

## **BILL ANALYSIS**

Senate Research Center

S.B. 285  
By: Nelson  
Government Organization  
8/14/2003  
Enrolled

### **DIGEST AND PURPOSE**

The Texas Department of Human Services (DHS) is subject to the Sunset Act. In 2001, the 77th Texas Legislature continued the agency until 2011, and required the Sunset Advisory Commission (commission) to conduct a limited review of DHS. S.B. 285 provides for several statutory modifications recommended by the commission.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Human Services in SECTION 11 (Section 22.040, Human Resources Code) and SECTION 14 (Section 31.015, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Human Services in SECTION 15 (Section 242.610, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 21.003(d), (h), and (j), Human Resources Code, as follows:

- (d) Requires the governor to designate a member of the Texas Board of Human Services (board) as the presiding officer of the board to serve in that capacity at the pleasure of the governor.
- (h) Provides that a person is not eligible for appointment to the board if the person or the person's spouse meets certain criteria.
- (j) Prohibits a person from being a member of the board or acting as general counsel to the board or the Texas Department of Human Services (DHS) if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of DHS.

SECTION 2. Amends Section 21.0031, Human Resources Code, as follows:

Sec. 21.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) Prohibits a person from being a member of the board and from being a DHS employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if certain conditions exist.

- (b) Redefines "Texas trade association."

SECTION 3. Amends Section 21.0032, Human Resources Code, as follows:

Sec. 21.0032. GROUND FOR REMOVAL. (a) Provides that it is a ground for removal from the board that a member does not meet certain criteria.

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

(c) Requires the commissioner of human services (commissioner), if the commissioner has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the commissioner, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4. Amends Section 21.0051, Human Resources Code, by amending Subsections (a) and (c) and adding Subsection (f), as follows:

(a) Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner and the staff of DHS.

(c) Requires the commissioner or the commissioner's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. Requires the policy statement to include certain information.

(f) Requires the policy statement under Subsection (c) to meet certain guidelines.

SECTION 5. Amends Chapter 21, Human Resources Code, by adding Section 21.0053, as follows:

Sec. 21.0053. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the commissioner or the commissioner's designee to provide to DHS employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 6. Amends Chapter 21, Human Resources Code, by adding Section 21.00605, as follows:

Sec. 21.00605. REGIONAL BUSINESS PLANNING. (a) Requires DHS to develop a business plan for each service region that meets certain criteria.

(b) Requires DHS to develop standard client-centered outcome measures and use the standard measures in all regional business plans.

(c) Requires DHS to seek public input in the development of regional business plans and regional strategies.

SECTION 7. Amends Section 21.011(a), Human Resources Code, as follows:

(a) Requires the commissioner, on or before December 31 of each year, to prepare and submit to the board a full report on the operation and administration of DHS together with the commissioner's recommendations for changes. Requires the report to include information relating to the status of the client-centered outcome measures developed by DHS under Section 21.00605(b) and DHS's progress in improving those outcome measures. Requires the board to submit the report to the governor and the legislature.

SECTION 8. Amends Section 21.015, Human Resources Code, by amending Subsections (c) and

(d) and adding Subsection (f), as follows:

(c) Requires DHS, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) Requires DHS to maintain a file on each written complaint filed with DHS. Requires the file to include certain information.

(f) Requires DHS to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of its policies and procedures relating to complaint investigation and resolution. Authorizes DHS to delay providing the information to a person who is a subject of the complaint if providing the information would jeopardize an investigation.

SECTION 9. Amends Section 21.016, Human Resources Code, as follows:

Sec. 21.016. PUBLIC TESTIMONY. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of DHS.

SECTION 10. Amends Chapter 21, Human Resources Code, by adding Sections 21.018 and 21.019 to read as follows:

Sec. 21.018. POLICY ON TECHNOLOGICAL SOLUTIONS. Requires the board to develop and implement a policy that requires the commissioner and the DHS staff to research and propose appropriate technological solutions to improve the ability of DHS to perform its mission. Requires the technological solutions to include measures to ensure that the public is able to easily find information about DHS through the Internet and that persons who have a reason to use DHS's services are able to use the Internet to interact with DHS and to access any services that can be provided effectively through the Internet. Requires the policy to also ensure that proposed technological solutions are cost-effective and developed through DHS's planning processes.

Sec. 21.019. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) Requires the board to develop and implement a policy to encourage the use of certain procedures.

(b) Requires DHS procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to meet certain guidelines.

SECTION 11. Amends Chapter 22, Human Resources Code, by adding Section 22.040, as follows:

Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES. Requires DHS by rule to develop and implement a plan to assist elderly persons or persons with disabilities requesting community care services in receiving those services as quickly as possible when those services become available. Requires the plan to require DHS to perform certain acts.

