

BILL ANALYSIS

C.S.S.B. 2039
By: Ellis
Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, the Legislative Audit Committee may meet to review circumstances of fiscal uncertainty at a university or a state agency. If the Legislative Audit Committee makes a finding that "gross fiscal mismanagement" exists, then they may recommend a rehabilitation plan for the university or a state agency, or they may recommend that the Governor place the university or state agency under conservatorship. However, conservatorship can jeopardize the accreditation at Texas Southern University, and as such, there may be a need for an alternative method of addressing situations of administrative and financial exigency at a university or state agency.

CSSB 2039 creates new law that expands the options for the Legislative Audit Committee and the Governor to make recommendations for new governance of a university or state agency upon a finding of "financial or administrative exigency." CSSB 2039 creates the position of interim president to work with a new board of regents and a team of experts to develop and implement a rehabilitation plan to address financial and administrative concerns.

Further, CSSB 2039 provides for the use of a rehabilitation plan to ensure sustained financial oversight and accountability for the agency and to include benchmarks and timelines for achieving specific goals. This bill requires continued reporting on the progress of the rehabilitation plan by the interim president, creates a legislative oversight committee, and authorizes the governor to appoint a new board of regents.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

ARTICLE 1: Article I is titled "Interim Administration of Certain Institutions of Higher Education on Finding of Financial or Administrative Exigency." Subchapter G, Chapter 51 of the Education Code is amended by adding language relating to the interim administration of certain institutions on finding of financial or administrative exigency. Defines "university," and provides that Section 51.358 applies only to a university or university system (system). Provides that the governor may make an independent finding that a condition of financial or administrative exigency exists within a university or system that creates continuing and pervasive instability in the operation and management of the university or system or results in the university or system consistently failing to properly perform all or part of the primary functions or duties of the university or system.

Provides that the governor shall notify each member of the legislative audit committee (committee) of the governor's findings. Provides that the committee may meet to act on the governor's finding, at the call of both chairs of the committee, not later than the 10th business day after the latest date a member of the committee receives notice from the governor. Provides that the governor may abolish the governing body of the university or system if the committee concurs with the governor's finding and recommends that the governing body be established.

Provides that if the governing body is abolished, an interim governing board for the university or system is reconstituted composed of five members appointed by the governor with the advice and consent of the senate. Provides that each member appointed holds office for a term expiring on the second anniversary of the date of the first appointment of a member of the interim

governing board. Provides that the interim governing board may appoint an interim president or chancellor to the university or system with the duties determined by the interim governing board to serve during the term of the interim governing board.

Provides that following the expiration of the terms of the interim governing board members, the governing body of the university or system is reconstituted under the law providing for the governance of the university or system. Provides that the initial members of the reconstituted governing body shall be appointed for terms that expire on the dates necessary to conform to the permanent law establishing those terms.

Provides that during the period in which an interim governing board is in effect, the law establishing the governing body of the university or system and the terms of office of the members of the governing body are suspended. Provides that the interim governing board, with the assistance of the interim president or chancellor, if any, shall develop and implement a comprehensive administration improvement plan for the university or system and submit the plan to the governor and to each of the joint chairs of the committee. Provides what provisions the plan must address. Provides the guidelines that the administration improvement plan must include.

Provides that the interim governing board may consult with the appropriate experts as the interim governing board considers necessary in developing and implementing the administration improvement plan. Provides that the interim governing board may contract with another system's administration office to provide financial and accounting services, including consulting services, to assist the university or system under interim administration in given and specific criteria.

Provides that the interim governing board shall prepare an annual financial statement for the university or system. Provides an audit of the financial statement must be prepared by the state auditor or, if the authority to contract for audit services is delegated by the state auditor in accordance with Section 321.020, Government Code, by an independent private auditor. Provides that the audit required must include a review of a contract entered into by the university or university system that is active; or the university or system entered into during the two-year period immediately preceding the date the interim administration took effect.

Requires the interim governing board to report to the governor, the committee, and the legislative oversight committee appointed under Subsection (r) on the progress of the administration improvement plan and on the progress of the outcomes for each area described by Subsection (i), including specific information regarding that progress. Further provides that the reports shall be issued not later than the 60th day after the date the interim governing board is appointed, at least once each quarter, and at other times as directed by the governor or the committee.

Requires an interim governing board appointed for a university or system and an interim president or chancellor appointed by that governing board to consult with the accreditation agencies by which the university or system is accredited and take appropriate action to the extent necessary to ensure that the university or system maintains accreditation during the period in which the interim board is in effect.

Entitles a person appointed to act as the interim president or chancellor of a university or system under this section to receive a salary for performing those duties that is equal to the salary of the chief administrative officer of the university or system under interim administration. Provides that the university or system under interim administration shall pay the salary of the interim president or chancellor from money appropriated or otherwise available to the university or system, except to the extent that money to pay the salary is specifically appropriated or made available through the budget execution process for that purpose.

