

1-1 By: Howard of Travis (Senate Sponsor - Ellis) H.B. No. 3756
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 1, 2009, read first time and referred to Committee on
1-4 Government Organization; May 13, 2009, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 13, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the Texas State Library and Archives Commission.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 441.006(a), Government Code, is amended
1-11 to read as follows:

1-12 (a) The commission shall:

1-13 (1) govern the Texas State Library;

1-14 (2) adopt policies and rules to aid and encourage the
1-15 development of and cooperation among all types of libraries,
1-16 including public, academic, special, and other types of libraries;

1-17 (3) aid those studying problems to be dealt with by
1-18 legislation;

1-19 (4) prepare and make available to the public and
1-20 appropriate state agencies information of public interest
1-21 describing the functions of the commission;

1-22 (5) deposit money paid to the commission under this
1-23 chapter subject to Subchapter F, Chapter 404;

1-24 (6) give to any person contemplating the establishment
1-25 of a public library advice regarding matters such as maintaining a
1-26 public library, selecting books, cataloging, and managing a
1-27 library;

1-28 (7) conduct library institutes and encourage library
1-29 associations;

1-30 (8) take custody of, preserve, and make available for
1-31 public use state records and other historical resources that
1-32 document the history and culture of Texas as a province, colony,
1-33 republic, or state;

1-34 (9) prepare and make available to the public a
1-35 complete list of every state symbol and place designation,
1-36 including state symbols and place designations made in accordance
1-37 with Chapter 391; ~~and~~

1-38 (10) aid and encourage, by adoption of policies and
1-39 programs, the development of effective records management and
1-40 preservation programs in state agencies and the local governments
1-41 of the state; and

1-42 (11) provide library services to persons with
1-43 disabilities in cooperation with the federal government.

1-44 SECTION 2. The heading to Section 441.009, Government Code,
1-45 is amended to read as follows:

1-46 Sec. 441.009. STATE PLAN FOR LIBRARY SERVICES AND
1-47 TECHNOLOGY ~~[CONSTRUCTION]~~.

1-48 SECTION 3. Sections 441.009(a) and (c), Government Code,
1-49 are amended to read as follows:

1-50 (a) The commission may adopt a state plan for improving
1-51 library services consistent with federal goals ~~[of and constructing~~
1-52 ~~county, municipal, and other public libraries]~~.

1-53 (c) The plan must include a procedure by which a ~~[county or~~
1-54 ~~municipal]~~ library may apply for money under the plan and a
1-55 procedure for a fair hearing for a library whose application for
1-56 money is refused. Money from local, state, or federal sources may
1-57 be used. The money shall be administered according to local, state,
1-58 and federal requirements.

1-59 SECTION 4. The heading to Section 441.0092, Government
1-60 Code, is amended to read as follows:

1-61 Sec. 441.0092. TEXAS READS ~~[NEW MILLENNIUM READING]~~ PROGRAM
1-62 GRANTS.

1-63 SECTION 5. Section 441.0092(a), Government Code, is amended
1-64 to read as follows:

2-1 (a) From money in the Texas Reads [~~new millennium reading~~]
 2-2 program account, the commission shall make grants to fund programs
 2-3 to promote reading provided by public libraries.

2-4 SECTION 6. Sections 441.122(1), (10), (11), and (13),
 2-5 Government Code, are amended to read as follows:

2-6 (1) "Accreditation of libraries" means the evaluation
 2-7 and rating of [~~public~~] libraries [~~and library systems, and the~~
 2-8 ~~evaluation and rating of libraries that are operated by a public~~
 2-9 ~~school district, institution of higher education, or unit of state~~
 2-10 ~~or local government but that are not public libraries,~~] according
 2-11 to commission accreditation standards.

