

BILL ANALYSIS

C.S.H.B. 2942
By: Dunnam
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although the Texas Legislature did not have the opportunity to vote on the federal American Recovery and Reinvestment Act of 2009, it does have a duty to ensure that the federal stimulus money is spent wisely and responsibly in Texas.

C.S.H.B. 2942, the Texas Government Accountability and Transparency Act of 2009, provides for active legislative oversight of the spending of federal stimulus money in Texas. The bill gives elected officials tools to ensure transparency and accountability for Texas taxpayers on an ongoing basis, greatly improving the legislature's ability to ensure that the stimulus funds benefit families across the state. The bill renames the legislative auditor's office the State Accountability Office, renames the legislative audit committee the legislative audit board, with changes to the functions of both and changes to the composition of the audit board. The bill changes the composition also of the Legislative Budget Board, the Texas Legislative Council, and the Legislative Library Board, and establishes sunset review dates, but without sunset abolition dates, for all of the above entities and for the Legislative Reference Library, and adds associated requirements applicable to reviews by the Sunset Advisory Commission. The bill creates a temporary entity, the Recovery Act Accountability Board and gives it and the other entities specified functions related to the American Recovery and Reinvestment Act of 2009. The bill transfers certain review and performance review functions—relating to interscholastic competition, institutions of higher education, state agency efficiency, and records management—from the Legislative Budget Board to the State Accountability Office. The bill includes various provisions relating to meetings by the Legislative Audit Board, Legislative Budget Board, Texas Legislative Council, Legislative Library Board, and Recovery Act Accountability Board.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2.26 of this bill.

ANALYSIS

C.S.H.B. 2942, the Texas Government Accountability and Transparency Act of 2009, amends chapters of the Government Code relating to the state auditor's office, the Legislative Budget Board, the Texas Legislative Council, the Legislative Reference Library, and the Sunset Advisory Commission, and adds a code chapter to create a new board within the legislative branch relating to the federal American Recovery and Reinvestment Act of 2009.

State Accountability Office, Legislative Audit Board, and State Auditor

C.S.H.B. 2942 renames the state auditor's office the State Accountability Office and renames the legislative audit committee the legislative audit board, with changes to the functions of both. The bill specifies that a reference in law to the state auditor's office means the State Accountability Office, and that a reference in law to the legislative audit committee means the legislative audit board. The bill provides that the state auditor is the office's chief executive and

administrative officer. The bill sets forth related legislative findings and intent regarding public confidence in government and adequate oversight of government spending. The bill makes the amended Government Code chapter relating to the office and the state auditor applicable, in the same manner as if each entity were a department, to an independent organization certified by the Public Utility Commission of Texas under provisions of the Public Utility Regulatory Act relating to electric utilities; a regional mobility authority; the Texas Economic Development Corporation; a nonprofit organization that is established by a state officer or department and that solicits gifts, grants, and other donations for the Texas Enterprise Fund; a nonprofit organization that is established by a state officer or department and that solicits gifts, grants, and other donations for any other purpose; and any public or private person or entity receiving funds through a governmental entity in Texas that were made available by or provided under the Recovery Act.

C.S.H.B. 2942 increases the size of the renamed legislative audit board to include three additional members of the senate appointed by the lieutenant governor and three additional members of the house of representatives appointed by the speaker. The bill makes the office and the audit board subject to the Texas Sunset Act, but does not abolish those entities under the act. The bill requires the office and audit board to be reviewed during the periods in which state agencies scheduled to be abolished in 2013 and every 12th year after that year are reviewed.

C.S.H.B. 2942 adds a temporary provision, set to expire January 1, 2011, to require the board, beginning July 1, 2009, to meet at least monthly in Austin to take testimony and receive evidence related to funds received by the state from the federal government for economic stabilization, including Recovery Act funds.

C.S.H.B. 2942 requires the state auditor, in addition to existing duties, to:

- administer and enforce provisions relating to the office and the state auditor;
- investigate fraud or abuse in all state departments, including misuse of funds, conflicts of interest, contract abuses, and other violations of law;
- monitor the compliance of all state departments with the applicable laws relating to the powers, duties, and functions of those departments;
- refer criminal matters, as appropriate, to the Travis County district attorney or the prosecuting attorney of the county in which an offense is alleged to have occurred;
- refer civil matters, as appropriate, to the attorney general, the Travis County district attorney, or the district or county attorney, as applicable, for the county in which a civil action regarding the matter would be brought; and
- perform all other duties and exercise all other powers granted to the office or the state auditor by the bill's provisions or any other law.

