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H.B. No. 1962

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions of the Texas State
3 Library and Archives Commission.

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

5 SECTION 1. Section 441.001(q), Government Code, is amended
6 to read as follows:

7 (q) The Texas State Library and Archives Commission is
8 subject to Chapter 325 (Texas Sunset Act). Unless continued in
9 existence as provided by that chapter, the commission is abolished
10 September 1, 2031 [~~2019~~].

11 SECTION 2. Section 441.0011, Government Code, is amended by
12 amending Subsection (b) and adding Subsection (d) to read as
13 follows:

14 (b) The training program must provide the person with
15 information regarding:

16 (1) the law governing [~~legislation that created the~~]
17 commission operations;

18 (2) the programs, functions, rules, and budget of the
19 commission;

20 (3) the scope of and limitations on the rulemaking
21 authority of the commission;

22 (4) the results of the most recent formal audit of the
23 commission;

24 (5) [~~(4)~~] the requirements of:

1 (A) laws relating to open meetings, public
2 information, administrative procedure, and disclosing conflicts of
3 interest; and

4 (B) other laws applicable to members of a state
5 policymaking body in performing their duties; and

6 (6) [~~5~~] any applicable ethics policies adopted by
7 the commission or the Texas Ethics Commission.

8 (d) The director and librarian shall create a training
9 manual that includes the information required by Subsection (b).
10 The director and librarian shall distribute a copy of the training
11 manual annually to each member of the commission. Each member of
12 the commission shall sign and submit to the director and librarian a
13 statement acknowledging that the member received and has reviewed
14 the training manual.

15 SECTION 3. Section 441.006(b), Government Code, is amended
16 to read as follows:

17 (b) The commission may:

18 (1) purchase, as state property, any suitable book,
19 picture, or similar item, within the limits of the annual
20 legislative appropriation;

21 (2) receive a donation or gift of money, property, or
22 services on any terms and conditions it considers proper as long as
23 the state does not incur financial liability;

24 (3) accept, receive, and administer federal funds made
25 available by grant or loan to improve the public libraries of this
26 state;

27 (4) contract or agree with the governing body or head

1 of a county, city, or town of this state to meet the terms
2 prescribed by the United States and consistent with state law for
3 the expenditure of federal funds for improving public libraries;
4 [~~and~~]

5 (5) participate in the establishment and operation of
6 an affiliated nonprofit organization whose purpose is to raise
7 funds for or provide services or other benefits to the commission;
8 and

9 (6) use general revenue, grants, donations, gifts,
10 and, if authorized by federal law, federal funds to advertise and
11 promote commission programs and increase participation in and
12 awareness of those programs.

13 SECTION 4. Subchapter A, Chapter 441, Government Code, is
14 amended by adding Section 441.0065 to read as follows:

15 Sec. 441.0065. ADVISORY COMMITTEES. (a) The commission
16 may establish an advisory committee to make recommendations to the
17 commission on programs, rules, and policies affecting the delivery
18 of information services in the state.

19 (b) In establishing an advisory committee under this
20 section, the commission shall adopt rules regarding:

21 (1) the purpose, role, responsibility, and goals of
22 the committee;

23 (2) the size and quorum requirement of the committee;

24 (3) qualifications for committee membership;

25 (4) appointment procedures for members;

26 (5) terms of service for members;

27 (6) training requirements for members;

1 (7) a periodic review process to evaluate the
2 continuing need for the committee; and

3 (8) a requirement that committee meetings be open to
4 the public.

5 SECTION 5. Sections 441.0945(a) and (b), Government Code,
6 are amended to read as follows:

7 (a) A county record may be destroyed if the record is listed
8 on a valid [the] records schedule and implementation plan [accepted
9 for filing by the director and librarian] and either its retention
10 period has expired or it has been microfilmed or stored
11 electronically in accordance with applicable law.

