

By: Kolkhorst

S.B. No. 2525

A BILL TO BE ENTITLED

AN ACT

relating to creating the Family and Protective Services Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CREATION OF FAMILY AND PROTECTIVE SERVICES BOARD

SECTION 1.01. Section 40.001, Human Resources Code, is amended by adding Subdivision (1) to read as follows:

(1) "Board" means the Family and Protective Services Board.

SECTION 1.02. Chapter 40, Human Resources Code, is amended by adding Subchapters D and E to read as follows:

SUBCHAPTER D. FAMILY AND PROTECTIVE SERVICES BOARD

Sec. 40.101. BOARD. (a) The Family and Protective Services Board consists of five members appointed by the governor with the advice and consent of the senate.

(b) The members shall be appointed to reflect the diverse geographic regions and population groups of this state. One member must reside in a rural area and be a registered voter of a county with a population of less than 150,000.

(c) A member of the board may not accept a contribution to a campaign for election to an elected office. If a board member accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

(d) Each member of the board must represent the general

1 public.

2 (e) A person is not eligible to serve as a member of the
3 board if the person or the person's spouse:

4 (1) is employed by or participates in the management
5 of a business entity or other organization that is regulated by or
6 receives funds from the department;

7 (2) directly or indirectly owns or controls more than
8 10 percent interest in a business entity or other organization that
9 is regulated by or receives funds from the department;

10 (3) uses or receives a substantial amount of tangible
11 goods, services, or funds from the department, other than
12 compensation or reimbursement authorized by law for board
13 membership, attendance, or expenses; or

14 (4) is registered, certified, or licensed by a
15 regulatory agency in the field of child welfare services.

16 (f) A person may not be a member of the board or act as the
17 general counsel to the board or the department if the person is
18 required to register as a lobbyist under Chapter 305, Government
19 Code, because of the person's activities for compensation on behalf
20 of a profession related to the operation of the department.

21 (g) Appointments to the board shall be made without regard
22 to race, color, disability, sex, religion, age, or national origin
23 of the appointees and shall reflect the diversity of the population
24 of the state as a whole.

25 Sec. 40.102. TERMS. Members of the board serve staggered
26 six-year terms, with the terms of either one or two members expiring
27 February 1 of each odd-numbered year.

1 Sec. 40.103. PRESIDING OFFICER. (a) The governor shall
2 designate one board member to serve as the presiding officer of the
3 board.

4 (b) The presiding officer shall:

5 (1) preside over board meetings, make rulings on
6 motions and points of order, and determine the order of business;

7 (2) represent the department in dealing with the
8 governor;

9 (3) report to the board the governor's suggestions for
10 department operations;

11 (4) create subcommittees, appoint board members to
12 subcommittees, and receive the reports of subcommittees to the
13 board as a whole; and

14 (5) appoint a board member to act in the presiding
15 officer's absence.

16 Sec. 40.104. BOARD MEETINGS. The board shall hold regular
17 meetings at least once a month and special meetings at the call of
18 the presiding officer. Board members shall attend the meetings of
19 the board. The presiding officer shall oversee the preparation of
20 an agenda for each meeting and ensure that a copy is provided to
21 each board member at least seven days before the meeting.

22 Sec. 40.105. COMPENSATION. A member of the board is
23 entitled to compensation as provided by the General Appropriations
24 Act. If compensation for members is not provided by that Act, each
25 member is entitled to reimbursement for actual and necessary
26 expenses incurred in performing functions as a member of the board.

27 Sec. 40.106. GROUNDS FOR REMOVAL. (a) It is a ground for

1 removal from the board if a board member:

2 (1) does not have at the time of taking office or
3 maintain during service on the board the qualifications required by
4 Section 40.101;

5 (2) violates a prohibition provided by Section 40.101;

6 (3) cannot discharge the board member's duties for a
7 substantial part of the term for which the board member is appointed
8 because of illness or disability; or

9 (4) is absent from more than half of the regularly
10 scheduled board meetings that the board member is eligible to
11 attend during a calendar year, unless the absence is excused by
12 majority vote of the board.