C.S.H.B. 2942 makes the state auditor ineligible to be a candidate for a public elective office in Texas unless the auditor has resigned and the audit board has accepted the resignation. The bill requires the state auditor to appoint a first assistant state auditor with the approval of the audit board, rather than authorizing the auditor to do so independently as under existing law. The bill requires the state auditor to appoint a counselor and requires the counselor to be an attorney licensed to practice law in Texas. The bill authorizes the counselor to issue advisory opinions under procedures approved by the state auditor relating to the appropriate use of and authority to spend state funds. The bill authorizes the state auditor to appoint a chief clerk to receive, file, and carefully preserve all documents and records provided to the state auditor and the office and to serve as secretary to the audit board. The bill amends provisions relating to other personnel and authorizes the state auditor, subject to the General Appropriations Act or other law, to appoint assistant state auditors, inspectors general, deputy inspectors general, assistant inspectors general, and special agents, and to employ other personnel. The bill requires the state auditor to establish the qualifications necessary for appointment or employment, including qualifications regarding necessary legal knowledge, law enforcement experience, honesty, integrity, education, training, and executive ability. The bill specifies that the state auditor and office personnel are to

be free from partisan politics, and makes it a Class A misdemeanor offense for a member of the legislature, an officer or employee of the state, or an officer or employee of a state department to suggest or recommend that the state auditor appoint a person to a position in the office. The bill removes the requirement for the audit board to approve the auditor's audit plan and requires the audit board to approve any personnel salaries that exceed the amounts paid by other departments for similar services.

C.S.H.B. 2942 requires the office to prepare and make available to state officers and employees and to the public information of public interest describing the functions of the office and state auditor, describing the matters or issues that may be subject to audits, investigations, and other functions performed by the office, and describing the manner in which a person may report an allegation of fraud or abuse to the office. The bill requires the office, not later than March 1, 2010, to develop a standard contract provision, to be included in any contract entered into by a state department, requiring a contractor to disclose to the office the amount of a payment made under a contract to any subcontractor, consultant, or person required to register as a lobbyist under state law or the federal Lobbying Disclosure Act of 1996. The bill requires a state department that is required under other law to report contract information to the Legislative Budget Board to also report such information to the office. The bill requires the office to post, in a timely manner, any such information that is not confidential by law on an Internet website maintained by or for the office and accessible to the public.

C.S.H.B. 2942 authorizes the state auditor to conduct an audit or investigation of any entity receiving funds from the state, replacing a provision that requires the state auditor to conduct such an audit or investigation at the direction of the legislative audit committee. The bill requires the state auditor to prepare an audit plan for the state each year, replacing a provision that requires the state auditor to recommend an audit plan to the committee. The bill authorizes the state auditor to conduct economy and efficiency audits, effectiveness audits, and special audits specified in the audit plan, removing the provision requiring specific authority from the legislative audit board to do so. The bill requires the state auditor to conduct or direct investigations as necessary.

C.S.H.B. 2942 authorizes the state auditor to employ and commission special agents to assist the office in carrying out the duties of the office relating to detection, investigation, and prevention of fraud, waste, and abuse. The bill specifies that a special agent employed by the office is not a peace officer but has the powers of search and seizure, as to felony offenses only, under the laws of Texas, and is not entitled to supplemental benefits from the law enforcement and custodial officer supplemental retirement fund unless the officer transfers from a position, without a break in service, that qualifies for supplemental retirement benefits from the fund. The bill authorizes an assistant state auditor, inspector general, deputy inspector general, or assistant inspector general to be commissioned under the bill's provisions, but prohibits the state auditor from commissioning more than 20 special agents at any time. The bill authorizes the state auditor, subject to the availability of funds, to contract with certified public accountants, qualified management consultants, or other professional experts as necessary to independently perform the functions of the office.

C.S.H.B. 2942 adds the chairs of the committees in each legislative chamber with oversight responsibility for an agency undergoing an audit to the officials who are required to be informed if the auditor finds evidence of improper financial practices, inadequate fiscal records, uneconomical use of resources, or ineffective program performance, in the course of the audit. The bill requires such chairs and the Travis County district attorney, or the prosecuting attorney of the county in which an offense is alleged to have occurred, to also be informed if the auditor finds evidence of an illegal transaction. The bill gives the state auditor subpoena authority separate from that of the audit board and makes other changes relating to subpoena authority.

C.S.H.B. 2942 enhances the penalty, from a Class A misdemeanor to a felony of the third degree, for an offense in which an officer or employee of the state or an entity subject to audit or

investigation by the state auditor refuses to immediately permit the auditor to examine or access information or documents to which the auditor is legally entitled, interferes with such an examination, or refuses to make a required report, if the audit or investigation relates to funds made available by or provided under the Recovery Act. The bill provides that the offense, whether a Class A misdemeanor or a felony of the third degree, may be prosecuted in the county in which an element of the offense occurs or in Travis County.

C.S.H.B. 2942 authorizes the state auditor to serve on the officer or employee of a department or an entity subject to audit or investigation written requests for information and inspection of property. The bill requires such a request to identify and describe with reasonable particularity the information sought, documents to be produced, or other property to which access is requested, and to set forth the items to be inspected by individual item or category. The bill makes an officer or employee who does not produce the information and documents or grant access to the property before the 25th hour after the request is served personally liable to the state for a civil penalty of \$1,000 for each day the conduct continues, except that the civil penalty is \$5,000 for each day if the audit or investigation is related to funds made available by or provided under the Recovery Act. The bill authorizes the attorney general, the Travis County district attorney, or the prosecuting attorney of the county in which a violation is alleged to have occurred to sue to collect the penalty.