12 (b) The retention period of a record as listed on [director
13 and librarian or a person on the staff of the director and librarian
14 may reject] the records schedule and implementation plan must be at
15 least as long as [for a record if the retention period of the record
16 as listed on the plan is less than] the retention period for the
17 record established on a records retention schedule issued by the
18 commission [by the county records manual. If the plan is rejected,
19 the director and librarian or staff person shall file with the
20 custodian the rejected schedule and a statement of the reasons for
21 rejection not later than the 30th day after the date the director
22 and librarian or staff person received the records schedule and
23 implementation plan. If a schedule is rejected under this
24 subsection, the custodian may submit an amended schedule].

25 SECTION 6. Sections 441.095(d) and (e), Government Code,
26 are amended to read as follows:

27 (d) A custodian may dispose of a county record that is not

1 listed on a records retention schedule issued by the commission if,
2 not ~~[Not]~~ later than the 10th day before the date the ~~[a]~~ record is
3 destroyed, the custodian files and records ~~[shall file and record]~~
4 a notice with the county clerk. The notice must indicate the record
5 to be destroyed, how it is to be destroyed, and the date of its
6 destruction. On the day the notice is filed, the county clerk shall
7 post a copy of it in the same manner that a notice of a meeting is
8 posted under Chapter 551.

9 (e) The custodian may destroy the record at any time after
10 ~~[the director and librarian has approved the destruction and]~~ the
11 notice required by Subsection (d) has been posted for 10 days by the
12 county clerk.

13 SECTION 7. Section 441.153, Government Code, is amended by
14 amending Subsection (f) and adding Subsection (g) to read as
15 follows:

16 (f) Except as otherwise provided by Subsection (g), title
17 ~~[Title]~~ to historical resources placed in a depository by the
18 commission remains with the commission, and the historical
19 resources may not be intermingled with other holdings of the
20 institution that serves as a depository.

21 (g) A depository may apply to the commission to transfer to
22 the depository title to local historical resources placed in the
23 depository by the commission. The commission shall approve the
24 application only if the transfer of title is in the state's best
25 interest. The commission, in consultation with depositories, shall
26 adopt rules providing an application procedure and standards for
27 evaluating applications to transfer title to local historical

1 resources to depositories. This subsection does not authorize the
2 commission to transfer title to state historical resources.

3 SECTION 8. Section 441.167, Government Code, is amended to
4 read as follows:

5 Sec. 441.167. ASSISTANCE [~~STATUTORY FILING~~] AND
6 INFORMATION [~~REVIEW~~]. The director and librarian may designate
7 employees of the commission to provide assistance and information
8 to local governments on records management issues under [~~act as~~
9 ~~deputies in the approval or disapproval or acceptance or rejection~~
10 ~~for filing of any records control schedule, destruction~~
11 ~~authorization request, electronic storage authorization request,~~
12 ~~or other statutory filing required by~~] Subtitle C, Title 6, Local
13 Government Code, or rules adopted under it.

14 SECTION 9. Subchapter J, Chapter 441, Government Code, is
15 amended by adding Section 441.169 to read as follows:

16 Sec. 441.169. DUTIES OF LOCAL GOVERNMENTS. Each local
17 government shall:

18 (1) submit to the director and librarian the name of
19 the local government's records management officer identified under
20 Section 203.001, Local Government Code, or designated under Section
21 203.025, Local Government Code, and the name of the new officer in
22 the event of a change;

23 (2) file a plan or an ordinance or order establishing a
24 records management program and any amendments to the plan or
25 ordinance or order with the director and librarian as required by
26 Sections 203.005 and 203.026, Local Government Code;

27 (3) notify the commission at least 10 days before

1 destroying a local government record that does not appear on a
2 records retention schedule issued by the commission; and

3 (4) file with the director and librarian a written
4 certification as provided by Section 203.041, Local Government
5 Code, that the local government has prepared a records control
6 schedule that:

7 (A) establishes a retention period for each local
8 government record as required by Subchapter C, Chapter 203, Local
9 Government Code; and

10 (B) complies with a local government records
11 retention schedule distributed by the director and librarian under
12 Section 441.158 and any other state and federal requirements.

