

BILL ANALYSIS

C.S.H.B. 2305
By: Guillen
Government Transparency & Operation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the required methods for transmission and receipt of certain state agency reports and notices are too restrictive and neither cost-efficient nor timely. C.S.H.B. 2305 seeks to increase efficiency and transparency in this area by allowing certain state agencies to use the most efficient means available to transmit and receive documents, by evaluating the necessity of each state agency report, and by requiring the online publication of certain reports in the Texas Digital Archive.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to state agencies that transmit and receive state documents using the Internet or another electronic medium in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 2305 amends the Government Code to require the Texas State Library and Archives Commission (TSLAC) to submit to the governor and the Legislative Budget Board (LBB) not later than January 1 of every other odd-numbered year a written report regarding all statutorily required reports prepared by and submitted to certain applicable state agencies. The bill authorizes TSLAC to consult with other such state agencies in preparing the report and requires such a state agency to cooperate with TSLAC in securing the information necessary for preparing the report and to submit that information to TSLAC. The bill requires TSLAC to prescribe the time and manner in which such a state agency transmits the information necessary to prepare the report and authorizes TSLAC to require the information to be submitted using the Texas Digital Archive, defined by the bill as the digital repository maintained and operated by TSLAC for the preservation of and access to permanently valuable copies of archival state records, reports, and publications. The bill requires the TSLAC report to include specified information for each statutorily required report, to be made available to the public, and to provide indices by preparing agency, title of report, and report recipient. The bill establishes that the first required TSLAC report is due not later than January 1, 2021.

C.S.H.B. 2305 requires an executive-branch or judicial-branch state agency, including a public university system or public institution of higher education, to the extent a report prepared by the agency is not confidential or excepted from the public-availability requirement of state public information law, to use the Texas Digital Archive to submit or post the report if the report is required by a statute, rule, or rider in the General Appropriations Act to be submitted to the governor, to a member, agency, or committee of the legislature, to another such state agency, or

to the public. The bill requires TSLAC to develop and make accessible to each such state agency guidelines that assist the agency in determining the reports prepared by the agency that are appropriate for submission through the Texas Digital Archive and the retention requirements for those reports. The bill requires TSLAC to monitor the effectiveness of state agency use of the Texas Digital Archive for the purposes provided under such requirement. The bill establishes that such a state agency that posts a report using the Texas Digital Archive satisfies any requirement in state law that the agency post the report on the agency's website if the agency posts a direct link to the Texas Digital Archive on the agency's website.

C.S.H.B. 2305 authorizes certain executive branch state agencies under the Administrative Procedure Act to provide notice of a proposed rule to each person who has made a timely written request of the agency for advance notice of its rulemaking proceedings by email if the person requests electronic delivery of the notice and includes an email address in the person's written request submitted to the agency.

C.S.H.B. 2305 authorizes executive, legislative, or judicial branch state agencies, including a public university system or public institution of higher education, to transmit and receive state documents in a format prescribed by the agency and in any manner that the agency determines will increase agency efficiency without compromising the delivery of the agency's program to the public. The bill requires a state agency that transmits and receives state documents using the Internet or another electronic medium by rule to develop electronic communication procedures for the agency. The bill authorizes a state agency to continue to use established procedures prescribed by state law or agency policy for the transmission and receipt of documents. The bill expressly does not authorize the electronic transmission or receipt of documents that are prohibited from being electronically transmitted or received under federal law. The bill establishes that the bill's provisions relating to the transmission and receipt of agency documents prevail over any other applicable state law to the extent of any conflict. The bill includes a temporary provision, set to expire September 1, 2020, requiring a state agency to include in the agency's legislative appropriations request submitted to the LBB for the 2020-2021 state fiscal biennium a report on any cost savings or achievements in efficiency recognized from implementing a change in the agency's procedures for the transmission and receipt of state documents during the 2018-2019 state fiscal biennium.

C.S.H.B. 2305 requires the comptroller of public accounts to conduct a study on the mail operations of each state agency in the executive branch that receives an appropriation and requires the study to identify provisions of law relating to the mailing requirements for the agency that impede the efficient transmission and receipt of documents by the agency. The bill requires the comptroller in conducting the study to collaborate with other state agencies to consider the needs or concerns specific to those agencies and, not later than November 1, 2018, to post the findings of the study on the comptroller's website. These provisions expire September 1, 2019.

C.S.H.B. 2305 amends the Health and Safety Code to authorize the written notice of the report the Department of State Health Services (DSHS) gives a person relating to an initial determination by DSHS that a violation of the Texas Ambulatory Surgical Center Licensing Act occurred to be provided by any certified delivery method. The bill requires such a notice sent by certified email to be sent to the person's last known email address as provided by the person to DSHS and requires DSHS to maintain proof that such a notice was sent. The bill establishes for purposes of such notice that a person's provision of an email address to DSHS is considered consent to electronically deliver notices and correspondence to the person.