C.S.H.B. 2942 requires the office to recommend policies for the detection of fraud and abuse, including state contract violations, conflicts of interest, and the inappropriate use or unauthorized expenditure of state funds; the identification of participants in any detected fraud or abuse; the termination or prosecution of state employees in relation to detected fraud or abuse; and the exclusion of contractors from participation in state contracts for detected fraud or abuse. The bill authorizes the state auditor to receive and investigate complaints and information concerning the possible existence of fraud or abuse. The bill requires the state auditor to establish a toll-free Texas Government Accountability Hotline that enables a person to obtain information concerning audits or investigations conducted by the office or to report an alleged violation, and a corresponding Internet web page. The bill requires each department or any entity subject to audit or investigation that maintains one or more Internet web pages to post on the home page a prominent link to the Internet web page maintained by the state auditor.

C.S.H.B. 2942 requires the Travis County district attorney or the prosecuting attorney of the county in which an offense is alleged to have occurred, on request of the state auditor, to assist the state auditor with investigations and to provide appropriate legal assistance. The bill authorizes the office, after an investigation of possible fraud or abuse, if the state auditor believes that fraud or abuse by a department may have resulted in the inappropriate use or unauthorized expenditure of state funds, to refer the matter to the Travis County district attorney or to the prosecuting attorney of the county in which an offense or impropriety is alleged to have occurred, and to recommend that the attorney pursue the recovery of state funds. The bill requires a district attorney or prosecuting attorney who receives such a referral to review the request, make an independent decision, and issue a written public opinion with respect to the existence of fraud and abuse and whether the attorney intends to pursue the recovery of state funds. The bill provides that a matter referred by the state auditor involving fraud or other criminal activity in connection with Recovery Act funds may be prosecuted in a county in which an element of the offense occurs or in Travis County.

C.S.H.B. 2942 transfers, renumbers, and amends applicable Government Code provisions to give the office, rather than the Legislative Budget Board, certain powers and responsibilities relating to the review or performance review, as applicable, of interscholastic competition, school districts, institutions of higher education, state agencies, and records management.

C.S.H.B. 2942, in the provisions relating to the office and the state auditor, revises or adds definitions of "audit plan," "board," "department," "office," and "Recovery Act."

Inspector General Division

C.S.H.B. 2942 makes its provisions relating to the Inspector General Division applicable only to the Health and Human Services Commission (HHSC), Texas Education Agency, and Texas Department of Transportation, except that for the purposes of the division's investigatory and review authority, the bill's provisions also apply to the Department of Aging and Disability Services, the Department of State Health Services, the Department of Assistive and Rehabilitative Services, and the Department of Family and Protective Services. The bill prohibits a state agency, other than the Texas Youth Commission or the Texas Department of Criminal Justice, from establishing an office of inspector general without specific legislative authorization. The bill specifies that any reference in law or rule to an office of inspector general in an agency to which this bill applies or HHSC's office of investigations and enforcement means the division of inspector general established by the bill's provisions.

C.S.H.B. 2942 requires the state auditor to appoint a person as inspector general to serve as director of the inspector general division, and specifies that the inspector general serves at the pleasure of the state auditor. The bill requires the inspector general, as necessary to implement the bill's provisions, to designate persons to serve as deputy inspectors general for each agency affected by the bill's provisions and requires a deputy inspector general to report to and perform duties as directed by the inspector general. The bill specifies that a person designated by the inspector general to serve as the deputy inspector general for an agency, together with staff assigned to the deputy inspector general, are administratively attached to the assigned agency, but are not employees of the assigned agency. The bill requires the division and each state agency under the division's purview to enter into a service level agreement, to be reviewed at least annually, that establishes the performance standards and deliverables with regard to administrative support provided to the division by the agency. The bill requires each affected agency to provide to the agency's designated deputy inspector general facilities and support services, administrative support, and salary and benefits as provided by the General Appropriations Act. The bill prohibits a division officer or employee from serving as an ex officio member on the governing body of a governmental entity, from having a financial interest in the transactions of the division or an agency under the division's purview, and from having a financial interest in the transactions of a provider.

C.S.H.B. 2942 requires the inspector general to train division personnel to pursue, efficiently and as necessary, fraud, waste, and abuse cases in programs at an agency under the division's purview or other state or federally funded programs implemented, administered, or overseen by or for the agency. The bill authorizes the inspector general to require employees of an agency under its purview, including employees of any health and human services agency, to provide assistance to the division in connection with the division's duties.