13 (b) The validity of an action of the board is not affected by
14 the fact that it is taken when a ground for removal of a board member
15 exists.

16 (c) If the commissioner knows that a potential ground for
17 removal exists, the commissioner shall notify the presiding officer
18 of the board of the ground, and the presiding officer shall notify
19 the governor and the attorney general that a potential ground for
20 removal exists. If the potential ground for removal relates to the
21 presiding officer, the commissioner shall notify another board
22 member, who shall notify the governor and the attorney general that
23 a potential ground for removal exists.

24 Sec. 40.107. INFORMATION ON QUALIFICATIONS AND CONDUCT.

25 The department shall provide to the members of the board, as often
26 as necessary, information concerning the members' qualifications
27 for office and their responsibilities under applicable laws

1 relating to standards of conduct for state officers.

2 Sec. 40.108. BOARD MEMBER TRAINING. (a) A person who is
3 appointed to and qualifies for office as a member of the board may
4 not vote, deliberate, or be counted as a member in attendance at a
5 meeting of the board until the person completes a training program
6 that complies with this section.

7 (b) The training program must provide the person with
8 information regarding:

9 (1) the law governing department operations;

10 (2) the programs, functions, rules, and budget of the
11 department;

12 (3) the scope of and limitations on the rulemaking
13 authority of the board;

14 (4) the results of the most recent formal audit of the
15 department;

16 (5) the requirements of:

17 (A) laws relating to open meetings, public
18 information, administrative procedure, and disclosing conflicts of
19 interest; and

20 (B) other laws applicable to members of the board
21 in performing their duties; and

22 (6) any applicable ethics policies adopted by the
23 department or the Texas Ethics Commission.

24 (c) A person appointed to the board is entitled to
25 reimbursement, as provided by the General Appropriations Act, for
26 the travel expenses incurred in attending the training program,
27 regardless of whether the attendance at the program occurs before

1 or after the person qualifies for office.

2 (d) The commissioner shall create a training manual that
3 includes the information required by Subsection (b). The
4 commissioner shall distribute a copy of the training manual
5 annually to each member of the board. On receipt of the training
6 manual, each member of the board shall sign and submit to the
7 commissioner a statement acknowledging receipt of the training
8 manual.

9 SUBCHAPTER E. BOARD'S POWERS AND DUTIES

10 Sec. 40.151. RULES; RECORDS. The board shall:

11 (1) adopt rules for the operation of the department;

12 and

13 (2) maintain a record of all proceedings and official
14 orders.

15 Sec. 40.152. SEPARATION OF RESPONSIBILITIES. The board
16 shall develop and implement policies that clearly separate the
17 policy-making responsibilities of the board and the management
18 responsibilities of the commissioner and staff of the department.

19 Sec. 40.153. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
20 RESOLUTION PROCEDURES. (a) The board shall develop and implement a
21 policy to encourage the use of:

22 (1) negotiated rulemaking procedures under Chapter
23 2008, Government Code, for the adoption of department rules; and

24 (2) appropriate alternative dispute resolution
25 procedures under Chapter 2009, Government Code, to assist in the
26 resolution of internal and external disputes under the department's
27 jurisdiction.

1 (b) The department's procedures relating to alternative
2 dispute resolution must conform, to the extent possible, to any
3 model guidelines issued by the State Office of Administrative
4 Hearings for the use of alternative dispute resolution by state
5 agencies.

6 (c) The department shall:

7 (1) coordinate the implementation of the policy
8 adopted under Subsection (a);

9 (2) provide training as needed to implement the
10 procedures for negotiated rulemaking or alternative dispute
11 resolution; and

12 (3) collect data concerning the effectiveness of those
13 procedures.