2-12 (10) "Major resource center" means a large public
 2-13 library [~~serving a population of 200,000 or more within 4,000 or~~
 2-14 ~~more square miles]~~ that is designated by the commission as the
 2-15 central library of a major resource system for [~~referral service~~
 2-16 ~~from area libraries in the system, for]~~ cooperative service with
 2-17 other libraries in the system[, ~~and for federated operations with~~
 2-18 ~~other libraries in the system].~~

2-19 (11) "Major resource system" means a network of
 2-20 libraries [~~library systems~~] attached to a major resource center[~~,~~
 2-21 ~~consisting of area libraries joined cooperatively to the major~~
 2-22 ~~resource center, community libraries joined cooperatively to area~~
 2-23 ~~libraries or directly to the major resource center, and libraries~~
 2-24 ~~that are not public libraries that join the system under Section~~
 2-25 ~~441.1271].~~

2-26 (13) "Regional library system" means a network of
 2-27 libraries [~~library systems~~] established under this subchapter.
 2-28 [~~Notwithstanding other provisions of this subchapter, libraries~~
 2-29 ~~operated by public school districts, institutions of higher~~
 2-30 ~~education, and units of state or local government may become~~
 2-31 ~~members of a regional library system to make the library resources~~
 2-32 ~~freely accessible to all residents of the system.]~~

2-33 SECTION 7. Sections 441.124(a) and (d), Government Code,
 2-34 are amended to read as follows:

2-35 (a) The commission shall appoint an advisory board composed
 2-36 of five librarians qualified by training, experience, and interest
 2-37 to advise the commission on the policy to be followed in applying
 2-38 this subchapter. Chapter 2110 does not apply to the composition of
 2-39 the advisory board.

2-40 (d) A member of the board serves without compensation but is
 2-41 entitled to reimbursement for actual and necessary expenses
 2-42 incurred in the performance of official duties, subject to any
 2-43 applicable limitation on reimbursement provided by the General
 2-44 Appropriations Act.

2-45 SECTION 8. The heading to Section 441.126, Government Code,
 2-46 is amended to read as follows:

2-47 Sec. 441.126. AUTHORITY TO ESTABLISH [~~MAJOR RESOURCE~~]
 2-48 SYSTEMS.

2-49 SECTION 9. Section 441.127(c), Government Code, is amended
 2-50 to read as follows:

2-51 (c) The governing body of a public library that proposes to
 2-52 become a major resource center shall submit to the director and
 2-53 librarian an annual [~~initial~~] plan of service for the major
 2-54 resource system [~~and annually after the library becomes a major~~
 2-55 ~~resource center shall submit a plan of system development]~~ made in
 2-56 consultation with the advisory council.

2-57 SECTION 10. The heading to Section 441.1271, Government
 2-58 Code, is amended to read as follows:

2-59 Sec. 441.1271. EXTENDING MEMBERSHIP OF [~~MAJOR RESOURCE~~]
 2-60 SYSTEMS TO CERTAIN NONPUBLIC LIBRARIES.

2-61 SECTION 11. Sections 441.1271(a), (b), (c), (d), and (e),
 2-62 Government Code, are amended to read as follows:

2-63 (a) A major resource system may extend its membership to
 2-64 include libraries that are not public libraries and that are
 2-65 operated by one of the following:

- 2-66 (1) a public school district;
- 2-67 (2) an institution of higher education;
- 2-68 (3) a unit of local, state, or federal government;

2-69 [~~or~~]