C.S.H.B. 2942 requires the division to investigate fraud, waste, and abuse, as defined in applicable state and federal law, in the provision or funding of services by or for an agency affected by the bill's provisions or under a program implemented, administered, or overseen by or for the agency. The bill requires the division to set clear objectives, priorities, and performance standards for the division that emphasize coordinating investigative efforts to aggressively recover money, allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money, and maximizing opportunities for referral of cases to the office of the attorney general in accordance with all applicable law. The bill authorizes the division to provide for coordination with special investigative units formed by managed care organizations or entities with which those organizations contract; audit the use and effectiveness of state or federal funds administered by a person or agency under the division's purview; conduct reviews, investigations, and inspections relating to such funds; recommend policies promoting economical and efficient administration of such funds and the prevention and detection of fraud, waste, and abuse in administration of such funds; and conduct investigations in instances of fraud, waste, abuse, or misconduct by employees, contractors, subcontractors, and vendors. The bill requires the division to investigate fraud, waste, and abuse in the provision or

funding of health or human services by the state; to determine and report regarding whether there is adequate enforcement of state law relating to the provision of those services; and to alert the appropriate law enforcement authorities to enable the authorities to prevent and detect crime relating to the provision of those services. The bill specifies that its provisions or other law related to the operation of the inspector general division do not take precedence over the authority of the state auditor to conduct audits under any law or affect the state auditor's authority to conduct an audit, investigation, or other review or to have full and complete access to all records and other information, including witnesses and electronic data, that the state auditor considers necessary for the audit, investigation, or other review.

C.S.H.B. 2942 requires the division to ensure that no barriers to direct Medicaid fraud referrals to the attorney general's Medicaid fraud control unit or unreasonable impediments to communication between Medicaid agency employees and the fraud control unit are imposed. The bill specifies that an exchange of information between the division and the attorney general or any other state agency relating to this requirement does not affect whether the information is subject to disclosure under public information law.

C.S.H.B. 2942 authorizes the division to evaluate any activity or operation of an agency under its purview, a provider, or a person in Texas that is related to the investigation, detection, or prevention of fraud, waste, abuse, or employee misconduct in the applicable programs. The bill authorizes a review to include an investigation or other inquiry into a specific act or allegation of, or a specific financial transaction or practice that may involve, impropriety, malfeasance, or nonfeasance in the obligation, spending, receipt, or other use of state or federal money. The bill requires the division to conduct reviews and inspections to protect the public and detect and prevent fraud, waste, and abuse in the provision or funding of such services or programs. The bill authorizes the division, with respect to an agency under the division's purview, to audit and review the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or agency receiving the funds in connection with an agency or state or federally funded program implemented, administered, or overseen by or for the agency.

C.S.H.B. 2942 prescribes the circumstances under which the division is authorized to initiate a review and requires the division to conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation on receipt of any complaint of fraud, waste, or abuse of funds in the state Medicaid program from any source. The bill establishes a time frame for the initiation and completion of an integrity review of a Medicaid program and prescribes actions the division must take if the findings of an integrity review give the division reason to believe that an incident of fraud involving possible criminal conduct has occurred in the state Medicaid program. The bill entitles the inspector general or deputy inspector general to access all relevant material maintained by a person, agency, or provider in connection with an agency or program in question to further a review conducted by the division and prohibits the inspector general or deputy inspector general from accessing data or other information the release of which is restricted under federal law unless the federal agency approves the information's release. The bill authorizes the inspector general or deputy inspector general, to further a review, to require medical or other professional assistance from an agency or an agency employee. The bill requires the division immediately to refer a case to the state's Medicaid fraud control unit, at the time the division learns or has reason to suspect that a health or human service provider's Medicaid records are being withheld, concealed, destroyed, fabricated, or in any way falsified. The bill specifies that such a criminal referral does not preclude the division from continuing its investigation of the provider or the imposition of appropriate administrative or civil sanctions.

C.S.H.B. 2942 requires the division, in addition to other instances authorized under state or federal law, to recommend, whenever appropriate, that the comptroller of public accounts impose without prior notice a hold on payment of claims for reimbursement submitted by a health or human services provider to compel production of records related to participation in the state Medicaid program or on request of the state's Medicaid fraud control unit, as applicable. The bill requires the comptroller to notify the provider of the hold not later than the fifth working

day after it is imposed. The bill requires the comptroller, in consultation with the division and the state's Medicaid fraud control unit, to establish guidelines under which holds on payment or exclusions from a health and human services program may permissively be imposed on a provider, or are required to be automatically imposed on a provider. The bill entitles a provider subject to a hold on payment or excluded from a program to a contested case hearing under the Administrative Procedure Act, and requires that the hearing be conducted by the State Office of Administrative Hearings. The bill requires the comptroller, after the hearing and subject to judicial review, to make a final determination. The bill entitles HHSC, a health and human services agency, and the attorney general to intervene as parties in the contested case.

C.S.H.B. 2942 sets forth procedures for a provider subject to a hold, other than a hold requested by the Medicaid fraud control unit, to request and to be granted an expedited administrative hearing. The bill requires the comptroller to adopt rules that allow a provider subject to such a hold to seek an informal resolution of the issues identified by the comptroller, provides a deadline for the provider to seek an informal resolution, and specifies that seeking an informal resolution does not extend the time period for a provider to request an expedited administrative hearing. The bill requires a hearing to be stayed at the comptroller's request until the informal resolution process is completed. The bill authorizes the state auditor to require employees at an agency under the division's purview to report information regarding fraud, waste, misuse, or abuse of funds or resources, corruption, or illegal acts to the division.

