

By: Ellis, West

S.B. No. 2039

A BILL TO BE ENTITLED

AN ACT

relating to the governance of certain state agencies.

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

ARTICLE 1. INTERIM ADMINISTRATION OF CERTAIN INSTITUTIONS OF  
HIGHER EDUCATION ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SECTION 1.01. Subchapter G, Chapter 51, Education Code, is  
amended by adding Sections 51.358 and 51.359 to read as follows:

Sec. 51.358. INTERIM ADMINISTRATION OF CERTAIN  
INSTITUTIONS ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY.

(a) In this section, "university" means a general academic  
teaching institution as defined by Section 61.003.

(b) This section applies only to a university or university  
system.

(c) The governor may make an independent finding that a  
condition of financial or administrative exigency exists within a  
university or university system that:

(1) creates continuing and pervasive instability in  
the operation and management of the university or system; or

(2) 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.

(d) The governor shall notify each member of the legislative  
audit committee of the governor's finding under Subsection (c).  
The legislative audit committee shall meet to act on the governor's

1 finding, at the call of either chair of the committee, not later  
2 than the 10th business day after the latest date a member of the  
3 committee receives notice from the governor under this subsection.

4 (e) The governor may abolish the governing body of the  
5 university or university system if the legislative audit committee  
6 concurs with the governor's finding under Subsection (c).

7 (f) If the governing body is abolished under this section,  
8 an interim governing board for the university or university system  
9 is reconstituted composed of five members appointed by the governor  
10 with the advice and consent of the senate. Each member appointed  
11 under this subsection holds office for a term expiring on the second  
12 anniversary of the date of the first appointment of a member of the  
13 interim governing board. In consultation with the governor, the  
14 interim governing board may appoint an interim president or  
15 chancellor to the university or system with the duties determined  
16 by the interim governing board to serve during the term of the  
17 interim governing board.

18 (g) Following the expiration of the terms of the interim  
19 governing board members under Subsection (f), the governing body of  
20 the university or university system is reconstituted under the law  
21 providing for the governance of the university or system. The  
22 initial members of the reconstituted governing body shall be  
23 appointed for terms that expire on the dates necessary to conform to  
24 the permanent law establishing those terms.

25 (h) During the period in which an interim governing board is  
26 in effect, the law establishing the governing body of the  
27 university or university system and the terms of office of the

1 members of the governing body are suspended.

2 (i) The interim governing board, with the assistance of the  
3 interim president or chancellor, if any, shall develop and  
4 implement a comprehensive administration improvement plan for the  
5 university or university system and submit the plan to the governor  
6 and to each of the joint chairs of the legislative audit committee.

7 The plan must address:

8 (1) finance and accounting;  
9 (2) human resources;  
10 (3) management information systems;  
11 (4) planning and communications;  
12 (5) student financial aid;  
13 (6) contract and grant management; and  
14 (7) other elements determined appropriate by the  
15 governor with the approval of the legislative audit committee.

16 (j) The administration improvement plan must:

17 (1) include timelines, benchmarks, and projected  
18 outcomes for improvements in the areas described by Subsection (i);

19 (2) provide a procedure for the investigation and  
20 reporting of any possible criminal activity to the appropriate  
21 district or county attorney and, unless prohibited by law, to the  
22 governor, the lieutenant governor, the speaker of the house of  
23 representatives, and the attorney general, if the activity:

24 (A) is committed by a university or university  
25 system employee; and

26 (B) contributes to the condition of financial or  
27 administrative exigency; and

1           (3) be prepared in a format specified by the governor  
2 with the approval of the legislative audit committee.

3           (k) The interim governing board may consult with  
4 appropriate experts as the interim governing board considers  
5 necessary in developing and implementing the administration  
6 improvement plan.