Entitles a member of an interim governing board or an interim president or chancellor to reimbursement for the necessary and reasonable expenses incurred by that person in the course of performing the person's duties under this chapter. Requires reimbursement to be paid from funds appropriated or otherwise available to the university or system, except to the extent that money to pay for those expenses is specifically appropriated or made available through the budget execution process for that purpose.

Requires the lieutenant governor and the speaker of the house of representatives to appoint a committee composed of three members of the senate and three members of the house of representatives to review the activities of the board and the succeeding, reconstituted governing body, as soon as practicable after appointing an interim governing board. This subsection states that such a committee expires on the third anniversary of the date of the first appointment of a member to the interim governing board.

Requires, that after the termination of an interim administration under this section, the university or system placed under the interim administration to continue to report to the governor and the committee at least once each quarter after the termination of an interim administration under this chapter until both the governor and the committee determine that the reports are no longer necessary. Provides that the report must include information required by Subsection (i).

Provides for a new section titled "denial of employment for contribution to financial or administrative exigency." Provides that the interim governing board of a university or system subject to an interim administration under Section 51.358 may make a determination that an individual's act or omission was a material cause of the condition of financial or administrative exigency at the university or system that resulted in the interim administration. Provides that if the interim governing board makes a determination under this section, the individual shall be denied employment in an administrative capacity with the university or system and any employment contract provision concerning administrative employment of that individual is void by the university or system.

ARTICLE 2: Amends Subtitle C, Title 10 of the Government Code by adding Chapter 2116, and creates a new chapter titled "interim administration of certain state agencies on finding of financial or administrative exigency." Subchapter (A), titled "general provisions," defines "state agency" and states that this chapter does not apply to an agency that is under the direction of an elected officer, board, or commission, or a system or institution of higher education.

Subchapter (B), titled "INTERIM ADMINISTRATOR," (administrator) creates sections for the appointment, term, title, compensation, and reimbursement of the expenses for the administrator. Sec. 2116.011 is titled "Appointment; Term." Authorizes the governor, with the senate's advice and consent, to appoint an administrator to oversee the interim administration of a state agency only if the required finding and recommendation is made under Section 2116.021. Requires an appointment to be made in consultation with the committee.

Requires a person to be qualified, by experience or education, to administer under the prevailing circumstances of the state agency, in order to be eligible for appointment. Provides that the term of an administrator expires on the date the interim administration terminates as determined. Authorizes an administration to be reappointed to continue the interim administration if said administration is extended.

Sec. 2116.012 is titled, "TITLE." Requires the governor to provide that the interim administrator has the title of interim administrator or interim commissioner, as appropriate to the state agency to which the interim administrator is appointed.

Sec. 2116.013 is titled, "COMPENSATION." Entitles a person appointed as an interim administrator to receive a salary for performing those duties that is equal to the salary of the chief administrative officer of the state agency under interim administration. Requires the state agency to pay the salary of the interim administrator from funds appropriated or otherwise available to the state agency, except to the extent that money to pay the salary is specifically appropriated or made available through the budget execution process for that purpose.

Sec. 2116.014 is titled, "REIMBURSEMENT OF EXPENSES." Entitles an interim administrator to reimbursement for the necessary and reasonable expenses incurred by that person in the course of performing the person's duties under this chapter. Further requires reimbursement to be paid from funds appropriated or otherwise available to the state agency, except to the extent that money to pay for those expenses is specifically appropriated or made available through the budget execution process for that purpose.

Provides that a limit prescribed by general law or the General Appropriations Act on the amount of reimbursement of expenses that state officers or members of state boards and commissions may generally receive does not apply to the reimbursement of the reasonable and necessary expenses incurred by an interim administrator in the course of performing duties under this chapter. Provides that specific sections are reserved for expansion.

Subchapter (C), titled, "Interim Administration" creates sections outlining the interim administration of a state agency under this Article. Sec. 2116.021 is titled, "FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY." Authorizes the governor to make an independent finding that a condition of financial or administrative exigency exists within a state agency that creates continuing and pervasive instability in the operation and management of, or results in the consistent failure to properly perform all or part of the primary functions or duties of, the state agency.

Requires the governor to notify each member of the committee of such a finding and further authorizes the committee to meet to act on the governor's finding, at the call of both chairs of the committee, not later than the 10th business day after the latest date a committee member receives notice from the governor under this subsection. Authorizes the governor to place the agency under interim administration and appoint an interim administrator as provided by this chapter only if the committee concurs with the governor's finding and recommends that such placement and appointment is appropriate.