C.S.H.B. 2305 amends the Labor Code to revise requirements relating to the attendance of an employee of an executive-branch and judicial-branch state agency, including a public institution of higher education, at a discrimination training program to require that each such state agency require an employee of the agency who completes the training program on the prevention of employment discrimination to verify the employee's completion of the training program in the

manner prescribed by the agency and either file a document that verifies the employee's completion of the training program in the employee's personnel file or retain an electronic record that verifies the employee's completion of the training program in accordance with the record retention requirements applicable to the agency.

C.S.H.B. 2305 amends the Natural Resources Code to add delivery by certified email to an email address specified by the deputy commissioner of the asset management division of the General Land Office for the purpose of the required notice of an action that may affect state land dedicated to the permanent school fund as an alternative method for the required delivery of such notice by a political subdivision or executive branch state agency, excluding the Texas Department of Transportation (TxDOT) and the Railroad Commission of Texas and including a public university system and a public institution of higher education.

C.S.H.B. 2305 amends the Occupations Code to authorize the Texas Board of Nursing to deliver its annual report regarding any pilot programs developed or approved and a status report on those programs by certified email if the recipient provides an email address to the board for the purpose of receiving the report.

C.S.H.B. 2305 amends the Transportation Code to authorize TxDOT to provide that the written notice of the total amount due for a vehicle driven or towed through a toll collection facility, instead of being sent by first class mail, be sent as an electronic record to a registered owner that agrees to the terms of the electronic record transmission of the information.

C.S.H.B. 2305 establishes that an applicable state agency is not required to comply with the bill's provisions relating to the use of the Texas Digital Archive until TSLAC notifies the agency that the Texas Digital Archive is configured to allow compliance by the agency with those provisions.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2305 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Subchapter G, Chapter 441, Government Code, is amended to read as follows:

SUBCHAPTER G. STATE PUBLICATIONS AND REPORTS

SECTION 2. Section 441.101, Government Code, is amended by adding Subdivision (5) to read as follows:

(5) "Texas Digital Archive" means the digital repository maintained and operated by the commission for the preservation of and access to permanently valuable copies of archival state records, reports, and

SECTION 1. Subchapter A, Chapter 441, Government Code, is amended by adding Section 441.0135 to read as follows:

Sec. 441.0135. REPORT OF REPORTS.

(a) Not later than January 1 of each odd-numbered year, the commission shall submit to the governor and the Legislative Budget Board a written report regarding all statutorily required reports prepared by and submitted to a state agency as defined by Section 441.180. The commission may consult with other state agencies in preparing the report. A state agency shall cooperate with the commission in securing the information necessary for preparing the report.

The commission shall prescribe the method by which a state agency transmits to the commission information necessary to prepare the report, and may require the information to be submitted using the state electronic Internet portal.

The report must include for each statutorily required report:

- (1) the title of and the agency preparing the report;
- (2) the statutory authority requiring the report;
- (3) the recipient of the report;
- (4) the deadline for submitting the report;
- (5) a brief description of the report; and
- (6) an assessment from each recipient of the report whether the report is necessary.

(b) The report required by Subsection (a) must:

- (1) be made available to the public; and
- (2) provide indices by preparing agency, title of report, and report recipient.

(See SECTION 4: Sec. 2054.1116, below.)

publications.

SECTION 3. Subchapter G, Chapter 441, Government Code, is amended by adding Sections 441.107 and 441.108 to read as follows:

Sec. 441.107. REPORT OF REPORTS.

(a) Notwithstanding Section 441.101, in this section, "state agency" has the meaning assigned by Section 441.180.

(b) Not later than January 1 of every other odd-numbered year, the commission shall submit to the governor and the Legislative Budget Board a written report regarding all statutorily required reports prepared by and submitted to a state agency.

The commission may consult with other state agencies in preparing the report. A state agency shall cooperate with the commission in securing the information necessary for preparing the report and shall submit that information to the commission.

The commission shall prescribe the time and manner in which a state agency transmits the information necessary to prepare the report, and may require the information to be submitted using the Texas Digital Archive.

The report must include for each statutorily required report:

- (1) the title of and the agency preparing the report;
- (2) the statutory authority requiring the report;
- (3) the recipient of the report;
- (4) the deadline for submitting the report;
- (5) a brief description of the report; and
- (6) an assessment from each recipient of the report whether the report is necessary.

(c) The report required by Subsection (b) must:

- (1) be made available to the public; and
- (2) provide indices by preparing agency, title of report, and report recipient.

Sec. 441.108. STATE AGENCY USE OF TEXAS DIGITAL ARCHIVE FOR CERTAIN REPORTS.

(a) Notwithstanding Section 441.101, in this section, "state agency" has the meaning assigned by Section 2054.003.

(b) To the extent a report prepared by a state agency is not confidential or excepted

from the requirements of Section 552.021, the agency shall use the Texas Digital Archive to submit or post the report if the report is required by a statute, rule, or rider in the General Appropriations Act to be submitted to:

(1) the governor;

(2) a member, agency, or committee of the legislature;

(3) another state agency; or

(4) the public.

(c) The commission shall develop and make accessible to each state agency guidelines that assist the agency in determining:

(1) the reports prepared by the agency that are appropriate for submission through the Texas Digital Archive; and

(2) the retention requirements for those reports.