13 SECTION 10. Subchapter L, Chapter 441, Government Code, is
14 amended by adding Sections 441.1815, 441.1935, 441.1965, 441.206,
15 441.207, and 441.208 to read as follows:

16 Sec. 441.1815. STATE ARCHIVES STRATEGIC PLAN. The
17 commission, with input from interested persons, shall develop and
18 implement a comprehensive strategic plan regarding the state
19 archives. The commission shall update the strategic plan at least
20 once every five years. The strategic plan must include:

21 (1) an assessment of any current archives backlog;

22 (2) a prioritized list of projects and goals related
23 to the state archives;

24 (3) an evaluation of the resources needed to achieve
25 the commission's goals related to the state archives, including the
26 impact that different amounts of those resources are expected to
27 have on the commission's ability to achieve those goals;

1 (4) performance measures, targets, and timeframes for
2 achieving the commission's goals related to the state archives;

3 (5) a mechanism for regular reporting to the
4 commission on progress toward achieving the commission's goals
5 related to the state archives; and

6 (6) opportunities and standards for entering into
7 collaborative agreements with interested persons regarding the
8 state archives.

9 Sec. 441.1935. REQUIREMENTS FOR REQUESTS FOR INFORMATION
10 HELD BY STATE ARCHIVES PROGRAM. (a) The commission shall
11 promulgate a form that persons must use to request access to
12 information held by the state archives program. The form must allow
13 the requestor to designate the request as either a request for
14 public information made under Chapter 552 or as a research request
15 not subject to the requirements of that chapter. The form must
16 include:

17 (1) a plain-language explanation of the difference
18 between a request for public information made under Chapter 552 and
19 a research request not subject to the requirements of that chapter;

20 (2) the requirements for making and responding to each
21 type of request; and

22 (3) an option for the requestor to change the type of
23 request at any time.

24 (b) Notwithstanding any other law, a request for
25 information held by the state archives program is considered to be a
26 request for public information under Chapter 552 only if the
27 requestor makes the request using the form described by Subsection

1 (a) and on the form designates the request as a request for public
2 information under Chapter 552.

3 Sec. 441.1965. SALE OF REPLICAS FROM STATE ARCHIVES. (a)
4 The commission may sell replicas of archival state records and
5 other historical resources in its custody subject to the approval
6 of the commission.

7 (b) Money received from the sale of replicas under
8 Subsection (a) shall be deposited in the general revenue fund and
9 may be appropriated only to the commission for the purposes of
10 preservation, digitization, archives information services, and
11 education.

12 Sec. 441.206. ARCHIVAL LEGISLATIVE RECORDS. (a) Except as
13 otherwise provided by this section, the commission shall preserve
14 archival state records of the legislature in the same manner as
15 other archival state records under Section 441.181.

16 (b) Notwithstanding Section 441.181(a), Section
17 441.193(a), or other law, the legislative entity that transferred
18 the state records to the commission retains ownership and legal
19 custody of the records held by the state archives program,
20 including records placed in a depository outside the Texas State
21 Library and Archives. The legislative entity may retrieve the
22 records for the legislature's use. The commission shall assist the
23 legislative entity with retrieval of the records and shall return
24 the records to the state archives program following the
25 legislature's use.

26 (c) The commission shall protect privileged or confidential
27 legislative state records held by the state archives program from

1 public disclosure at the direction of the legislative entity that
2 transferred the records to the commission.

3 (d) The commission shall receive requests under Chapter 552
4 for legislative state records held by the state archives program
5 and respond as directed by the officer for public information of the
6 legislative entity that transferred the state records to the
7 commission. The commission shall notify the appropriate officer
8 for public information as soon as practicable after receiving a
9 request described by this subsection.

10 Sec. 441.207. RECORDS OF MEMBER OF LEGISLATURE. (a) A
11 member of the legislature may apply to the commission to place
12 records of the member's legislative office created or received
13 during the member's term of office in a depository other than the
14 Texas State Library and Archives.

15 (b) The commission shall:

16 (1) create a list of preapproved depositories in which
17 members of the legislature may place records of their legislative
18 offices, including regional historical resource depositories
19 described by Section 441.153; and

20 (2) by rule adopt policies and procedures to approve
21 additional depositories.

22 (c) The commission is responsible for the preservation of
23 records described by Subsection (a) placed in a depository other
24 than the Texas State Library and Archives. Ownership and legal
25 custody of the records remain with the legislature as provided by
26 Section 441.206. The records may not be intermingled with other
27 holdings of the institution that serves as a depository.