Sec. 2116.022 is titled, "GOVERNING POWERS; SUSPENSION; TRANSFER." Authorizes the governor to suspend the powers and duties of the governing officer or body, as applicable, of a state agency placed under interim administration unless the governor abolishes the position of said officer or body. This subsection provides that the suspension terminates when the interim administration terminates. Transfers the powers and duties of the governing officer or body suspended by the governor to the interim administrator, except as provided. Requires the interim administrator to consult with the governing officer or body, as applicable, of the state agency to which the interim administrator is appointed to ensure that the state agency maintains accreditation.

Sec. 2116.023 is titled, "ADMINISTRATIVE IMPROVEMENT PLAN." Requires the interim administrator to develop and implement a comprehensive administration improvement plan for the state agency and to submit the plan to the governor and to each of the joint chairs of the committee. Provides what the plan must address.

Requires that the plan include timelines, benchmarks, and projected outcomes for improvements in the areas described and provide a procedure for the investigation and reporting of any possible criminal activity to the appropriate district attorney or county attorney and, unless prohibited by law, to certain elected officials, if the activity meets certain criteria, and be prepared in a format specified by the governor with the legislative audit committee's approval. Authorizes the interim administrator to consult with appropriate experts as the interim administrator considers necessary in developing and implementing the plan.

Sec. 2116.024 is titled, "FINANCIAL OVERSIGHT." Authorizes the administrator to contract with another state agency that provides financial and accounting services, including consulting services, to assist the state agency under interim administration in taking certain actions. Requires the interim board to prepare an annual financial statement for the state agency and requires an audit of that statement to be prepared by the state auditor or an independent private auditor, as determined by the committee. Requires such an audit to include a review of each contract entered into by the state agency that is active or was entered into by the state agency during the two-year period immediately preceding the date the interim administration took effect.

Sec. 2116.025 is titled, "REPORT." Requires the administrator to report to the governor and the legislative audit committee on the progress of the administration improvement plan at least once each quarter, on completion of the interim administration, and at other times as directed by the governor or the legislative audit committee. Requires the report to include specific information on the progress of the outcomes for each area described.

Sec. 2116.026 is titled, "DURATION OF INTERIM ADMINISTRATION." Requires the governor, with the approval of the committee, to determine the duration of an interim administration, except that the duration is prohibited from exceeding two years. Authorizes the governor, with the approval of the committee, to extend the duration of the interim administration that lasted less than two years on a determination by the governor that an extension is necessary to accomplish the purposes of this chapter, provided that the initial duration and the extended duration together do not exceed two years.

Requires the governor to review the progress of the interim administration, if said administration has a duration longer than six months, after each six-month period and to consider whether the interim administration is to be continued after that period. Also provides that the interim administration terminates on the 30th day after the end of that period unless the governor, with the approval of the committee, elects to continue the administration.

Provides that, notwithstanding any other provision of this chapter, the interim administration of a state agency is immediately terminated if the governor or the committee makes a determination that the condition of financial or administrative exigency at the agency that resulted in the interim administration no longer exists.

Sec. 2116.027 is titled, "REPORT FOLLOWING TERMINATION OF INTERIM ADMINISTRATION." Requires the state agency placed under the interim administration to continue to report to the governor and the committee at least once each quarter after the termination of an interim administration under this chapter until both the governor and the committee determine that the reports are no longer necessary. This section also requires the report to include the information required by Section 2116.025. Provides that specific Sections be reserved for expansion

Subchapter (D), titled, "Option for interim governing board and reconstituted governing officer or body" contains sections for abolishing the governing officer or body of a state agency, the interim governing board, and the reconstitution of permanent governing officer or body.

Sec. 2116.041 is titled, "ABOLITION OF GOVERNING OFFICER OR BODY." Authorizes the governor may make an independent finding that a condition of financial or administrative exigency exists within the state agency as described by Section 2116.021 as an alternative to the appointment of an interim administrator and the options provided under Subchapters B and C. Further allows the governor to propose that the position of governing officer or body, as applicable, of the agency be abolished.

States that the governor shall notify each member of the committee of the governor's finding. Provides that the committee may meet to act on the governor's finding, at the call of both chairs of the committee, not later than the 10th business day after the latest date a member of the committee receives notice from the governor. Provides that the governor may abolish the position of governing officer or the governing board, as applicable, of the agency only if the committee concurs with the governor's finding and recommends that the position of governing officer or the governing board, as applicable, be abolished.

Sec. 2116.042 is titled, "INTERIM GOVERNING BOARD." Provides that an interim governing board for the state agency is reconstituted and composed of five members appointed by the governor, with the advice and consent of the senate, if a governing officer or body is abolished under this subchapter. Also provides that each interim member holds office for a term expiring on the second anniversary of the date of the first appointment of such a member. Requires consultation with the committee in making this appointment.