3-1 (4) accredited nonpublic elementary or secondary
3-2 schools; or
3-3 (5) special or research libraries [~~a unit of local~~
3-4 ~~government~~].
3-5 (b) The decision to extend major resource system membership
3-6 under Subsection (a) must be:
3-7 (1) made in accordance with the bylaws of the library
3-8 [~~on a two-thirds vote of the governing bodies of the members of the~~
3-9 ~~major resource~~] system; and
3-10 (2) approved by the commission.
3-11 (c) A library that is a type of library to which a major
3-12 resource system has extended its membership under this section:
3-13 (1) must be accredited by the commission to be
3-14 eligible to join the system; and
3-15 (2) may join the system by resolution or agreement
3-16 [~~ordinance~~] of its governing body or designee [~~and execution of~~
3-17 ~~interlibrary contracts for service~~].
3-18 (d) The commission may terminate the [~~system~~] membership of
3-19 a library that is not a public library and that joined a major
3-20 resource system under this section if the library[+
3-21 [~~(1)~~] loses its accreditation by ceasing to meet the
3-22 minimum standards established by the commission[+
3-23 [~~(2)~~ fails to comply with obligations stated in the
3-24 ~~applicable resolution or ordinance or interlibrary contracts for~~
3-25 ~~service~~].
3-26 (e) A library that [~~is not a public library that~~] joins a
3-27 major resource system under this section must agree to loan
3-28 materials without charge to users of other libraries [~~provide~~
3-29 ~~benefits to the public through its membership in the system that are~~
3-30 ~~sufficient to constitute fair value in exchange for the benefits~~
3-31 ~~received by the library through its membership~~] in the system.
3-32 SECTION 12. Sections 441.130(a) and (b), Government Code,
3-33 are amended to read as follows:
3-34 (a) Each major resource system has an advisory council
3-35 composed of not more than 12 [~~six lay~~] members representing the
3-36 member libraries of the system.
3-37 (b) The commission [~~governing body of each member library of~~
3-38 ~~the system~~] shall adopt rules to provide guidance to [~~elect or~~
3-39 ~~appoint a representative to elect council members. The~~
3-40 ~~representatives shall meet following their selection and shall~~
3-41 ~~elect the initial council from their group. The representatives in~~
3-42 ~~an annual meeting shall elect members of their group to fill council~~
3-43 ~~vacancies caused by expiration of terms of office. Other vacancies~~
3-44 ~~shall be filled for the unexpired term by the remaining members of~~
3-45 ~~the council. At all times one member of the council must be a~~
3-46 ~~representative of the~~] major resource systems on the administrative
3-47 operation of advisory councils. Major resource systems will use
3-48 this guidance to develop bylaw provisions for their advisory
3-49 councils [~~center~~].
3-50 SECTION 13. Section 441.131, Government Code, is amended
3-51 by amending Subsection (b) and adding Subsections (b-1) and (b-2)
3-52 to read as follows:
3-53 (b) Governing bodies of libraries within a regional library
3-54 system may establish a nonprofit corporation under the Texas
3-55 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
3-56 Texas Civil Statutes) to administer the system or may contract with
3-57 a private business to administer the system. If the governing
3-58 bodies form a nonprofit corporation, they may select a board of
3-59 directors and adopt bylaws for the corporation. Bylaws adopted or a
3-60 contract executed under this section may permit other libraries
3-61 operated by the following entities to become members of the
3-62 regional library system:
3-63 (1) a public school district;
3-64 (2) an institution [~~districts, institutions~~] of
3-65 higher education;
3-66 (3) a unit [~~, and units~~] of local, state, or federal
3-67 [~~local~~] government;
3-68 (4) an accredited nonpublic elementary or secondary
3-69 school; or

4-1 (5) a special or research library ~~[to become members~~
 4-2 ~~of the regional library system].~~

4-3 (b-1) Bylaws adopted under Subsection (b) may provide for
 4-4 reorganization, merger, division, and dissolution.

4-5 (b-2) A library that joins a regional system under this
 4-6 section must agree to loan materials without charge to users of
 4-7 other libraries in the system.