7           (1) The interim governing board may contract with another  
8 university system's administration office to provide financial and  
9 accounting services, including consulting services, to assist the  
10 university or university system under interim administration in:

11               (1) reviewing policies and procedures relating to:

12                       (A) revenue and expenditure controls;

13                       (B) fixed assets;

14                       (C) treasury matters;

15                       (D) payroll; and

16                       (E) information technology;

17               (2) reviewing and approving grants and contracts;

18               (3) determining and recommending best business  
19 practices;

20               (4) segregating duties affecting internal controls to  
21 ensure that no one individual has control over multiple areas of  
22 operations or financial transactions;

23               (5) establishing a monthly financial report that  
24 includes receipts, bank statements, and monthly reconciliations;

25               (6) providing accurate and timely recording of assets  
26 in the state property accounting system; and

27               (7) providing other management and financial

1 operations.

2 (m) The interim governing board shall prepare an annual  
3 financial statement for the university or university system. An  
4 audit of the financial statement must be prepared by the state  
5 auditor or, if the authority to contract for audit services is  
6 delegated by the state auditor in accordance with Section 321.020,  
7 Government Code, by an independent private auditor. The audit  
8 required by this subsection must include a review of a contract  
9 entered into by the university or university system that:

10 (1) is active; or

11 (2) the university or university system entered into  
12 during the two-year period immediately preceding the date the  
13 interim administration took effect.

14 (n) The interim governing board shall report to the  
15 governor, the legislative audit committee, and the legislative  
16 oversight committee appointed under Subsection (r) on the progress  
17 of the administration improvement plan and on the progress of the  
18 outcomes for each area described by Subsection (i), including  
19 specific information regarding that progress:

20 (1) not later than the 60th day after the date the  
21 interim governing board is appointed;

22 (2) at least once each quarter; and

23 (3) at other times as directed by the governor with the  
24 approval of the legislative audit committee.

25 (o) An interim governing board appointed for a university or  
26 university system under Subsection (f) and an interim president or  
27 chancellor appointed by that governing board shall 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 governing board is in effect.

(p) A person appointed to act as the interim president or chancellor of a university or university system under this section is entitled 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. 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.

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

(r) As soon as practicable after appointing an interim governing board under Subsection (f), the lieutenant governor and the speaker of the house shall appoint a legislative oversight

committee composed of three members of the senate and three members of the house of representatives to review the activities of the interim governing board and the reconstituted governing body that succeeds the interim governing board. A legislative oversight committee appointed under this subsection expires on the third anniversary of the date of the first appointment of a member of the interim governing board.

(s) After the termination of an interim administration under this section, the university or university system placed under the interim administration must continue to report to the governor and the legislative audit committee at least once each quarter. The report must include the information required by Subsection (i).

Sec. 51.359. DENIAL OF EMPLOYMENT FOR CONTRIBUTION TO FINANCIAL OR ADMINISTRATIVE EXIGENCY. The interim governing board of a university or university 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 university system that resulted in the interim administration. 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 university system and any employment contract provision concerning administrative employment of that individual is void by the university or system.

ARTICLE 2. INTERIM ADMINISTRATION OF CERTAIN STATE AGENCIES ON  
FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SECTION 2.01. Subtitle C, Title 10, Government Code, is  
amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. INTERIM ADMINISTRATION OF CERTAIN STATE AGENCIES ON  
FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITION. In this chapter, "state agency"  
means a department, commission, board, office, or other agency or  
entity governed by a commissioner or other officer appointed by the  
governor or by a board, commission, or other governing body with one  
or more members appointed by the governor that:

(1) is in the executive branch of state government; or

(2) is created by statute.

Sec. 2116.002. APPLICABILITY OF CHAPTER. This chapter does  
not apply to:

(1) an agency that is under the direction of an elected  
officer, board, or commission; or

(2) a university system or institution of higher  
education.

[Sections 2116.003-2116.010 reserved for expansion]

SUBCHAPTER B. INTERIM ADMINISTRATOR

Sec. 2116.011. APPOINTMENT; TERM. (a) The governor with  
the advice and consent of the senate may appoint an interim  
administrator to oversee the interim administration of a state  
agency if the required finding is made under Section 2116.021. An  
appointment under this subsection must be made in consultation with



1 the legislative audit committee.