14 ARTICLE 2. REPEAL OF FAMILY AND PROTECTIVE SERVICES COUNCIL

15 SECTION 2.01. Section 531.0012(c), Government Code, is
16 amended to read as follows:

17 (c) A reference to any of the following councils means the
18 executive commissioner or the executive commissioner's designee,
19 as appropriate, and a function of any of the following councils is a
20 function of that appropriate person:

21 (1) the Health and Human Services Council;

22 (2) the Aging and Disability Services Council;

23 (3) the Assistive and Rehabilitative Services
24 Council; or

25 (4) ~~[the Family and Protective Services Council, or~~

26 ~~(5)]~~ the State Health Services Council.

27 SECTION 2.02. Section 40.002(a), Human Resources Code, is

1 amended to read as follows:

2 (a) The Department of Family and Protective Services is
3 composed of the board [~~council~~], the commissioner, an
4 administrative staff, and other employees necessary to efficiently
5 carry out the purposes of this chapter.

6 SECTION 2.03. Sections 40.045(e) and (i), Human Resources
7 Code, are amended to read as follows:

8 (e) Not later than March 1 of the state fiscal year in which
9 an efficiency audit is required under this section, the board
10 [~~commissioner~~], in collaboration with the commissioner [~~council~~],
11 the department's chief financial officer, and the department's
12 internal audit director, shall select an external auditor to
13 conduct the efficiency audit.

14 (i) Not later than November 1 of the calendar year an
15 efficiency audit is conducted, the auditor shall prepare and submit
16 a report of the audit and recommendations for efficiency
17 improvements to the governor, the Legislative Budget Board, the
18 state auditor, the commissioner, the board [~~council~~], and the
19 chairs of the House Human Services Committee and the Senate Health
20 and Human Services Committee.

21 SECTION 2.04. Section 552.103(c), Health and Safety Code,
22 is amended to read as follows:

23 (c) The inspector general shall submit the annual status
24 report to the:

- 25 (1) executive commissioner;
- 26 (2) commissioner of state health services;
- 27 (3) commissioner of the Department of Family and

1 Protective Services;

2 (4) State Health Services Council;

3 (5) Family and Protective Services Board [~~Council~~];

4 (6) governor;

5 (7) lieutenant governor;

6 (8) speaker of the house of representatives;

7 (9) standing committees of the senate and house of
8 representatives with primary jurisdiction over state hospitals;

9 (10) state auditor; and

10 (11) comptroller.

11 SECTION 2.05. The following provisions of the Human
12 Resources Code are repealed:

13 (1) Section 40.001(2-a);

14 (2) Section 40.021;

15 (3) Section 40.022;

16 (4) Section 40.023;

17 (5) Section 40.024;

18 (6) Section 40.025; and

19 (7) Section 40.026.

20 ARTICLE 3. CONFORMING CHANGES

21 SECTION 3.01. Sections 162.304(b-2) and (g), Family Code,
22 are amended to read as follows:

23 (b-2) The Family and Protective Services Board
24 [~~commissioner of the department~~] shall adopt rules necessary to
25 implement Subsection (b-1), including rules that:

26 (1) limit eligibility for the subsidy under that
27 subsection to a child whose adoptive family income is less than 300

1 percent of the federal poverty level;

2 (2) provide for the manner in which the department
3 shall pay the subsidy under that subsection; and

4 (3) specify any documentation required to be provided
5 by an adoptive parent as proof that the subsidy is used to obtain
6 and maintain health benefits coverage for the adopted child.

7 (g) The Family and Protective Services Board [~~commissioner~~
8 ~~of the department~~] by rule shall provide that the maximum amount of
9 the subsidy under Subsection (b) that may be paid to an adoptive
10 parent of a child under an adoption assistance agreement is an
11 amount that is equal to the amount that would have been paid to the
12 foster parent of the child, based on the child's foster care service
13 level on the date the department and the adoptive parent enter into
14 the adoption assistance agreement. This subsection applies only to
15 a child who, based on factors specified in rules of the department,
16 the department determines would otherwise have been expected to
17 remain in foster care until the child's 18th birthday and for whom
18 this state would have made foster care payments for that care.
19 Factors the department may consider in determining whether a child
20 is eligible for the amount of the subsidy authorized by this
21 subsection include the following:

22 (1) the child's mental or physical disability, age,
23 and membership in a sibling group; and

24 (2) the number of prior placement disruptions the
25 child has experienced.