1 Sec. 441.208. ELECTION TO DISCLOSE LEGISLATIVE
2 CORRESPONDENCE. (a) The commission shall promulgate a form that a
3 member of the legislature or lieutenant governor may use before
4 leaving office to elect to disclose records described by Section
5 306.003, communications described by Section 306.004, or
6 communications, information, advice, or opinions described by
7 Section 323.017 created or received during the member's or
8 lieutenant governor's term of office. The form must include a
9 plain-language description of state law relating to
10 confidentiality of that information and the effects of electing to
11 disclose that information.

12 (b) The commission by rule shall adopt policies and
13 procedures relating to distributing, collecting, and reviewing
14 forms described by Subsection (a). The rule must describe the roles
15 and responsibilities of the commission, house and senate records
16 management officers, and the offices of members of the legislature
17 and lieutenant governor in making elections described by Subsection
18 (a).

19 (c) The commission shall maintain the confidentiality of
20 information described by Subsection (a) unless the appropriate
21 member of the legislature or lieutenant governor elects to disclose
22 the information.

23 SECTION 11. Section 202.001(a), Local Government Code, is
24 amended to read as follows:

25 (a) A local government record may be destroyed if:

26 (1) the record is listed on a valid records control
27 schedule [~~accepted for filing by the director and librarian as~~

1 ~~provided by Section 203.041]~~ and either its retention period has
2 expired or it has been microfilmed or stored electronically in
3 accordance with the requirements of Chapters 204 and 205;

4 (2) the record appears on a list of obsolete records
5 ~~[approved by the director and librarian]~~ as provided by Section
6 203.044; or

7 (3) the ~~[a destruction request is filed with and~~
8 ~~approved by the director and librarian as provided by Section~~
9 ~~203.045 for a]~~ record is not listed on a records retention [an
10 ~~approved control]~~ schedule issued by the commission and the local
11 government provides notice to the commission at least 10 days
12 before destroying the record as required by Section 441.169,
13 Government Code.

14 SECTION 12. Section 203.002, Local Government Code, is
15 amended to read as follows:

16 Sec. 203.002. DUTIES AND RESPONSIBILITIES OF ELECTED COUNTY
17 OFFICERS AS RECORDS MANAGEMENT OFFICERS. The elected county
18 officer shall:

19 (1) develop policies and procedures for the
20 administration of an active and continuing records management
21 program;

22 (2) administer the records management program so as to
23 reduce the costs and improve the efficiency of recordkeeping;

24 (3) ~~[prepare and file with the director and librarian~~
25 ~~the records control schedules and amended schedules required by~~
26 ~~Section 203.041 and the list of obsolete records as provided by~~
27 ~~Section 203.044,~~

1 ~~[(4) prepare requests for authorization to destroy~~
2 ~~records not on an approved control schedule as provided by Section~~
3 ~~203.045, requests to destroy the originals of permanent records~~
4 ~~that have been microfilmed as provided by Section 204.008, and~~
5 ~~electronic storage authorization requests as provided by Section~~
6 ~~205.007;~~

7 ~~[(5)]~~ identify and take adequate steps to preserve
8 records that are of permanent value;

9 (4) ~~[(6)]~~ identify and take adequate steps to protect
10 the essential records of the office;

11 (5) ~~[(7)]~~ ensure that the maintenance, preservation,
12 microfilming, destruction, or other disposition of records is
13 carried out in accordance with the policies and procedures of the
14 records management program and the requirements of this subtitle
15 and rules adopted under it; and

16 (6) ~~[(8)]~~ cooperate with the commission in its conduct
17 of statewide records management surveys.