2 (b) To be eligible for appointment under this section, a  
3 person must be qualified, by experience or education, to administer  
4 under the prevailing circumstances the state agency for which the  
5 person is appointed.

6 (c) The term of an interim administrator expires on the date  
7 the interim administration terminates as determined under Section  
8 2116.026. An interim administrator may be reappointed to continue  
9 the interim administration if the interim administration is  
10 extended under Section 2116.026.

11 Sec. 2116.012. TITLE. The governor shall provide that the  
12 interim administrator has the title of interim administrator or  
13 interim commissioner, as appropriate to the state agency to which  
14 the interim administrator is appointed.

15 Sec. 2116.013. COMPENSATION. (a) A person appointed to  
16 act as the interim administrator of a state agency under this  
17 chapter is entitled to receive a salary for performing those duties  
18 that is equal to the salary of the chief administrative officer of  
19 the state agency under interim administration.

20 (b) The state agency under interim administration shall pay  
21 the salary of the interim administrator from money appropriated or  
22 otherwise available to the state agency, except to the extent that  
23 money to pay the salary is specifically appropriated or made  
24 available through the budget execution process for that purpose.

25 Sec. 2116.014. REIMBURSEMENT OF EXPENSES. (a) An interim  
26 administrator is entitled to reimbursement for the reasonable and  
27 necessary expenses incurred by the interim administrator in the

course of performing duties under this chapter. Reimbursement shall be paid from funds appropriated or otherwise available to the state agency under interim administration, except to the extent that money to pay those expenses is specifically appropriated or made available through the budget execution process for that purpose.

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

[Sections 2116.015-2116.020 reserved for expansion]

#### SUBCHAPTER C. INTERIM ADMINISTRATION

Sec. 2116.021. FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY. (a) The governor may make an independent finding that a condition of financial or administrative exigency exists within a state agency that:

(1) creates continuing and pervasive instability in the operation and management of the agency; or

(2) results in the agency consistently failing to properly perform all or part of the agency's primary functions or duties.

(b) The governor shall notify each member of the legislative audit committee of the governor's finding under Subsection (a). The legislative audit committee shall meet to act on the governor's finding, at the call of either chair of the committee, not later

1 than the 10th business day after the latest date a member of the  
2 committee receives notice from the governor under this subsection.

3 (c) The governor may place the state agency under interim  
4 administration and appoint an interim administrator as provided by  
5 this chapter only if the legislative audit committee concurs with  
6 the governor's finding under Subsection (a).

7 Sec. 2116.022. GOVERNING POWERS; SUSPENSION; TRANSFER.

8 (a) Unless the governor abolishes the position of governing  
9 officer or the governing body under Section 2116.041, the governor  
10 may suspend the powers and duties of the governing officer or  
11 governing body, as applicable, of a state agency placed under  
12 interim administration under Section 2116.021. The suspension  
13 terminates when the interim administration terminates.

14 (b) Except as provided by Subsection (c), the powers and  
15 duties of the governing officer or governing body suspended by the  
16 governor under Subsection (a) are transferred to the interim  
17 administrator appointed by the governor under this chapter.

18 (c) To the extent necessary to maintain accreditation  
19 status with an appropriate accrediting agency, an interim  
20 administrator shall consult the governing officer or governing  
21 body, as applicable, of the state agency to which the interim  
22 administrator is appointed.

23 Sec. 2116.023. ADMINISTRATION IMPROVEMENT PLAN. (a) The  
24 interim administrator appointed under this chapter shall develop  
25 and implement a comprehensive administration improvement plan for  
26 the state agency approved by the governor and by each of the joint  
27 chairs of the legislative audit committee. The plan must address:

1           (1) finance and accounting;  
2           (2) human resources;  
3           (3) management information systems;  
4           (4) planning and communications;  
5           (5) contract and grant management; and  
6           (6) other elements determined appropriate by the  
7 governor with the approval of the legislative audit committee.