4-8 SECTION 14. Sections 441.136(a) and (d), Government Code,
 4-9 are amended to read as follows:

4-10 (a) The director and librarian, with the advice of the
 4-11 advisory board, shall propose ~~[initial]~~ rules necessary to the
 4-12 administration of the program of state grants, including
 4-13 qualifications for major resource system membership. The
 4-14 ~~[proposed]~~ rules shall be ~~[published in the official publication of~~
 4-15 ~~the Texas State Library with notice of a public hearing before the~~
 4-16 ~~commission on the]~~ proposed and adopted according to Chapter 2001
 4-17 ~~[rules to be held on a specified date not less than 30 nor more than~~
 4-18 ~~60 days after the date of the publication].~~

4-19 (d) The commission shall include requirements in its rules
 4-20 to ensure that ~~[both the population served and]~~ the constituent
 4-21 member libraries are adequately represented in the conduct of
 4-22 system business relating to activities involved in the development
 4-23 of a plan of service and adequately represented on each major
 4-24 resource system advisory council. Rules adopted as required by
 4-25 this subsection do not apply to the governing board or board of
 4-26 directors of a regional library system governed by applicable
 4-27 requirements of the Texas Business Corporation Act or the Texas
 4-28 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
 4-29 Texas Civil Statutes).

4-30 SECTION 15. Section 441.160, Government Code, is amended to
 4-31 read as follows:

4-32 Sec. 441.160. REVISIONS TO RECORDS RETENTION SCHEDULES.
 4-33 The records retention schedules may be revised and the revisions
 4-34 take effect according to their terms when they are approved and
 4-35 adopted in the same manner as provided by Section 441.158.
 4-36 ~~[However, editorial changes that do not substantively change the~~
 4-37 ~~description of a record or its retention period and changes to~~
 4-38 ~~retention periods as the result of changes to retention periods~~
 4-39 ~~prescribed in a federal or state law, rule of court, or regulation~~
 4-40 ~~do not require approval of the local government records committee~~
 4-41 ~~before adoption.]~~

4-42 SECTION 16. Section 441.180(11), Government Code, is
 4-43 amended to read as follows:

4-44 (11) "State record" means any written, photographic,
 4-45 machine-readable, or other recorded information created or
 4-46 received by or on behalf of a state agency or an elected state
 4-47 official that documents activities in the conduct of state business
 4-48 or use of public resources. The term includes any recorded
 4-49 information created or received by a Texas government official in
 4-50 the conduct of official business, including officials from periods
 4-51 in which Texas was a province, colony, republic, or state. The term
 4-52 does not include:

4-53 (A) library or museum material made or acquired
 4-54 and maintained solely for reference or exhibition purposes;

4-55 (B) an extra copy of recorded information
 4-56 maintained only for reference; or

4-57 (C) a stock of publications or blank forms.

4-58 SECTION 17. Sections 441.192(a), (b), and (c), Government
 4-59 Code, are amended to read as follows:

4-60 (a) The governing body of a state agency may demand the
 4-61 return of any state ~~[government]~~ record in the private possession
 4-62 of a person if the removal of the state record from the state agency
 4-63 or the agency's predecessor was not authorized by law.

4-64 (b) The director and librarian may demand the return of any
 4-65 state ~~[government]~~ record or archival state record ~~[of permanent~~
 4-66 ~~value]~~ in the private possession of any person.

4-67 (c) If the person in possession of the state ~~[government]~~
 4-68 record or archival state record refuses to deliver the record on
 4-69 demand, the director and librarian or the governing body of a state

5-1 agency may ask the attorney general to petition a district court in
 5-2 Travis County for the recovery of the record as provided by this
 5-3 section. If the court finds that the record is a state ~~[government]~~
 5-4 record or archival state record, the court shall order the return of
 5-5 the record to the custody of the state. As part of the petition or
 5-6 at any time after its filing, the attorney general may petition to
 5-7 have the record seized pending the determination of the court if the
 5-8 director and librarian or governing body finds the record is in
 5-9 danger of being destroyed, mutilated, altered, secreted, or removed
 5-10 from the state.

5-11 SECTION 18. Section 441.222, Government Code, is amended to
 5-12 read as follows:

5-13 Sec. 441.222. CREATION OF CONSORTIUM. The commission shall
 5-14 establish and maintain the TexShare consortium as a
 5-15 resource-sharing consortium operated as a program within the
 5-16 commission for libraries at institutions of higher education and~~[,~~
 5-17 for public libraries, [and for] libraries of nonprofit
 5-18 corporations, and other types of libraries.

