) meet certain criteria.

(f) Provides that, with the exception of information that is confidential under Chapter 552, including Section 552.139 (Exception: Confidentiality of Government Information Related to Security or Infrastructure Issues for Computers), or other state or federal law, the consolidated report submitted under Subsection (d) is public information and must be released or made available to the public on request. Authorizes a governmental body as defined by Section 552.003 (Definitions) to withhold information confidential under Chapter 552, including Section 552.139, or other state or federal law that is contained in a consolidated report released under this subsection without the necessity of requesting a decision from the Texas attorney general (attorney general) under Subchapter G (Attorney General Decisions), Chapter 552.

(g) Provides that this section does not apply to an institution of higher education or university system, as defined by Section 61.003 (Definitions), Education Code.

(c) Amends Section 2054.0965(a), Government Code, as follows:

(a) Requires a state agency, not later than March 31, of each even-numbered year, rather than December 1 of each odd-numbered year, to complete a review of the operational aspects of the agency's information resources deployment following instructions developed by DIR.

(d) Amends Section 2157.007, Government Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Requires that a state agency, rather than authorizes a state agency, consider cloud computing service options, including any security benefits and cost savings associated with purchasing those service options from a cloud computing service provider and from a statewide technology center established by DIR, when making purchases for a major information resources project under Section 2054.118 (Major Information Resources Project).

(e) Requires DIR, using existing resources, not later than November 15 of each even-numbered year, to submit a report to the governor, lieutenant governor, and speaker of the house of representatives on the use of cloud computing service options by state agencies. Requires that the report include use cases that provided cost savings and other benefits, including security enhancements. Requires a state agency to cooperate with DIR in the creation of the report by providing timely and accurate information and any assistance required by DIR.

(e) Makes application of Sections 552.139(b)(4) and (b-1), Government Code, as added by this section, prospective.

SECTION 16. (a) Requires DIR to conduct an interim study on state reliance on the use of paper documents, including current requirements that certain state documents be mailed, for the purpose of reducing the state's volume of paper transactions and increasing governmental efficiency.

(b) Requires that the study include recommendations on opportunities to increase operational efficiency in state government through a reduction in the use of paper documents and strategies to replace the use of paper documents with electronic documents and to automate state transactions to better meet the needs of residents of this state.

(c) Requires DIR to submit a report on the findings of the study to the governor, lieutenant governor, speaker of the house of representatives, and LBB.

(d) Provides that this Section expires September 1, 2019.

SECTION 17. Provides that This Act may not be construed as exempting a state agency from complying with any applicable law that requires the state agency to physically post notice to the public in a paper format, including Chapter 551, Government Code.

SECTION 18. Provides that a state agency is not required to comply with Section 441.108, Government Code, as added by this Act, until TSLAC notifies the agency that the Texas Digital Archive, as defined by Section 441.101, Government Code, as amended by this Act, is configured to allow compliance by the agency with that section.

SECTION 19. Makes application of the changes in law made by this Act relating to the method of delivery or submission of a notice or report prospective.

SECTION 20. Provides that The first report required under Section 441.107, Government Code, as added by this Act, is due not later than January 1, 2021.

SECTION 21. (a) Requires an official publisher in the executive branch of state government to comply with the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act, in accordance with an implementation plan developed under Subsection (b) of this section.

(b) Provides that the Records Management Interagency Coordinating Council and an official publisher in the executive branch of state government are jointly responsible for developing an implementation plan for the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act. Requires that the implementation plan:

(1) for each applicable type of legal material defined by Subchapter E, Chapter 2051, Government Code, as added by this Act, advise as to the method by which the legal material may be authenticated, preserved, and made available on a permanent basis; and

(2) establish a timeline for the official publisher to comply with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act.

(c) Provides that the implementation plan developed under Subsection (b) of this section may provide for compliance by an official publisher in the executive branch of state government with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act, to be phased in over a period of time.

(d) Requires the Records Management Interagency Coordinating Council to provide the implementation plan developed under Subsection (b) of this section to the legislature not later than September 1, 2018.

SECTION 22. (a) Requires an official publisher in the legislative branch of state government to comply with the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act, in accordance with an implementation plan developed under Subsection (b) of this section.

(b) Requires an official publisher in the legislative branch of state government, in consultation with the lieutenant governor, the speaker of the house of representatives, the Senate Committee on Administration, and the House Committee on Administration, to develop an implementation plan for the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act. Requires that the implementation plan:

(1) for each applicable type of legal material defined by Subchapter E, Chapter 2051, Government Code, as added by this Act, recommend the method by which the legal material may be authenticated, preserved, and made available on a permanent basis; and

(2) establish a timeline for the official publisher to comply with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act.

(c) Provides that the implementation plan developed under Subsection (b) of this section may provide for compliance by an official publisher in the executive branch of state government with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act, to be phased in over a period of time.

(d) Requires an official publisher in the legislative branch of state government to provide the implementation plan developed under Subsection (b) of this section to the lieutenant governor and speaker of the house of representatives not later than September 1, 2018.

SECTION 23. Effective date, except as otherwise provided by this Act: September 1, 2017.