18 SECTION 13. Section 203.023, Local Government Code, is
19 amended to read as follows:

20 Sec. 203.023. DUTIES OF RECORDS MANAGEMENT OFFICER. The
21 records management officer in each local government shall:

22 (1) assist in establishing and developing policies and
23 procedures for a records management program for the local
24 government;

25 (2) administer the records management program and
26 provide assistance to custodians for the purposes of reducing the
27 costs and improving the efficiency of recordkeeping;

1 (3) in cooperation with the custodians of the
2 records, ~~+~~

3 ~~[(A)]~~ prepare ~~[and file with the director and~~
4 ~~librarian]~~ the records control schedules and amended schedules
5 required by Section 203.041 and the list of obsolete records as
6 provided by Section 203.044 ~~+, and~~

7 ~~[(B) prepare or direct the preparation of~~
8 ~~requests for authorization to destroy records not on an approved~~
9 ~~control schedule as provided by Section 203.045, of requests to~~
10 ~~destroy the originals of permanent records that have been~~
11 ~~microfilmed as provided by Section 204.008, and of electronic~~
12 ~~storage authorization requests as provided by Section 205.007];~~

13 (4) in cooperation with custodians, identify and take
14 adequate steps to preserve local government records that are of
15 permanent value;

16 (5) in cooperation with custodians, identify and take
17 adequate steps to protect essential local government records;

18 (6) in cooperation with custodians, ensure that the
19 maintenance, preservation, microfilming, destruction, or other
20 disposition of records is carried out in accordance with the
21 policies and procedures of the local government's records
22 management program and the requirements of this subtitle and rules
23 adopted under it;

24 (7) disseminate to the governing body and custodians
25 information concerning state laws, administrative rules, and the
26 policies of the government relating to local government records;
27 and

1 (8) in cooperation with custodians, establish
2 procedures to ensure that the handling of records in any context of
3 the records management program by the records management officer or
4 those under the officer's authority is carried out with due regard
5 for:

6 (A) the duties and responsibilities of
7 custodians that may be imposed by law; and

8 (B) the confidentiality of information in
9 records to which access is restricted by law.

10 SECTION 14. The heading to Section 203.041, Local
11 Government Code, is amended to read as follows:

12 Sec. 203.041. PREPARATION [~~AND FILING~~] OF RECORDS CONTROL
13 SCHEDULES.

14 SECTION 15. Sections 203.041(a), (d), (f), and (g), Local
15 Government Code, are amended to read as follows:

16 (a) On or before January 4, 1999, the records management
17 officer shall [~~prepare and file with the director and librarian~~]:

18 (1) prepare a records control schedule listing the
19 following records and establishing a retention period for each as
20 provided by Section 203.042:

21 (A) all records created or received by the local
22 government or elective county office;

23 (B) any record no longer created or received by
24 the local government or elective county office that is still in its
25 possession and for which the retention period on a records
26 retention schedule issued by the commission has not expired; and

27 (C) any record no longer created or received by

1 the local government or elective county office that is still in its
2 possession and for which the retention period on a records
3 retention schedule issued by the commission has expired but which
4 will not be destroyed as provided by Section 203.044; and ~~[or]~~

5 (2) ~~[the records management officer, in lieu of filing~~
6 ~~a records control schedule, may]~~ file with the director and
7 librarian a written certification of compliance that the local
8 government or the elective county office has adopted records
9 control schedules that comply with the minimum requirements
10 established on records retention schedules issued by the
11 commission.

12 (d) The records management officer shall review the records
13 control schedules of the local government or elective county office
14 and prepare amendments to the schedules as needed to reflect new
15 records created or received by the government or office or
16 revisions to retention periods established in a records retention
17 schedule issued by the commission. The records management officer
18 shall file with the director and librarian a written certification
19 of compliance that the local government or the elective county
20 office has amended the records control schedules to comply with the
21 minimum requirements established on records retention schedules
22 issued by the commission ~~[Amendments to records control schedules~~
23 ~~shall be filed with the director and librarian in the same manner as~~
24 ~~the original schedules].~~

25 (f) Records control schedules may be prepared ~~[filed]~~ on an
26 office-by-office basis or on a department-by-department basis
27 within each office.

1 (g) A local government that intends to retain all records
2 permanently or that destroys only those records for which no
3 retention periods have been established in a records retention
4 schedule established under Section 441.158, Government Code, is not
5 required to prepare [~~submit~~] a records control schedule under this
6 section.