5-19 SECTION 19. Section 441.223, Government Code, is amended to
 5-20 read as follows:

5-21 Sec. 441.223. FINDINGS; PURPOSE AND METHODS. The
 5-22 legislature finds that it is necessary to assist libraries across
 5-23 the state [at public and private or independent institutions of
 5-24 higher education, public libraries, designated public school
 5-25 libraries, and libraries of nonprofit corporations] to promote the
 5-26 public good by achieving the following public purposes through the
 5-27 following methods:

5-28 (1) to promote the future well-being of the citizenry,
 5-29 enhance quality teaching and research excellence at institutions of
 5-30 higher education through the efficient exchange of information and
 5-31 the sharing of library resources, improve educational resources in
 5-32 all communities, and expand the availability of information about
 5-33 clinical medical research and the history of medicine;

5-34 (2) to maximize the effectiveness of library
 5-35 expenditures by enabling libraries to share staff expertise and to
 5-36 share library resources in print and in an electronic form,
 5-37 including books, journals, technical reports, and databases;

5-38 (3) to increase the intellectual productivity of
 5-39 students and faculty at the participating institutions of higher
 5-40 education by emphasizing access to information rather than
 5-41 ownership of documents and other information sources;

5-42 (4) to facilitate joint purchasing agreements for
 5-43 purchasing information services and encourage cooperative research
 5-44 and development of information technologies; and

5-45 (5) to enhance the ability of public schools to
 5-46 further student achievement and lifelong learning ~~[through~~
 5-47 ~~designated public school library participation in group purchasing~~
 5-48 ~~agreements].~~

5-49 SECTION 20. Section 441.224(a), Government Code, is amended
 5-50 to read as follows:

5-51 (a) Membership in the consortium is open to all institutions
 5-52 of higher education, all public libraries that are members of the
 5-53 state library system, and all libraries of nonprofit corporations.
 5-54 The commission, by rule, may also admit other types of libraries as
 5-55 members or as affiliated members.

5-56 SECTION 21. Sections 441.226(a) and (b), Government Code,
 5-57 are amended to read as follows:

5-58 (a) The commission shall appoint an ~~[eleven-member]~~
 5-59 advisory board to advise the commission on matters relating to the
 5-60 consortium. Composition of the board must be representative of the
 5-61 various types of libraries comprising the membership. At least two
 5-62 members must be representatives of the general public~~[,~~ ~~at least~~
 5-63 ~~two members must be affiliated with a four-year public university~~
 5-64 ~~in the consortium, at least two members must be affiliated with a~~
 5-65 ~~public community college in the consortium, at least two members~~
 5-66 ~~must be affiliated with a private institution of higher education~~
 5-67 ~~in the consortium, and at least two members must be affiliated with~~
 5-68 ~~a public library in the consortium].~~ Members of the advisory board
 5-69 must be qualified by training and experience to advise the

6-1 commission on policy to be followed in applying this subchapter.
 6-2 Chapter 2110 does not apply to the composition of the advisory
 6-3 board.

6-4 (b) The commission [~~advisory board~~] shall adopt rules [~~meet~~
 6-5 ~~regularly~~] regarding [~~consortium programs and plans at~~] the
 6-6 organization and structure [~~call~~] of the advisory board [~~board's~~
 6-7 ~~chairman or of the director and librarian~~].

6-8 SECTION 22. Sections 441.229(b) and (c), Government Code,
 6-9 are amended to read as follows:

6-10 (b) The commission may designate [~~public school~~] libraries
 6-11 that may participate in group purchasing agreements provided to the
 6-12 consortium. The commission by rule shall establish criteria for
 6-13 the participation.