(d) The commission shall monitor the effectiveness of state agency use of the Texas Digital Archive for the purposes provided under this section.

(e) A state agency that posts a report using the Texas Digital Archive satisfies any requirement in state law that the agency post the report on the agency's Internet website if the agency posts a direct link to the Texas Digital Archive on the agency's Internet website.

SECTION 2. Section 2001.026, Government Code, is amended.

SECTION 4. Same as introduced version.

SECTION 3. Chapter 2052, Government Code, is amended.

SECTION 5. Same as introduced version.

SECTION 4. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1116 to read as follows:

Sec. 2054.1116. USE OF STATE ELECTRONIC INTERNET PORTAL FOR CERTAIN REPORTS.

(a) To the extent a report prepared by a state agency is not confidential or excepted from the requirements of Section 552.021, the agency shall use the state electronic Internet portal to submit or post the report if the report is required by a statute, rule, or rider in the General Appropriations Act to be submitted to:

(1) the governor;

(See SECTION 3: Sec. 441.108, above.)

(2) a member, agency, or committee of the legislature;

(3) another state agency; or

(4) the public.

(b) The department shall collaborate with the Texas State Library and Archives Commission to develop and provide to each state agency guidelines that assist the agency in determining:

(1) the reports prepared by the agency that are appropriate for submission through the state electronic Internet portal; and

(2) the retention requirements for those reports.

(c) The Texas State Library and Archives Commission shall monitor the effectiveness of state agency use of the state electronic Internet portal for the purposes provided under this section.

(d) A state agency that posts a report using the state electronic Internet portal satisfies any requirement in state law that the agency post the report on the agency's Internet website if the agency posts a direct link to the state electronic Internet portal on the agency's Internet website.

SECTION 5. Subchapter A, Chapter 2176, Government Code, is amended.

SECTION 6. Section 243.015, Health and Safety Code, is amended.

No equivalent provision.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Sections 21.010(a), (d), and (e), Labor Code, are amended to read as follows:

(a) Each state agency shall provide to employees of the agency a ~~[an employment discrimination]~~ training program on the prevention of employment discrimination [that complies with this section].

(d) The commission shall develop materials for use by state agencies in providing the [employment—discrimination] training program [as] required by this section.

(e) Each state agency shall require an employee of the agency who completes the [attends a] training program required by this section to verify [sign a statement verifying] the employee's completion of [attendance at] the training program in the manner

prescribed by the agency. The agency shall:
(1) file a document that verifies the employee's completion of the training program [the statement] in the employee's personnel file; or
(2) retain an electronic record that verifies the employee's completion of the training program in accordance with the record retention requirements applicable to the agency.

SECTION 7. Section 11.082(a), Natural Resources Code, is amended.

SECTION 9. Same as introduced version.

SECTION 8. Section 301.160, Occupations Code, is amended.

SECTION 10. Same as introduced version.

SECTION 9. Section 228.0545, Transportation Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

SECTION 11. Section 228.0545, Transportation Code, is amended by adding Subsection (e) to read as follows:

(c) The department shall send ~~[by first class mail]~~ to the registered owner of the vehicle a written notice of the total amount due. The notice must specify the date, which may not be earlier than the 30th day after the date the notice is sent ~~[mailed]~~, by which the amount due must be paid. The registered owner shall pay the amount due on or before the date specified in the notice.

(d) Except as provided by Subsection (e), the [The] department shall send the notice required under Subsection (c) and subsequent notices by first class mail to:

(1) the registered owner's address as shown in the vehicle registration records of the Texas Department of Motor Vehicles or the analogous department or agency of another state or country; or

(2) an alternate address provided by the owner or derived through other reliable means.

(e) The department may send the notice required under Subsection (c) by certified electronic mail to the registered owner's e-mail address as shown in the records of the department or in the vehicle registration records of the Texas Department of Motor Vehicles or the analogous department or agency of another state or country.

(e) The department may provide that the notice under Subsection (c), instead of being sent by first class mail, be sent as an electronic record to a registered owner that agrees to the terms of the electronic record transmission of the information.

SECTION 10. A state agency is not required to comply with Section 2054.1116, Government Code, as added by this Act, until the Department of Information Resources notifies the agency that the state electronic Internet portal project is configured to allow compliance by the agency with that section.

SECTION 11. The changes in law made by this Act relating to the method of delivery or submission of a notice or report apply only to a notice or report that is required to be delivered or submitted on or after the effective date of this Act. A notice or report required to be delivered or submitted before the effective date of this Act is governed by the law in effect on the date the notice or report was required to be delivered or submitted, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 12. This Act takes effect September 1, 2017.

SECTION 12. A state agency is not required to comply with Section 441.108, Government Code, as added by this Act, until the Texas State Library and Archives Commission notifies the agency that the Texas Digital Archive, as defined by Section 441.101, Government Code, as amended by this Act, is configured to allow compliance by the agency with that section.

SECTION 13. Same as introduced version.

SECTION 14. The first report required under Section 441.107, Government Code, as added by this Act, is due not later than January 1, 2021.

SECTION 15. Same as introduced version.