26 SECTION 3.02. Section [162.3041\(a-1\)](#), Family Code, is
27 amended to read as follows:

1 (a-1) Notwithstanding Subsection (a), if the department
2 first entered into an adoption assistance agreement with a child's
3 adoptive parents after the child's 16th birthday, the department
4 shall, in accordance with rules adopted by the Family and
5 Protective Services Board [~~commissioner of the department~~], offer
6 adoption assistance after the child's 18th birthday to the child's
7 adoptive parents under an existing adoption agreement until the
8 last day of the month of the child's 21st birthday, provided the
9 child is:

10 (1) regularly attending high school or enrolled in a
11 program leading toward a high school diploma or high school
12 equivalency certificate;

13 (2) regularly attending an institution of higher
14 education or a postsecondary vocational or technical program;

15 (3) participating in a program or activity that
16 promotes, or removes barriers to, employment;

17 (4) employed for at least 80 hours a month; or

18 (5) incapable of doing any of the activities described
19 by Subdivisions (1)-(4) due to a documented medical condition.

20 SECTION 3.03. Section [263.009](#)(a), Family Code, is amended
21 to read as follows:

22 (a) The department shall hold a permanency planning meeting
23 for each child for whom the department is appointed temporary
24 managing conservator in accordance with a schedule adopted by the
25 Family and Protective Services Board [~~commissioner of the~~
26 ~~department~~] by rule that is designed to allow the child to exit the
27 managing conservatorship of the department safely and as soon as

1 possible and be placed with an appropriate adult caregiver who will
2 permanently assume legal responsibility for the child.

3 SECTION 3.04. Sections 266.001(1-a) and (1-b), Family Code,
4 are amended to read as follows:

5 (1-a) "Board" means the Family and Protective Services
6 Board.

7 (1-b) "Commission" means the Health and Human Services
8 Commission.

9 [~~(1-b) "Commissioner" means the commissioner of the~~
10 ~~Department of Family and Protective Services.~~]

11 SECTION 3.05. Section 266.003(c), Family Code, is amended
12 to read as follows:

13 (c) The board [~~commissioner~~] shall adopt rules necessary to
14 implement this chapter.

15 SECTION 3.06. Section 266.006(b), Family Code, is amended
16 to read as follows:

17 (b) The executive commissioner, in collaboration with the
18 board [~~commissioner~~], shall adopt rules specifying the information
19 required to be included in the passport. The required information
20 may include:

21 (1) the name and address of each of the child's
22 physicians and health care providers;

23 (2) a record of each visit to a physician or other
24 health care provider, including routine checkups conducted in
25 accordance with the Texas Health Steps program;

26 (3) an immunization record that may be exchanged with
27 ImmTrac;

1 (4) a list of the child's known health problems and
2 allergies;

3 (5) information on all medications prescribed to the
4 child in adequate detail to permit refill of prescriptions,
5 including the disease or condition that the medication treats; and

6 (6) any other available health history that physicians
7 and other health care providers who provide care for the child
8 determine is important.

9 SECTION 3.07. Section [411.114](#)(a)(5), Government Code, is
10 amended to read as follows:

11 (5) The Department of Family and Protective Services
12 or the Health and Human Services Commission may not use the
13 authority granted under this section to harass an employee or
14 volunteer. The [~~commissioner of the Department of~~] Family and
15 Protective Services Board or the executive commissioner of the
16 Health and Human Services Commission, as applicable, shall adopt
17 rules to prevent the harassment of an employee or volunteer through
18 the request and use of criminal records.