SECTION 12. Amends Section 31.0128, Human Resources Code, by adding Subsection (e) to require DHS and the Texas Workforce Commission (TWC), on DHS's formulation of recommendations and strategies under Section 31.0129(b), to, as necessary, revise and update a

memorandum of understanding and coordinated interagency case management plan under this section to include the recommendations and strategies.

SECTION 13. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.0129, as follows:

Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY TRANSITIONS. (a) Requires DHS, TWC, and representatives of local workforce development boards to conduct a survey of best practices used to transition clients between local department offices and workforce centers.

(b) Requires DHS to perform certain acts.

(c) Requires DHS and local workforce development boards, using existing resources, to adopt policies to implement the recommendations and strategies contained in the revised and updated memorandum of understanding under Section 31.0128.

SECTION 14. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.015, as follows:

Sec. 31.015. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. Requires DHS, by rule, to the extent practicable using existing revenue, to develop and implement a plan to identify recipients of financial assistance that are at risk of exhausting their benefits under Section 31.0065, and provide referrals for the recipient and the recipient's family to appropriate preventive and support services, including faith-based services.

SECTION 15. Amends Section 242.610, Health and Safety Code, by amending Subsections (b), (d), and (g) and adding Subsections (h), (i), (j), (k), (l), and (m), as follows:

(b) Requires the results of the examination to be reported in accordance with Section 242.6101.

(d) Requires DHS, subject to Subsections (h)-(m), to issue a permit or renew a permit to an applicant who meets certain criteria.

(g) Authorizes the board by rule to adopt a system under which permits expire on various dates during the year. Requires DHS, for the year in which the permit expiration date is changed, to prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. Provides that on renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) Authorizes a person who is otherwise eligible to renew a permit to renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. Prohibits a person whose permit has expired from engaging in activities that require a permit until the permit has been renewed.

(i) Authorizes a person whose permit has been expired for 90 days or less to renew the permit by paying to DHS a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) Authorizes a person whose permit has been expired for more than 90 days but less than one year to renew the permit by paying to DHS a renewal fee that is equal to two times the normally required renewal fee.

(k) Prohibits a person whose permit has been expired for one year or more from renewing the

permit. Authorizes the person to obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) Authorizes a person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application to obtain a new permit without reexamination. Requires the person to pay to DHS a fee that is equal to two times the normally required renewal fee for the permit.

(m) Requires DHS, not later than the 30th day before the date a person's permit is scheduled to expire to send written notice of the impending expiration to the person at the person's last known address according to DHS records.

SECTION 16. Amends Subchapter N, Chapter 242, Health and Safety Code, by adding Section 242.6101, as follows:

Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT. (a) Requires DHS to notify the person of the results of the examination, not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter.

(b) Requires DHS, if the examination is graded or reviewed by a testing service, to notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service and to notify the person of the reason for the delay before the 90th day, if notice of the examination results will be delayed for longer than 90 days after the examination date.

(c) Authorizes DHS to require a testing service to notify a person of the results of the person's examination.

(d) Requires DHS to furnish the person with an analysis of the person's performance on the examination, if requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter.

SECTION 17. Amends Section 242.611, Health and Safety Code, as follows:

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. Prohibits the fees from exceeding, except as otherwise provided by Section 242.610, a certain amount.

SECTION 18. Amends Section 242.612, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the board to revoke, suspend, or refuse to renew a permit or to reprimand a permit holder for a violation of this subchapter or a rule of the board adopted under this subchapter. Authorizes the board to suspend a permit in an emergency or rescind training program approval.

(c) Authorizes the board to place on probation a person whose permit is suspended. Authorizes the board, if a permit suspension is probated, to require the person follow certain guidelines.

SECTION 19. Provides that the changes made by this Act to Section 21.011(a), Human Resources Code, apply only to a report on the operations and administration of DHS that is required to be submitted to the governor and the legislature under that section after December 31, 2003.

SECTION 20. Requires DHS to develop a business plan for each service region, in accordance with Section 21.00605, Human Resources Code, as added by this Act, not later than September 1, 2004.

SECTION 21. Requires DHS to formulate recommendations and strategies in accordance with Section 31.0129(b), Human Resources Code, as added by this Act, not later than September 1, 2004.

SECTION 22. Requires DHS and TWC, not later than December 1, 2004, to, as necessary, update the memorandum of understanding and coordinated interagency case management plan required under Section 31.0128, Human Resources Code, as amended by this Act.

SECTION 23. Effective date: September 1, 2003.