

By: Hall

S.B. No. 1433

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the identification of programs and activities in the
3 general appropriations bill and the review of state agency
4 performance and rules.

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

6 SECTION 1. Section 322.008, Government Code, is amended by
7 adding Subsection (b-1) to read as follows:

8 (b-1) The general appropriations bill must, for each state
9 agency or other entity to which an appropriation is proposed under
10 the bill:

11 (1) include a line item for each specific program or
12 activity administered by the agency or entity or by an
13 organizational unit of the agency or entity, arranged according to
14 the agency's, entity's, or unit's organizational structure, except
15 that if a specific program or activity administered by the agency,
16 entity, or unit includes identifiable components or subprograms,
17 the bill must include a line item for each of those components or
18 subprograms;

19 (2) specify the amount of the proposed appropriation
20 for each line item; and

21 (3) include, for each line item that represents a
22 specific program or activity or, if applicable, each group of line
23 items representing the components or subprograms of a specific
24 program or activity:

1 (A) a description of the program or activity and
2 a citation to the authorization in law for the program or activity;
3 and

4 (B) a statement regarding whether the source of
5 the proposed appropriation is nondedicated general revenue money,
6 dedicated general revenue money, federal money, or another source.

7 SECTION 2. Sections 325.008(a) and (b), Government Code,
8 are amended to read as follows:

9 (a) Before January 1 of the year in which a state agency
10 subject to this chapter and its advisory committees are abolished,
11 the commission shall:

12 (1) review and take action necessary to verify the
13 reports submitted by the agency under Section 325.007;

14 (2) consult the Legislative Budget Board, the
15 Governor's Budget, Policy, and Planning Division, the State
16 Auditor, and the comptroller of public accounts, or their
17 successors, on the application to the agency of the criteria
18 provided in Section 325.011;

19 (3) have [~~conduct~~] a review of the agency based on the
20 criteria provided in Section 325.011 conducted by a private
21 performance auditor with whom the commission contracts under
22 Section 325.0081 and have the performance auditor prepare a written
23 report; and

24 (4) review the implementation of commission
25 recommendations contained in the reports presented to the
26 legislature during the preceding legislative session and the
27 resulting legislation.

1 (b) The written report prepared by the performance auditor
2 [~~commission~~] under Subsection (a)(3) is a public record.

3 SECTION 3. Chapter 325, Government Code, is amended by
4 adding Section 325.0081 to read as follows:

5 Sec. 325.0081. PERFORMANCE AUDITOR CONTRACT. The
6 commission shall contract with a person to perform the performance
7 audits required by this chapter. The contract must require the
8 auditor to conduct the performance audits as prescribed by this
9 chapter.

10 SECTION 4. Section 325.010(b), Government Code, is amended
11 to read as follows:

12 (b) In the report the commission shall include:

13 (1) the performance auditor's [its] findings regarding
14 the criteria prescribed by Section 325.011;

15 (2) its recommendations based on the matters
16 prescribed by Section 325.012; and

17 (3) other information the commission considers
18 necessary for a complete review of the agency.

19 SECTION 5. Section 325.011, Government Code, is amended to
20 read as follows:

21 Sec. 325.011. CRITERIA FOR REVIEW. The commission, [and]
22 its staff, and the performance auditor shall consider the following
23 criteria in determining whether a public need exists for the
24 continuation of a state agency or its advisory committees or for the
25 performance of the functions of the agency or its advisory
26 committees:

27 (1) the efficiency and effectiveness with which the

1 agency or the advisory committee operates;

2 (2)(A) an identification of the mission, goals, and
3 objectives intended for the agency or advisory committee and of the
4 problem or need that the agency or advisory committee was intended
5 to address; and

6 (B) the extent to which the mission, goals, and
7 objectives have been achieved and the problem or need has been
8 addressed;

9 (3)(A) an identification of any activities of the
10 agency in addition to those granted by statute and of the authority
11 for those activities; and

12 (B) the extent to which those activities are
13 needed;

14 (4) an assessment of authority of the agency relating
15 to fees, inspections, enforcement, and penalties;

16 (5) whether less restrictive or alternative methods of
17 performing any function that the agency performs could adequately
18 protect or provide service to the public;

19 (6) the extent to which the jurisdiction of the agency
20 and the programs administered by the agency overlap or duplicate
21 those of other agencies, the extent to which the agency coordinates
22 with those agencies, and the extent to which the programs
23 administered by the agency can be consolidated with the programs of
24 other state agencies;

25 (7) the promptness and effectiveness with which the
26 agency addresses complaints concerning entities or other persons
27 affected by the agency, including an assessment of the agency's

1 administrative hearings process;

2 (8) an assessment of the agency's rulemaking process
3 and the extent to which the agency has encouraged participation by
4 the public in making its rules and decisions and the extent to which
5 the public participation has resulted in rules that benefit the
6 public;

7 (9) the extent to which the agency has complied with:

8 (A) federal and state laws and applicable rules
9 regarding equality of employment opportunity and the rights and
10 privacy of individuals; and

11 (B) state law and applicable rules of any state
12 agency regarding purchasing guidelines and programs for
13 historically underutilized businesses;

14 (10) the extent to which the agency issues and
15 enforces rules relating to potential conflicts of interest of its
16 employees;

17 (11) the extent to which the agency complies with
18 Chapters 551 and 552 and follows records management practices that
19 enable the agency to respond efficiently to requests for public
20 information;

21 (12) the effect of federal intervention or loss of
22 federal funds if the agency is abolished; and

23 (13) the extent to which the purpose and effectiveness
24 of reporting requirements imposed on the agency justifies the
25 continuation of the requirement.