C.S.H.B. 2942 requires an agency's internal auditor to provide the state auditor with a copy of the agency's internal audit plan and all of the agency's final audit reports concerning agency divisions, contracts, procurements, grants, or programs, and sets forth provisions for the state auditor's cooperation with law enforcement officials and other entities. The bill authorizes the state auditor to make recommendations to agencies within the division's purview on promoting economical and efficient administration of state or federal funds and on preventing and detecting fraud, waste, and abuse in the administration of those funds and authorizes the state auditor to provide training or education approved by the agency's presiding officer on such topics.

C.S.H.B. 2942 requires the state auditor to timely inform the governor, attorney general, and the presiding officer of the relevant agency of the initiation of a review and the ongoing status of the review; to report the findings of the division in connection with a review to those officials as well as to the comptroller and the legislature's presiding officers; and to immediately report to the presiding officer of the agency associated with the review, the governor, and any person the state auditor considers necessary, a particularly serious or flagrant problem or interference with a review.

C.S.H.B. 2942 specifies that, except as otherwise provided, all information and material compiled by the state auditor during a review is confidential, not subject to public information laws, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the state auditor's office, the agency subject to review, or as the state auditor determines appropriate, a law enforcement agency, the appropriate prosecuting attorney, or the attorney general. The bill prohibits a person receiving such information from disclosing the information except to the extent that disclosure is consistent with the authorized purpose for which the person received the information.

C.S.H.B. 2942 requires the state auditor, except in cases in which the division has determined that potential fraud, waste, or abuse exists, to provide a draft of the final review report of any investigation, audit, or review of the operations of an agency to the agency's presiding officer before publishing the office's final review report. The bill authorizes the agency's presiding officer to provide a response to the draft report in the manner prescribed by the state auditor, within a specified time period. The bill prohibits the division from providing a draft report to the agency's presiding officer if in the state auditor's opinion providing the draft could negatively affect any anticipated civil or criminal proceedings. The bill authorizes the state auditor to include any portion of the agency's response in the office's final report.

C.S.H.B. 2942 requires the state auditor to prepare a final report for each review conducted by the division and prescribes items for inclusion in the final report. The bill specifies that the state auditor's final review reports are subject to disclosure under public information laws and that all working papers and other documents related to compiling the final review reports remain confidential and are not subject to disclosure. The bill requires an agency, within a specified time period after the date the state auditor issues a final report that identifies deficiencies or inefficiencies in, or recommends corrective measures in the operations of, the agency, to file a response that includes either an implementation plan and timeline for the recommended corrective measures, or a rationale for declining to implement the recommended measures. The bill requires the state auditor to maintain information regarding the cost of reviews and authorizes the state auditor to cooperate with appropriate administrative and prosecutorial agencies, including the attorney general, in recovering costs incurred in conducting reviews from nongovernmental entities, including contractors or individuals involved in violations of applicable state or federal rules or statutes, abusive or wilful misconduct, or violations of a provider contract or program policy.

C.S.H.B. 2942 requires the state auditor to prepare and submit a semiannual report to the governor, comptroller, attorney general, and the presiding officers and each member of the legislature concerning the activities of the division in detecting and preventing fraud, waste, and abuse under any agency programs or in programs receiving state or federal funds that are implemented, administered, or overseen by a state agency that is reviewed by the division. The bill authorizes the report's consolidation with any other report relating to the same subject matter the state auditor is required to submit under other law.

C.S.H.B. 2942 defines "agency," "commission," "division," "fraud," "furnished," "hold on payment," "inspector general," "internal auditor," "program exclusion," "provider," "review," "state funds," and "state money."

C.S.H.B. 2942 specifies that to the extent of a conflict between the bill's provisions relating to the inspector general division and provisions of the Government Code relating to the Health and Human Services Commission, the bill's provisions prevail.

C.S.H.B. 2942 repeals Sections 321.011(d) and (e) Government Code, relating to state auditor personnel.

Legislative Budget Board

C.S.H.B. 2942 increases the size of the Legislative Budget Board (LBB) to include two additional members of the senate appointed by the lieutenant governor and two additional members of the house of representatives appointed by the speaker. The bill makes the LBB subject to the Texas Sunset Act, but does not abolish the board under that act. The bill requires the LBB to be reviewed during the periods in which state agencies scheduled to be abolished in 2013 and every 12th year after that year are reviewed.

C.S.H.B. 2942 adds a temporary provision, set to expire January 1, 2011, to require the board, beginning July 1, 2009, to meet at least once every two months in Austin to take testimony and receive evidence related to funds received by the state from the federal government for economic stabilization, including Recovery Act funds.

Texas Legislative Council

C.S.H.B. 2942 increases the size of the Texas Legislative Council to include two additional senators from various areas of the state appointed by the president of the senate and two additional members of the house of representatives from various areas of the state appointed by the speaker. The bill makes the council subject to the Texas Sunset Act, but does not abolish the

council under the act. The bill requires the council to be reviewed during the periods in which state agencies scheduled to be abolished in 2013 and every 12th year after that year are reviewed. The bill redefines "legislative information" to include information about legislative oversight of Recovery Act funds, including the committees of each legislative chamber and each legislative agency responsible for providing oversight of or information about such funds. The bill defines "Recovery Act" and requires the council to make legislative information related to the Recovery Act available to the public through the Internet.