6-14 (c) The commission may allow designated [~~public school~~]
 6-15 libraries to participate in a group purchasing agreement only to
 6-16 the extent that the commission may do so efficiently and [~~only~~] in a
 6-17 manner that enhances resource sharing [~~does not reduce~~] services to
 6-18 the consortium members.

6-19 SECTION 23. Section 441.230, Government Code, is amended to
 6-20 read as follows:

6-21 Sec. 441.230. GRANTS TO MEMBERSHIP INSTITUTIONS. To
 6-22 achieve the purposes of this subchapter, the commission may grant
 6-23 money to consortium members [~~institutions of higher education~~].
 6-24 The commission shall ensure that the commission or institutions in
 6-25 the consortium receive benefits that are sufficient to constitute
 6-26 fair value in return for any grant made by the commission. The
 6-27 commission shall require a recipient of a grant to report to the
 6-28 commission information relating to best practices and performance
 6-29 outcomes.

6-30 SECTION 24. Sections 323.005(b) and (d), Local Government
 6-31 Code, are amended to read as follows:

6-32 (b) [~~A person is not eligible for employment as a county~~
 6-33 ~~librarian unless the person has first obtained from the Texas State~~
 6-34 ~~Library and Archives Commission a county librarian's certificate of~~
 6-35 ~~qualification. If a person has received the certificate and has~~
 6-36 ~~served as a county librarian, further examination and certification~~
 6-37 ~~by the commission is not required for employment or reemployment of~~
 6-38 ~~the person as a county librarian.~~] Before beginning to perform
 6-39 duties, a person employed as county librarian must file with the
 6-40 county clerk the official oath and, at the discretion of the
 6-41 commissioners court, execute a bond conditioned that the person
 6-42 will faithfully perform the duties of the position. The bond must
 6-43 be in an amount determined by the commissioners court and must be
 6-44 purchased from sufficient sureties approved by the county judge.

6-45 (d) On or before March 31 [~~October 1~~] of each year, the
 6-46 county librarian shall report to the commissioners court and the
 6-47 state librarian on the operation of the county library during the
 6-48 previous fiscal year [~~ending on the preceding August 31~~]. The
 6-49 report must be made on a form furnished by the state librarian and
 6-50 must contain a statement of the condition of the library and a
 6-51 statement of its operation during the year and must contain
 6-52 financial and book statistics customarily kept by well-regulated
 6-53 libraries.

6-54 SECTION 25. Section 323.011(b), Local Government Code, is
 6-55 amended to read as follows:

6-56 (b) The contract must provide that the established library
 6-57 assume the functions of a county library within the county,
 6-58 including municipalities in the county [~~, and must provide that the~~
 6-59 ~~librarian of the established library hold or secure a county~~
 6-60 ~~librarian's certificate from the Texas State Library and Archives~~
 6-61 ~~Commission~~]. The commissioners court may contract to pay annually
 6-62 to the established library out of the general fund of the county an
 6-63 amount on which the parties may agree.

6-64 SECTION 26. The following provisions of the Government Code
 6-65 are repealed:

- 6-66 (1) Sections 441.122(3) and (5);
- 6-67 (2) Sections 441.130(c), (d), (e), and (f);
- 6-68 (3) Section 441.133;
- 6-69 (4) Section 441.134;

- 7-1 (5) Sections 441.136(b) and (c);
- 7-2 (6) Section 441.139;
- 7-3 (7) Section 441.158(d);
- 7-4 (8) Section 441.161;
- 7-5 (9) Section 441.162;
- 7-6 (10) Section 441.163;
- 7-7 (11) Section 441.164;
- 7-8 (12) Section 441.165; and
- 7-9 (13) Sections 441.226(c) and (e).

7-10 SECTION 27. The changes in law made by this Act to Sections
7-11 441.180 and 441.192, Government Code, apply retroactively and apply
7-12 to all state records regardless of when the records were removed
7-13 from the custody of this state.

7-14 SECTION 28. This Act takes effect September 1, 2009.

7-15 * * * * *