7 SECTION 16. Section 204.007(a), Local Government Code, is
8 amended to read as follows:

9 (a) The [~~Except as provided by Section 204.008, the~~]
10 original of a record that has been microfilmed pursuant to this
11 chapter and rules adopted under it may be destroyed before the
12 expiration of its retention period on a records retention schedule
13 issued by the commission.

14 SECTION 17. Sections 205.008(a) and (c), Local Government
15 Code, are amended to read as follows:

16 (a) The source document, if any, for electronically stored
17 local government record data covered by rules adopted under Section
18 205.003(a) [~~205.007(a)~~] may be destroyed or returned to the person
19 who filed it for record [~~if the electronic storage authorization~~
20 ~~request is approved~~].

21 (c) The source document, if any, for electronically stored
22 local government record data not covered by rules adopted under
23 Section 205.003(a) [~~205.007(a)~~] may be destroyed before the
24 expiration of the retention period for the source document in a
25 records retention schedule issued by the commission if the magnetic
26 tape, optical disk, or similar medium and hardware and software
27 necessary to provide access to local government record data on the

1 media are retained for the retention period in the schedule.
2 Conversely, the magnetic tape, optical disk, or similar medium may
3 be erased, written over, or destroyed before the expiration of the
4 retention period for a source document for local government record
5 data not covered by rules adopted under Section 205.003(a)
6 [~~205.007(a)~~], if the source document, if any, is retained until the
7 expiration of its retention period or, if the source document has
8 already been destroyed, paper or microfilm copies are generated
9 from the magnetic tape, optical disk, or similar medium before
10 destruction or erasure and retained until the expiration of the
11 retention period for the source document.

12 SECTION 18. (a) The following provisions of the Government
13 Code are repealed:

- 14 (1) Section 441.094(e);
- 15 (2) Section 441.0945(c); and
- 16 (3) Sections 441.095(a), (b), and (c).

17 (b) The following provisions of the Local Government Code
18 are repealed:

- 19 (1) Sections 203.041(c) and (h);
- 20 (2) Section 203.042(c);
- 21 (3) Section 203.043;
- 22 (4) Sections 203.044(c) and (d); and
- 23 (5) Sections 203.045, 204.008, and 205.007.

24 SECTION 19. (a) Except as provided by Subsection (b) of
25 this section, Section 441.0011, Government Code, as amended by this
26 Act, applies to a member of the Texas State Library and Archives
27 Commission who is appointed before, on, or after the effective date

1 of this Act.

2 (b) A member of the Texas State Library and Archives
3 Commission who, before the effective date of this Act, completed
4 the training program required by Section 441.0011, Government Code,
5 as that law existed before the effective date of this Act, is only
6 required to complete additional training on the subjects added by
7 this Act to the training program required by Section 441.0011,
8 Government Code. A commission member described by this subsection
9 may not vote, deliberate, or be counted as a member in attendance at
10 a meeting of the commission held on or after December 1, 2019, until
11 the member completes the additional training.

12 (c) Not later than March 1, 2020, the Texas State Library
13 and Archives Commission shall promulgate a form as required by
14 Section 441.1935, Government Code, as added by this Act.

15 (d) Not later than September 1, 2020, the Texas State
16 Library and Archives Commission shall:

17 (1) adopt rules providing an application process and
18 standards for transfer of title to local historical resources under
19 Section 441.153(g), Government Code, as added by this Act;

20 (2) develop a strategic plan for the state archives
21 program as required by Section 441.1815, Government Code, as added
22 by this Act;

23 (3) create a list of preapproved depositories and
24 adopt rules for approving additional depositories as required by
25 Section 441.207, Government Code, as added by this Act; and

26 (4) promulgate a form and adopt rules relating to the
27 procedure for electing to disclose legislative correspondence as

1 required by Section 441.208, Government Code, as added by this Act.

2 (e) Section 441.206, Government Code, as added by this Act,
3 applies to an archival record of the legislature transferred to the
4 Texas State Library and Archives Commission before, on, or after
5 the effective date of this Act.

6 (f) Rules adopted under Section 441.207, Government Code,
7 as added by this Act, apply only to a member of the legislature
8 leaving office after September 1, 2020.

9 SECTION 20. This Act takes effect September 1, 2019.