Legislative Reference Library

C.S.H.B. 2942 increases the size of the Legislative Library Board to include two additional members of the senate appointed by the lieutenant governor and two additional members of the house of representatives appointed by the speaker. The bill specifies that the lieutenant governor and speaker are joint chairs of the board. The bill makes the board and the Legislative Reference Library subject to the Texas Sunset Act, but does not abolish the agencies under that act. The bill requires the board and the library to be reviewed during the periods in which state agencies abolished in 2013 and every 12th year after that year are reviewed.

C.S.H.B. 2942 requires the library to serve as the central depository for all Recovery Act publications, and requires each state or local governmental entity and each private entity receiving, disbursing, investigating, auditing, or reporting the use of Recovery Act funds received by or through a governmental entity in Texas to provide the library with a copy of each Recovery Act publication produced, assembled, or maintained by the entity. The bill requires the library, to the extent feasible, to make Recovery Act publications available for public viewing on the Internet. The bill defines "Recovery Act" and "Recovery Act publication."

Sunset Advisory Commission

C.S.H.B. 2942 adds a temporary provision, set to expire January 1, 2014, to authorize the commission and its staff, for the initial review of a legislative agency, board, or council subject to review in 2013, to only consider the extent to which the agency, board, or council discharged its responsibilities related to Recovery Act funds under applicable law. The bill defines "Recovery Act."

Recovery Act Accountability Board

C.S.H.B. 2942 adds a temporary code chapter to create the Recovery Act Accountability Board and provides for the expiration of the chapter and the abolition of the board on December 31, 2013. The bill defines "board," "Recovery Act," and "legislative agency."

C.S.H.B. 2942 provides that the Recovery Act Accountability Board consists of the following voting members:

- the lieutenant governor;
- the speaker of the house of representatives;
- one senate member and one house member of the Legislative Audit Board, designated by the lieutenant governor and speaker, respectively;
- one senate member and one house member of the Legislative Budget Board, designated by the lieutenant governor and speaker, respectively;
- one senate member and one house member of the Texas Legislative Council, designated by the lieutenant governor and speaker, respectively;
- one senate member and one house member of the Sunset Advisory Commission, designated by the lieutenant governor and speaker, respectively;
- one senate member and one house member of the Legislative Library Board, designated

by the lieutenant governor and speaker, respectively;

- the chair and vice-chair of the House Select Committee on Federal Economic Stabilization Funding;
- four other members of the senate designated by the lieutenant governor;
- four other members of the house designated by the speaker;
- two public members appointed by the lieutenant governor; and
- two public members appointed by the speaker.

C.S.H.B. 2942 provides that the accountability board also includes of the following non-voting members: four members of the United States Congress from Texas, with two members selected by the members of each political party required by law to hold a primary, and the chief administrative officer of each legislative agency, except the State Accountability Office.

C.S.H.B. 2942 requires one of the appointed voting members to be the chair of the Senate Finance Committee and one other appointed voting member to be the chair of the House Appropriations Committee. The bill makes the lieutenant governor and the speaker joint chairs of the accountability board and specifies that a legislative member serving on the board because of the member's service on another board, commission, or committee serves a term coinciding with the member's service on the other board, commission, or committee. The bill specifies that other legislative members and public members serve for the term of the accountability board. The bill provides procedures for filling a vacancy in the appointed membership of the accountability board and procedures for the reimbursement of members for actual and necessary expenses incurred in performing board duties. The bill requires the accountability board to select a chief administrative officer of the board, and specifies that an officer or employee of a legislative agency, other than the State Accountability Office, is eligible for appointment.

C.S.H.B. 2942 requires the accountability board, beginning July 1, 2009, to meet at least monthly in Austin to take testimony and receive evidence related to funds received by governmental entities in Texas from the federal government for economic stabilization, including Recovery Act funds. The bill requires the accountability board to coordinate reviews of spending of Recovery Act funds conducted by a legislative agency to ensure that duplication and overlap of legislative agency work is avoided. The bill authorizes the accountability board to hold hearings and conduct investigations and surveys, and requires the board to ensure the public has access to vital information related to the expenditure of Recovery Act funds. The bill authorizes the accountability board to prescribe performance measures, make certain recommendations, and appoint advisory committees as necessary to assist the board. The bill requires each governmental entity that receives Recovery Act funds, not later than the 10th day after the date a state fiscal quarter ends, to submit a report to the accountability board containing specified information and performance measures.

C.S.H.B. 2942 authorizes the accountability board to make investigations and surveys regarding funds received by governmental entities in Texas from the federal government for economic stabilization, including Recovery Act funds, and to hold public or executive hearings in connection with those investigations and surveys. The bill requires such a hearing to be held at a time and place determined by the accountability board. The bill authorizes the accountability board to inspect and copy any book, record, file, or other instrument or document of a governmental entity in Texas that is pertinent to a matter under investigation by the board and to examine and audit the books of a person, firm, or corporation having dealings with a governmental entity under investigation by the accountability board. The bill authorizes any member of the accountability board to administer oaths to witnesses appearing at such a hearing. The bill authorizes the accountability board to issue subpoenas to compel the attendance of witnesses and the production of books, records, or other documents in their custody and requires a subpoena to be signed by either of the joint chairs of the board. The bill sets forth procedures for serving a subpoena, procedures for reporting the failure of a person to whom a subpoena was

served, and provides subpoena enforcement procedures. The bill entitles a subpoenaed witness who attends an accountability board hearing or meeting to the same mileage and per diem as a witness who appears before a Texas grand jury.

