

By: Ellis, West S.B. No. 2039
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COMMITTEE SUBSTITUTE FOR S.B. No. 2039 By: Ogden

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 Section 51.358 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 finding, at the call of either chair of the committee, not later than the 10th business day after the latest date a member of the committee receives notice from the governor under this subsection.

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

(f) If the governing body is abolished under this section, an interim governing board for the university or university system is reconstituted composed of five members appointed by the governor with the advice and consent of the senate. Each member appointed under this subsection 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. In consultation with the governor, 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.

(g) Following the expiration of the terms of the interim governing board members under Subsection (f), the governing body of the university or university system is reconstituted under the law providing for the governance of the university or system. 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.

(h) During the period in which an interim governing board is in effect, the law establishing the governing body of the university or university system and the terms of office of the members of the governing body are suspended.

(i) 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 university system and submit the plan to the governor

and to each of the joint chairs of the legislative audit committee.
The plan must address:

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

(j) The administration improvement plan must:

- (1) include timelines, benchmarks, and projected
outcomes for improvements in the areas described by Subsection (i);
- (2) provide a procedure for the investigation and
reporting of any possible criminal activity to the appropriate
district or county attorney and, unless prohibited by law, to the
governor, the lieutenant governor, the speaker of the house of
representatives, and the attorney general, if the activity:

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

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

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

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

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

(1) reviewing policies and procedures relating to:

(A) revenue and expenditure controls;

(B) fixed assets;

(C) treasury matters;

(D) payroll; and

(E) information technology;

(2) reviewing and approving grants and contracts;

(3) determining and recommending best business
practices;

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

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

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

(7) providing other management and financial
operations.

(m) The interim governing board shall prepare an annual
financial statement for the university or university system. An
audit of the financial statement must be prepared by the state
auditor or an independent private auditor, as determined by the
legislative audit committee. The audit required by this subsection
must include a review of each contract entered into by the
university or university system that has a value greater than
\$50,000 and that:

(1) is active; or

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

(n) The interim governing board shall report to the
governor, the legislative audit 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:

(1) not later than the 60th day after the date the

interim governing board is appointed;

(2) at least once each quarter; and

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

(o) An interim governing board appointed for a university or university system under Subsection (f) and an interim president or 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 two 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).

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 that:

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

(2) is created by statute; and

(3) does not have statutory geographical boundaries limited to a part of the state.

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 the legislative audit committee.

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

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

Sec. 2116.012. TITLE. The governor shall 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. COMPENSATION. (a) A person appointed to act as the interim administrator of a state agency under this chapter is entitled 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.

(b) The state agency under interim administration shall pay the salary of the interim administrator from money 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. REIMBURSEMENT OF EXPENSES. (a) An interim administrator is entitled to reimbursement for the reasonable and 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 than the 10th business day after the latest date a member of the committee receives notice from the governor under this subsection.

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

Sec. 2116.022. GOVERNING POWERS; SUSPENSION; TRANSFER. (a) Unless the governor abolishes the position of governing officer or the governing body under Section 2116.041, the governor

may suspend the powers and duties of the governing officer or governing body, as applicable, of a state agency placed under interim administration under Section 2116.021. The suspension terminates when the interim administration terminates.

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

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

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

- (1) finance and accounting;
- (2) human resources;
- (3) management information systems;
- (4) planning and communications;
- (5) contract and grant management; and
- (6) other elements determined appropriate by the

governor with the approval of the legislative audit committee.

(b) The administration improvement plan must:

- (1) include timelines, benchmarks, and projected outcomes for improvements in the areas described in Subsection (a);
- (2) provide a procedure for the investigation and reporting of any possible criminal activity to the appropriate district or county attorney and, unless prohibited by law, to the governor, the lieutenant governor, the speaker of the house of representatives, and the attorney general, if the activity:

- (A) is committed by an agency employee; and
- (B) contributes to the condition of financial or administrative exigency; and

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

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

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

- (1) reviewing policies and procedures relating to:
 - (A) revenue and expenditure controls;
 - (B) fixed assets;
 - (C) treasury matters;
 - (D) payroll; and
 - (E) information technology;
- (2) reviewing and approving grants and contracts;
- (3) determining and recommending best business practices;
- (4) segregating duties affecting internal controls to ensure that no one individual has control over multiple areas of operations or financial transactions;
- (5) establishing a monthly financial report that includes receipts, bank statements, and monthly reconciliations;
- (6) providing accurate and timely recording of assets in the state property accounting system; and
- (7) providing other management and financial operations.

(b) The interim administrator shall prepare an annual financial statement for the state agency. An audit of the financial statement must be prepared by the state auditor or an independent private auditor, as determined by the legislative audit committee. The audit required by this subsection must include a review of each contract entered into by the agency that has a value greater than

\$50,000 and that:

(1) is active; or
(2) the agency entered into during the two-year period immediately preceding the date the interim administration took effect.

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

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

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

Sec. 2116.026. DURATION OF INTERIM ADMINISTRATION.

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

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

(c) If the duration of an interim administration is longer than six months, the governor shall review the progress of the 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

7-1 appointed for a term or terms that expire on the date or dates
7-2 necessary to conform to the permanent law establishing those terms.

7-3 (b) During the period in which an interim governing board is
7-4 in effect, the law establishing the governing officer or governing
7-5 body of the state agency and the term or terms of office of the
7-6 governing officer or governing body are suspended.

7-7 ARTICLE 3. EFFECTIVE DATE

7-8 SECTION 3.01. This Act takes effect immediately if it
7-9 receives a vote of two-thirds of all the members elected to each
7-10 house, as provided by Section 39, Article III, Texas Constitution.
7-11 If this Act does not receive the vote necessary for immediate
7-12 effect, this Act takes effect September 1, 2007.

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