8           (b) The administration improvement plan must:

9           (1) include timelines, benchmarks, and projected  
10 outcomes for improvements in the areas described in Subsection (a);

11           (2) provide a procedure for the investigation and  
12 reporting of any possible criminal activity to the appropriate  
13 district or county attorney and, unless prohibited by law, to the  
14 governor, the lieutenant governor, the speaker of the house of  
15 representatives, and the attorney general, if the activity:

16                   (A) is committed by an agency employee; and

17                   (B) contributes to the condition of financial or  
18 administrative exigency; and

19           (3) be prepared in a format specified by the governor  
20 with the approval of the legislative audit committee.

21           (c) The interim administrator may consult with appropriate  
22 experts as the interim administrator considers necessary in  
23 developing and implementing the administration improvement plan.

24           Sec. 2116.024. FINANCIAL OVERSIGHT. (a) The interim  
25 administrator may contract with another state agency that provides  
26 financial and accounting services, including consulting services,  
27 to assist the state agency under interim administration in:

1           (1) reviewing policies and procedures relating to:

2                   (A) revenue and expenditure controls;

3                   (B) fixed assets;

4                   (C) treasury matters;

5                   (D) payroll; and

6                   (E) information technology;

7           (2) reviewing and approving grants and contracts;

8           (3) determining and recommending best business  
9 practices;

10           (4) segregating duties affecting internal controls to  
11 ensure that no one individual has control over multiple areas of  
12 operations or financial transactions;

13           (5) establishing a monthly financial report that  
14 includes receipts, bank statements, and monthly reconciliations;

15           (6) providing accurate and timely recording of assets  
16 in the state property accounting system; and

17           (7) providing other management and financial  
18 operations.

19           (b) The interim administrator shall prepare an annual  
20 financial statement for the state agency. An audit of the financial  
21 statement must be prepared by the state auditor or, if the authority  
22 to contract for audit services is delegated by the state auditor in  
23 accordance with Section 321.020, by an independent private auditor.  
24 The audit required by this subsection must include a review of a  
25 contract entered into by the agency that:

26                   (1) is active; or

27                   (2) the agency entered into during the two-year period

1 immediately preceding the date the interim administration took  
2 effect.

3 Sec. 2116.025. REPORT. (a) The interim administrator  
4 shall report to the governor and the legislative audit committee on  
5 the progress of the administration improvement plan:

- 6 (1) at least once each quarter;  
7 (2) on completion of the interim administration; and  
8 (3) at other times as directed by the governor with the  
9 approval of the legislative audit committee.

10 (b) The report must include specific information on the  
11 progress of the outcomes for each area described by Section  
12 2116.023(a).

13 Sec. 2116.026. DURATION OF INTERIM ADMINISTRATION.

14 (a) The governor with the advice of the legislative audit  
15 committee shall determine the duration of an interim  
16 administration, except that the duration of an interim  
17 administration may not exceed two years.

18 (b) If the initial duration of an interim administration is  
19 less than two years, the governor with the advice of the legislative  
20 audit committee may extend the duration of the interim  
21 administration on a determination by the governor that an extension  
22 is necessary to accomplish the purposes of this chapter, provided  
23 the initial duration and the extended duration together may not  
24 exceed two years.

25 (c) If the duration of an interim administration is longer  
26 than six months, the governor shall review the progress of the  
27 interim administration after each six-month period and consider

whether to continue the interim administration after that period.  
The interim administration terminates on the 30th day after the end  
of that period unless the governor with the advice of the  
legislative audit committee elects to continue the interim  
administration.

Sec. 2116.027. REPORT FOLLOWING TERMINATION OF INTERIM  
ADMINISTRATION. After the termination of an interim administration  
under this chapter, the state agency placed under the interim  
administration must continue to report to the governor and the  
legislative audit committee at least once each quarter. The report  
must include the information required by Section 2116.025.