Sec. 2116.043 is titled, "RECONSTITUTION OF PERMANENT GOVERNING OFFICER OR BODY." Provides that the governing officer or body, as applicable, is reconstituted under the law providing for the governance of the state agency following the expiration of the term of the interim board members. Requires the initial reconstituted governing officer or members of the governing body to be appointed for a term or terms that expire on the date or dates necessary to conform with the permanent law establishing those terms.

Provides that the law establishing the governing officer or governing body and the term or terms of office of the governing officer or those members is suspended during the period in which a board is in effect. Provides that specific Sections are reserved for expansion.

Subchapter (E) titled "Employment for Contribution to Financial or Administrative Exigency." Sec. 2116.061 is titled "DENIAL OF EMPLOYMENT FOR CONTRIBUTION TO FINANCIAL OR ADMINISTRATIVE SOLVENCY." Provides that the interim administrator or interim governing board or officer, as applicable, of a state agency subject of this chapter may make a determination that individual's act or omission was a material cause of the condition of financial or administrative exigency at the agency that resulted in the interim administration or the abolition of the position of governing officer or the governing body. If the interim administrator, or interim governing board or officer, as applicable, makes a determination under this section, the individual shall be denied employment with the agency and any existing employment contract with that individual is void.

ARTICLE III: Article III is titled "Legislative Audit Committee Meeting by Telecommunication Device." Amends Chapter 321 of the Government Code by adding Section 321.024 titled "MEETING BY TELECOMMUNICATION DEVICE." States that, as an exception to Chapter 551 of the Government Code and other law, if a meeting is located in Austin and the joint chairs of the committee are physically present at the meeting, then any number of the other members of the committee may attend the meeting by use of telephone conference call, video conference call, or other similar telecommunication device.

States that this section applies for purposes of constituting a quorum, for purposes of voting, and for any other purpose allowing a member of the committee to otherwise fully participate in any meeting of the committee, and applies only to a meeting held pursuant to chapters of this code or sections of the Education Code.

States that a meeting held by use of telephone conference call, video conference call, or other similar telecommunication device is subject to the notice requirements applicable to other meetings of the committee; must specify in the notice of the meeting the location in Austin of the meeting at which the joint chairs will be physically present; must be open to the public and shall be audible to the public at the location in Austin specified in the notice of the meeting as the location of the meeting at which the joint chairs will be physically present; and must provide two-way audio communication between all members of the committee attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished.

ARTICLE IV: Effective date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes a change to provide that the legislative audit committee may, rather than shall, meet to act on certain findings of the governor, at the call of both chairs, rather than either chair, of the committee, not later than a certain date.

The substitute makes a change to provide that the governor may abolish the governing body of the university or university system if the legislative audit committee concurs with a certain finding of the governor and recommends that the governing body be abolished.

The substitute makes a change to provide that the interim governing board may appoint an interim president or chancellor to the university or system with certain duties and for a certain term and must no longer do so in consultation with the governor.

The substitute makes a change to provide that the interim governing board and the interim administrator shall report certain information to certain parties at other times as directed by the governor or the legislative audit committee, rather than by the governor with the approval of the legislative audit committee.

The substitute makes a change to provide that after the termination of an interim administration, the applicable university, system, or state agency shall continue to report to certain parties at least once each quarter until both the governor and the legislative audit committee determine that the reports are no longer necessary.

The substitute makes a change to provide that the governor with the advice and consent of the senate may appoint an interim administrator to oversee the interim administration of a state agency only if the required finding and recommendation are made under a certain section of code.

The substitute makes a change to provide that the governor may place the state agency under interim administration and appoint an interim administrator only if the legislative audit committee concurs with the a certain finding of the governor and recommends that the governor place the agency under interim administration and appoint an interim administrator.

The substitute makes a change to provide that the governor may determine the length, extend the duration, and elect to continue the interim administration with the approval, rather than advice, of the legislative audit committee in certain instances.

The substitute makes a change to provide that the interim administration of a state agency is immediately terminated, notwithstanding any other provision of this chapter, if the governor or the legislative audit committee makes a determination that the condition of financial or administrative exigency at the agency that resulted in the interim administration no longer exists.

The substitute makes a change to provide that in certain instances, the governor may make an independent finding, rather than on concurrence by the legislative audit committee, that a condition of financial or administrative exigency exists within the agency as described and propose that the certain position, as applicable, be abolished, rather than be able to abolish that position.

The substitute makes a change to provide that the governor shall notify each member of the legislative audit committee of the governor's finding under Subsection (a). Provides that the legislative audit committee may meet to act on the governor's finding, at the call of both chairs of the committee, not later than a certain date. Provides that the governor may abolish the position of governing officer or the governing body, as applicable, of the agency under this section only if the legislative audit committee concurs with a certain finding of the governor and recommends that the position of governing officer or the governing body, as applicable, be abolished.

The substitute makes other conforming, technical, and non-substantive changes.