19 SECTION 3.08. Section [531.998](#)(b), Government Code, as
20 amended by S.B. 213, Acts of the 85th Legislature, Regular Session,
21 2017, is reenacted and amended to read as follows:

22 (b) The report must be submitted to the governor, the
23 lieutenant governor, each standing committee of the legislature
24 with jurisdiction over matters involving the department, each
25 member of the legislature, the executive commissioner, [~~and~~]
26 commissioner of the department, and the Family and Protective
27 Services Board not later than December 1 of each year. On receipt

1 of the report, the department and the commission shall make the
2 report publicly available on the department's and the commission's
3 Internet websites.

4 SECTION 3.09. Section 40.004, Human Resources Code, is
5 amended to read as follows:

6 Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS.

7 (a) The board [~~commissioner~~] shall develop and implement policies
8 that provide the public with a reasonable opportunity to appear
9 before the board [~~commissioner~~] and to speak on any issue under the
10 jurisdiction of the department.

11 (b) The board [~~commissioner~~], with the advice of the
12 commissioner [~~council~~], shall prepare information of public
13 interest describing the functions of the department. The
14 commission shall make the information available to the public and
15 appropriate state agencies.

16 (c) [~~The commissioner shall grant an opportunity for a~~
17 ~~public hearing before the council makes recommendations to the~~
18 ~~commissioner regarding a substantive rule if a public hearing is~~
19 ~~requested by:~~

20 [~~(1) at least 25 persons,~~

21 [~~(2) a governmental entity, or~~

22 [~~(3) an association with at least 25 members.~~

23 [~~(d)~~] The board [~~executive commissioner~~] shall consider
24 fully all written and oral submissions about a proposed rule.

25 SECTION 3.10. Section 40.0041(f), Human Resources Code, is
26 amended to read as follows:

27 (f) The department shall periodically prepare and deliver

1 reports to the executive commissioner, ~~and~~ the commissioner, and
2 the board regarding the number, type, and resolution of complaints
3 made in the state against the department.

4 SECTION 3.11. Section 40.027, Human Resources Code, is
5 amended to read as follows:

6 Sec. 40.027. COMMISSIONER. (a) The board ~~[governor, with~~
7 ~~the advice and consent of the senate,]~~ shall appoint a
8 commissioner. The commissioner is to be selected according to
9 education, training, experience, and demonstrated ability.

10 (b) The commissioner serves at the will of the board ~~[a term~~
11 ~~of two years]~~.

12 (c) The commissioner shall:

13 (1) act as the department's chief administrative
14 officer;

15 (2) oversee the development and implementation of
16 policies and guidelines needed for the administration of the
17 department's functions; and

18 ~~(3) [oversee the development of rules relating to the~~
19 ~~matters within the department's jurisdiction, including the~~
20 ~~delivery of services to persons and the rights and duties of persons~~
21 ~~who are served or regulated by the department, and~~

22 ~~[(4)]~~ serve as a liaison between the department and
23 commission.

24 (d) The commissioner shall, as directed by the board,
25 administer this chapter and other laws relating to the department.

26 ~~[(e) Notwithstanding any other law, the commissioner shall~~
27 ~~adopt rules and policies for the operation of and the provision of~~

1 ~~services by the department.]~~

2 SECTION 3.12. Section 40.030, Human Resources Code, is
3 amended to read as follows:

4 Sec. 40.030. ADVISORY COMMITTEES. (a) The board
5 [~~commissioner~~] or the board's [~~commissioner's~~] designee may appoint
6 advisory committees in accordance with Chapter 2110, Government
7 Code.

8 (b) The board [~~commissioner~~] shall adopt rules, in
9 compliance with Chapter 2110, Government Code, regarding the
10 purpose, structure, and use of advisory committees by the
11 department. The rules may include provisions governing:

12 (1) an advisory committee's size and quorum
13 requirements;

14 (2) qualifications for membership of an advisory
15 committee, including:

16 (A) requirements relating to experience and
17 geographic representation; and

18 (B) requirements for the department to include as
19 members of advisory committees youth who have aged out of foster
20 care and parents who have successfully completed family service
21 plans and whose children were returned to the parents, as
22 applicable;

23 (3) appointment procedures for an advisory committee;

24 (4) terms for advisory committee members; and

25 (5) compliance with Chapter 551, Government Code.