[Sections 2116.028-2116.040 reserved for expansion]

SUBCHAPTER D. OPTION FOR INTERIM GOVERNING BOARD AND RECONSTITUTED  
GOVERNING OFFICER OR BODY

Sec. 2116.041. ABOLITION OF GOVERNING OFFICER OR BODY. As  
an alternative to the appointment of an interim administrator and  
suspension of the powers and duties of a governing officer or  
governing body of a state agency under Subchapters B and C, the  
governor on concurrence by the legislative audit committee that a  
condition of financial or administrative exigency exists within the  
agency as described by Section 2116.021 may abolish the position of  
governing officer or the governing body, as applicable, of the  
agency.

Sec. 2116.042. INTERIM GOVERNING BOARD. If the position of  
governing officer or the governing body is abolished under this  
subchapter, an interim governing board for the state agency is  
reconstituted composed of five members appointed by the governor

with the advice and consent of the senate. Each member appointed under this section 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. An appointment under this subsection must be made in consultation with the legislative audit committee.

Sec. 2116.043. RECONSTITUTION OF PERMANENT GOVERNING OFFICER OR BODY. (a) Following the expiration of the terms of the interim governing board members under Section 2116.042, the position of governing officer or the governing body, as applicable, is reconstituted under the law providing for the governance of the state agency. The initial reconstituted governing officer or initial members of the reconstituted governing body shall be appointed for a term or terms that expire on the date or dates necessary to conform to the permanent law establishing those terms.

(b) During the period in which an interim governing board is in effect, the law establishing the governing officer or governing body of the state agency and the term or terms of office of the governing officer or governing body are suspended.

[Sections 2116.044-2116.060 reserved for expansion]

#### SUBCHAPTER E. EMPLOYMENT PROVISIONS DURING INTERIM ADMINISTRATION

Sec. 2116.061. DENIAL OF EMPLOYMENT FOR CONTRIBUTION TO FINANCIAL OR ADMINISTRATIVE EXIGENCY. The interim administrator or interim governing board or officer, as applicable, of a state agency subject to this chapter 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 agency that resulted in the interim administration or the abolition of the position of



1 governing officer or the governing body. If the interim  
2 administrator, or interim governing board or officer, as  
3 applicable, makes a determination under this section, the  
4 individual shall be denied employment with the agency and any  
5 existing employment contract with that individual is void.

6 ARTICLE 3. LEGISLATIVE AUDIT COMMITTEE MEETING BY  
7 TELECOMMUNICATION DEVICE

8 SECTION 3.01. Chapter 321, Government Code, is amended by  
9 adding Section 321.024 to read as follows:

10 Sec. 321.024. MEETING BY TELECOMMUNICATION DEVICE. (a) As  
11 an exception to Chapter 551 and other law, if a meeting is located  
12 in Austin and the joint chairs of the committee are physically  
13 present at the meeting, then any number of the other members of the  
14 committee may attend the meeting by use of telephone conference  
15 call, video conference call, or other similar telecommunication  
16 device.

17 (b) This section applies for purposes of constituting a  
18 quorum, for purposes of voting, and for any other purpose allowing a  
19 member of the committee to otherwise fully participate in any  
20 meeting of the committee, and applies only to a meeting held  
21 pursuant to Chapter 2104 or 2116 of this code, or Section 51.358,  
22 Education Code.

23 (c) A meeting held by use of telephone conference call,  
24 video conference call, or other similar telecommunication device:

25 (1) is subject to the notice requirements applicable  
26 to other meetings of the committee;

27 (2) must specify in the notice of the meeting the

1 location in Austin of the meeting at which the joint chairs will be  
2 physically present;

3 (3) must be open to the public and shall be audible to  
4 the public at the location in Austin specified in the notice of the  
5 meeting as the location of the meeting at which the joint chairs  
6 will be physically present; and

7 (4) must provide two-way audio communication between  
8 all members of the committee attending the meeting during the  
9 entire meeting, and if the two-way audio communication link with  
10 any member attending the meeting is disrupted at any time, the  
11 meeting may not continue until the two-way audio communication link  
12 is reestablished.

13 ARTICLE 4. EFFECTIVE DATE

14 SECTION 4.01. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2007.