26 SECTION 6. Section [325.0127](#), Government Code, is amended by
27 adding Subsection (c) to read as follows:

1 (c) Each state agency reviewed under this chapter shall pay
2 the costs incurred by the commission in performing the review. The
3 commission shall determine the costs of the review, and the agency
4 shall pay the amount of those costs promptly on receipt of a
5 statement from the commission regarding those costs. Any reduction
6 in the state agency's operating expenses that result from
7 implementing the performance auditor's recommendations shall be
8 used to pay for the cost of the performance review.

9 SECTION 7. Sections 325.019(b) and (c), Government Code,
10 are amended to read as follows:

11 (b) In carrying out its functions under this chapter, the
12 commission, ~~or~~ its designated staff member, the performance
13 auditor, or an employee of the performance auditor may attend any
14 meetings and proceedings of any state agency, including any meeting
15 or proceeding of the governing body of the agency that is closed to
16 the public, and may inspect the records, documents, and files of any
17 state agency, including any record, document, or file that is:

- 18 (1) attorney work product;
- 19 (2) an attorney-client communication; or
- 20 (3) made privileged or confidential by law.

21 (c) It is the intent of the legislature to allow the
22 commission, ~~and~~ its designated staff members, the performance
23 auditor, or an employee of the performance auditor to have access to
24 all meetings or proceedings of a state agency being reviewed by the
25 commission under this chapter and to all records, documents, and
26 files of that agency. To the extent that this section conflicts
27 with other law that purports to limit the commission's or auditor's

1 access to meetings or proceedings or to records, documents, and
2 files, this section controls. If federal law prohibits a state
3 agency from disclosing information in a record, document, or file
4 to the commission or auditor, including information in a record,
5 document, or file created as a result of or considered during a
6 meeting or proceeding, the state agency may redact the protected
7 information from the record, document, or file.

8 SECTION 8. Sections 325.0195(a), (b), (c), and (d),
9 Government Code, are amended to read as follows:

10 (a) A working paper, including all documentary or other
11 information, prepared or maintained by the commission staff or the
12 performance auditor in performing [~~its~~] duties under this chapter
13 or other law to conduct an evaluation and prepare a report is
14 excepted from the public disclosure requirements of Section
15 552.021.

16 (b) A record held by another entity that is considered to be
17 confidential by law and that the commission or the performance
18 auditor receives in connection with the performance of the
19 commission's or auditor's duties [~~functions~~] under this chapter or
20 another law remains confidential and is excepted from the public
21 disclosure requirements of Section 552.021.

22 (c) A state agency that provides the commission or the
23 performance auditor with access to a privileged or confidential
24 communication, record, document, or file under Section 325.019 for
25 purposes of a review under this chapter does not waive the
26 attorney-client privilege, or any other privilege or
27 confidentiality requirement protected or required by the Texas

1 Constitution, common law, statutory law, or rules of evidence,
2 procedure, or professional conduct, with respect to the
3 communication, record, document, or file provided to the commission
4 or auditor. For purposes of this subsection, a communication
5 includes a discussion that occurs at a meeting or proceeding of the
6 state agency that is closed to the public.

7 (d) The state agency may require the commission, ~~or~~ the
8 members of the commission's staff, the performance auditor, or the
9 employees of the performance auditor who view, handle, or are privy
10 to information, or who attend a meeting that is not accessible to
11 the public, to sign a confidentiality agreement that covers the
12 information and requires that:

13 (1) the information not be disclosed outside the
14 commission or the auditor's office for purposes other than the
15 purpose for which it was received;

16 (2) the information be labeled as confidential;

17 (3) the information be kept securely; and

18 (4) the number of copies made of the information or the
19 notes taken from the information that implicate the confidential
20 nature of the information be controlled, with all copies or notes
21 that are not destroyed or returned to the governmental body
22 remaining confidential and subject to the confidentiality
23 agreement.

24 SECTION 9. Chapter 325, Government Code, is amended by
25 adding Section 325.025 to read as follows:

26 Sec. 325.025. REVIEW OF RULES. (a) The commission, with the
27 assistance of the appropriate standing committee of each house of

1 the legislature, shall review each state agency's rules to
2 determine whether:

3 (1) the agency has authority to adopt the rule;

4 (2) the rule is necessary for the administration of
5 the agency's functions; and

6 (3) the rule should be repealed or, if applicable, the
7 agency should be given authority to adopt the rule.

8 (b) The commission shall prepare a report with the
9 commission's findings and recommendations and submit the report to
10 the legislature.

11 (c) The commission shall establish a schedule to ensure that
12 each state agency's rules are reviewed every six years.

13 SECTION 10. This Act takes effect September 1, 2015.