C.S.H.B. 2942 authorizes the accountability board to request assistance and advice from a legislative agency or any other state officer, department, board, commission, or agency, including the governor and the attorney general. The bill authorizes either joint chair to request legal opinions or other advice from the counselor of the State Accountability Office or from the director of the legal division of the Texas Legislative Council.

Provisions Applicable to All Legislative Agencies and Oversight Committees

C.S.H.B. 2942 includes provisions applicable to all legislative agencies and oversight committees. The bill establishes that a majority of the members of a legislative entity constitutes a quorum to transact business and that, if a quorum is present, the legislative entity may act on any matter within its jurisdiction by a majority vote. The bill establishes that two members of a legislative entity from each house constitutes a quorum for the taking of testimony and receiving evidence. The bill requires a legislative entity to meet as often as necessary to perform its duties, and at least once every six months. The bill authorizes meetings to be held at any time at the request of either of the joint chairs of a legislative entity or on written petition of two of the members of a legislative entity from each house. The bill entitles each member of the legislature to attend and present views in any meeting of the legislative entity, but prohibits a legislator who is not a member from voting. The bill includes, for each legislative entity, provisions relating to member attendance by conference call, video conference call, or other similar telecommunications device, and establishes related requirements and procedures.

C.S.H.B. 2942 specifies that to the extent of a conflict between the bill's provisions relating to quorum and meetings and any other provision of the same subtitle, the other provision of the subtitle prevails. The bill revises the definition of "legislative agency," and "state agency" and defines "legislative entity."

C.S.H.B. 2942 makes conforming changes.

Transition Provisions and Transfers

C.S.H.B. 2942 renames the state auditor's office as the State Accountability Office on the bill's effective date. The bill specifies that the validity of an action taken by the state auditor, the state auditor's office, or the legislative audit committee is not affected by the change in names of the state auditor's office and the legislative audit committee. The bill provides that, on its effective date, all functions, activities, employees, rules, forms, money, property, contracts, records, and obligations of the state auditor's office become functions, activities, employees, rules, forms, money, property, contracts, records, and obligations of the State Accountability Office without a change in status. The bill provides that, on its effective date, statutory references to the state auditor's office mean the State Accountability Office, and all funds appropriated to the state auditor's office are transferred to the State Accountability Office.

C.S.H.B. 2942 requires each department, other than the Texas Department of Criminal Justice and the Texas Youth Commission, that has an inspector general or that does not have an inspector general but that has a division responsible for investigating fraud and abuse in the expenditure of funds to enter into a memorandum of understanding with the office under which the specified responsibilities of each party to the memorandum are clearly defined and delineated. The bill grants the State Accountability Office discretion, with respect to certain of the responsibilities transferred to the office, regarding whether to allow employees whose duties primarily involve a transferred function to remain in the same physical location while performing those duties or to require that the employees are housed in another facility. The bill specifies that all employees whose duties primarily involve a transferred function and all

property and support staff and appropriations connected to those employees and their duties are transferred to the State Accountability Office. The bill, for purposes of such provisions, defines "department," and "office."

C.S.H.B. 2942 specifies that a department is not required to comply with the requirement for a contract disclosure statement until September 1, 2010.

C.S.H.B. 2942, on its effective date, transfers employees, records and equipment, and appropriations relating to performance review functions from the Legislative Budget Board to the State Accountability Office. The bill defines "performance review."

C.S.H.B. 2942 specifies that a governmental entity is not required to submit a recipient agency report until the end of the first full state fiscal quarter after the bill's effective date. The bill provides that in the event of a conflict between the bill's provisions and provisions of another bill enacted by the 81st Legislature, Regular Session, 2009, the provisions of C.S.H.B. 2942 prevail and control regardless of the relative dates of enactment.

C.S.H.B. 2942 specifies that changes in law made by the bill's provisions do not affect the entitlement of a person who is a member of a board, commission, or council serving immediately before the effective date of the bill's provisions to continue to carry out the board's, commission's, or council's functions for the remainder of the member's term. The bill requires the lieutenant governor and the speaker of the house of representatives as soon as possible after the bill's effective date, to appoint members as specified in the bill's provisions.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2942 differs from the original by naming the office created by the bill's provisions the State Accountability Office, rather than the Texas Fiscal Responsibility Office as in the original. The substitute adds provisions not in the original to define "department" and "Recovery Act." The substitute differs from the original by making its provisions applicable to certain nonprofit organizations established by a state officer or department, rather than by a state officer, agency, board, commission, or department as in the original; and by making its provisions applicable to a person or entity receiving funds through a governmental entity in Texas that were made available by or under the Recovery Act, whereas the original does not specify that the funds are received through a governmental agency in Texas.