26 SECTION 3.13. Section 40.042(g), Human Resources Code, as
27 added by Chapter 1136 (H.B. 249), Acts of the 85th Legislature,

1 Regular Session, 2017, is amended to read as follows:

2 (g) The executive commissioner or the board [~~commissioner~~
3 ~~of the department~~], as appropriate, may adopt rules to implement
4 this section.

5 SECTION 3.14. Section 40.043, Human Resources Code, is
6 amended to read as follows:

7 Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION
8 PROCEDURES. The board [~~commissioner~~] by rule shall establish the
9 department's strategy to:

10 (1) develop trauma-informed protocols for reducing
11 the number of incidents in which a child in the conservatorship of
12 the department runs away from a residential treatment center; and

13 (2) balance measures aimed at protecting child safety
14 with federal and state requirements related to normalcy and
15 decision making under the reasonable and prudent parent standard
16 prescribed by 42 U.S.C. Section 675 and Sections 264.001 and
17 264.125, Family Code.

18 SECTION 3.15. Section 40.065(b), Human Resources Code, is
19 amended to read as follows:

20 (b) The department shall develop and implement a
21 communication plan to ensure statewide public and government
22 awareness of child abuse or neglect investigated by the department.
23 The plan shall include information detailing the procedure followed
24 by the department during the investigation and the responsibilities
25 of the department in child abuse cases. In implementing the plan,
26 the department shall establish a process for expediting the
27 reporting of child abuse or neglect to the department. The board

1 ~~[executive commissioner]~~ shall adopt rules to implement this
2 subsection.

3 SECTION 3.16. Section 40.066(b), Human Resources Code, is
4 amended to read as follows:

5 (b) The memorandum of understanding shall require the chief
6 administrative law judge, the department, and the board
7 ~~[commissioner]~~ to cooperate in connection with a contested case
8 hearing and may authorize the State Office of Administrative
9 Hearings to perform any administrative act, including the giving of
10 notice, that is required to be performed by the department or board
11 ~~[commissioner]~~.

12 SECTION 3.17. Section 48.0021, Human Resources Code, is
13 amended to read as follows:

14 Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE
15 COMMISSIONER. In this chapter:

16 (1) a reference to the Health and Human Services
17 Commission means the Department of Family and Protective Services;
18 and

19 (2) a reference to the executive commissioner means
20 the ~~[commissioner of the Department of]~~ Family and Protective
21 Services Board.

22 SECTION 3.18. The following provisions of the Human
23 Resources Code are repealed:

24 (1) Section 40.042(d), as added by Chapter 1136 (H.B.
25 249), Acts of the 85th Legislature, Regular Session, 2017; and

26 (2) Section 40.042(g), as added by Chapter 319 (S.B.
27 11), Acts of the 85th Legislature, Regular Session, 2017.

1 ARTICLE 4. TRANSITION AND EFFECTIVE DATE

2 SECTION 4.01. (a) Not later than January 1, 2024, the
3 governor shall appoint members to the Family and Protective
4 Services Board as provided by Section 40.101, Human Resources Code,
5 as added by this Act.

6 (b) In appointing the initial members of the Family and
7 Protective Services Board under Section 40.101, Human Resources
8 Code, as added by this Act, the governor shall appoint:

9 (1) one member for a term expiring February 1, 2025;

10 (2) two members for terms expiring February 1, 2027;

11 and

12 (3) two members for terms expiring February 1, 2029.

13 SECTION 4.02. Notwithstanding Section 40.108, Human
14 Resources Code, as added by this Act, a person serving on the Family
15 and Protective Services Board may vote, deliberate, and be counted
16 as a member in attendance at a meeting of the board until April 1,
17 2024.

18 SECTION 4.03. This Act takes effect September 1, 2023.