C.S.H.B. 2942 adds temporary provisions set to expire January 1, 2011, that are not included in the original relating to meetings of the State Accountability Office, legislative audit board, Legislative Budget Board, and Recovery Act Accountability Board related to the Recovery Act. The substitute differs from the original by specifying that the civil matters the state auditor is required to refer to certain enforcement and prosecutorial entities may be referred to the district or county attorney, as applicable, for a county in which a civil action regarding the matter would be brought, rather than the county in which an offense is alleged to have occurred as in the original. The substitute differs from the original by authorizing the state auditor to appoint assistant state auditors, inspectors general, deputy inspectors general, and special agents, whereas the original requires the state auditor to appoint assistant state auditors. The bill adds a provision not included in the original specifying that the qualifications established by the state auditor for appointment or employment must include necessary legal knowledge, law enforcement experience, honesty, integrity, education, training, and executive ability.

C.S.H.B. 2942 differs from the original by specifying that only information that is not confidential by law is required to be posted to the Internet by the State Accountability Office, whereas the original requires all information received by the office relating to certain contracts to be posted to an Internet site. The substitute adds a provision not included in the original requiring the state auditor to conduct or direct investigations as necessary. The substitute adds provisions not included in the original relating to the employment or commissioning of special agents and contracting with experts by the state auditor. The substitute adds a provision not in the original adding a special agent to those who serve subpoenas at the request of the state auditor or a joint chair of the board.

C.S.H.B. 2942 adds provisions not included in the original establishing the Inspector General Division within the State Accountability Office, and setting forth provisions relating to the responsibilities and authority of the division; the appointment of an inspector general and of deputy inspectors general; access to information by the division; cooperation with other persons and entities; and procedures for conducting hearings and filing reports.

C.S.H.B. 2942 differs from the original by requiring the Legislative Budget Board (LBB) to meet every two months, rather than once each month. The substitute omits provisions included in the original requiring LBB to report monthly on the receipt and use of Recovery Act funding, establishing criminal penalties for interfering with the LBB's functions, and authorizing LBB to make certain requests for information.

C.S.H.B. 2942 differs from the original by requiring each state or local governmental entity receiving, disbursing, investigating, auditing, or reporting the use of Recovery Act funds to provide the Legislative Reference Library with a copy of each Recovery Act publication produced, assembled or maintained by the entity, whereas the original requires each agency, or political subdivision to provide the library with each Recovery Act publication. The substitute differs from the original by redefining "Recovery Act publication" to include materials in any format related in any way to the receipt, disbursement, expenditure, or audit of Recovery Act funds, whereas the original does not specify that the materials are related to the receipt, disbursement, expenditure, or audit of such funds.

C.S.H.B. 2942 differs from the original by specifying that certain of the voting members of the temporary Recovery Act Accountability Board are designated by the presiding officer of the legislative chamber in which the member serves, whereas the original does not specify the person responsible for designating such members. The substitute differs from the original by specifying that the chief administrative officer of each legislative agency, except the State Accountability Office, serves on the board as a nonvoting member, whereas the original lists the state auditor, director of the Legislative Budget Board, the executive director of the Texas Legislative Council, the executive director of the Sunset Advisory Commission, and the director of the Legislative Reference Library as nonvoting members of the board.

C.S.H.B. 2942 differs from the original by requiring the Recovery Act Accountability Board to select a chief administrative officer, rather than specifying that the state auditor serves in that role as in the original. The substitute adds a provision not included in the original making an officer or employee of a legislative agency, other than the State Accountability Office, eligible for such an appointment. The substitute adds provisions not included in the original authorizing the accountability board to hold hearings and conduct investigations and surveys, requiring the board to ensure the public has access to vital information related to the expenditure of Recovery Act funds and authorizing the board to prescribe performance measures, make certain recommendations, and appoint advisory committees as necessary to assist the board. The substitute adds provisions not included in the original requiring each governmental entity that receives Recovery Act funds, not later than the 10th day after the date a state fiscal quarter ends, to submit a report to the board containing the prescribed information and performance measures.

C.S.H.B. 2942 differs from the original by consolidating various provisions relating to quorums and meetings of different legislative agencies and making those provisions uniformly applicable to all legislative entities.

C.S.H.B. 2942 differs from the original by specifying that the accountability board is authorized to make investigations and surveys regarding funds received by governmental entities in Texas from the federal government for economic stabilization, including Recovery Act funds. The substitute removes various transition provisions included in the original relating to the transfer of powers and duties under the bill's provisions, and the continuance in effect of certain procedures until other procedures are developed by the state auditor. The substitute adds provisions not included in the original relating to a memorandum of understanding between each department that has an inspector general, other than the Texas Department of Criminal Justice or Texas Youth Commission, and the State Accountability Office. The substitute adds provisions not included in the original relating to when governmental entities are first required to submit certain reports relating to Recovery Act funds they have received and to a time frame for the presiding officers of the senate and house of representatives to make certain appointments to legislative entities. The substitute differs from the original by taking effect immediately on passage or September 1, 2010, rather than immediately on passage or September 1, 2009 as in the original.