

BILL ANALYSIS

C.S.H.B. 4181
By: Geren
House Administration
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls to revise procedures for the organization of the legislative branch of state government and to make the operation of that branch more efficient. C.S.H.B. 4181 seeks to make those revisions.

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 the Legislative Library Board in SECTION 23 of this bill.

ANALYSIS

C.S.H.B. 4181 amends the Government Code to specify that the Texas Legislature is required to convene in regular session at the seat of government. The bill removes the specification that the secretary of state attends and presides at the convening of each regular legislative session, which is to be attended and presided by the attorney general if the secretary of state is absent or unable, and removes the requirement for the secretary of state to appoint a clerk to take the minutes of the proceedings. The bill requires instead that the secretary of state attend and preside at the organization of the house of representatives, or the attorney general if the secretary of state is absent or unable to attend, and, with regard to the presiding officer at the organization of the senate:

- requires the lieutenant governor to attend and preside at the organization of the senate;
- authorizes the lieutenant governor to designate a member of the senate who is entitled to organize the senate as a senator who was not subject to re-election in the most recent general election to preside if the lieutenant governor is absent or unable to attend; and
- requires the senator with the greatest number of years of cumulative service as a member of the senate as a senator who was not subject to re-election in the most recent general election who is entitled to organize the senate to preside if there is no lieutenant governor.

C.S.H.B. 4181 provides for a temporary secretary of the senate and the appointment of a temporary chief clerk of the house of representatives under certain circumstances and requires the presiding officer of each house to appoint any temporary officers necessary to ensure the organization of the legislature. The bill revises the manner in which individuals are called to present proper evidence of the individual's election to a seat in the legislature by requiring the secretary of the senate or chief clerk, as applicable, under the direction of the presiding officer to call the districts of the appropriate house in numerical order regardless of whether the secretary

of state has received the election returns for each district. The bill specifies that the official oath is administered to a senator-elect by an officer authorized by law to administer oaths. The bill includes the secretary of the senate and the chief clerk of the house among the persons authorized to administer an oath made in Texas and give a certificate of the fact.

C.S.H.B. 4181 requires the presiding officer of each house to ensure that a journal of the proceedings of that house is kept. The bill revises the individuals who are required, in the event that a quorum is not present in a house of the legislature on the day the legislature is to convene, to attend each day until a quorum appears and is qualified to include the presiding officer for that house and the secretary of the senate or chief clerk, as appropriate and to remove the secretary of state as such an individual. The bill requires the senate to choose necessary officers after the senators-elect have taken the official oath and requires the lieutenant governor or an officer authorized by law to administer oaths to administer the official oath to those officers.

C.S.H.B. 4181 removes as a duty of each standing committee the formulation of legislative programs and the initiation and drafting of any legislation the committee believes is necessary and desirable. The bill removes the requirement for the chair of each standing committee to introduce or cause to be introduced legislative programs developed by the committee and to mobilize committee efforts to secure the enactment into law of committee proposals. The bill revises a related requirement to provide that a committee may recommend passage of any legislative solution the committee believes desirable for resolving problems within its jurisdiction. The bill specifies that standing committees, special committees, and general investigating committees may by rule, in addition to by resolution, be created or authorized to perform certain duties or exercise certain powers.

C.S.H.B. 4181 revises provisions relating to general investigating committees by:

- specifying that the president of the senate designates the vice chairman of the senate general investigating committee and the speaker of the house designates the vice chairman of the house general investigating committee;
- removing the requirement for the selection by the committee of a vice chairman and secretary from the committee's members;
- clarifying the appropriation out of which the expenses of a general investigating committee may be paid;
- revising the duties of the liaison established if the general investigating committees decide not to conduct joint hearings;
- revising quorum requirements for a joint general investigating committee; and
- revising the conditions under which information held by a general investigating committee is confidential and not subject to public disclosure so that such confidentiality and disclosure conditions are provided by the rules of the house establishing the committee.

C.S.H.B. 4181 establishes that an acceptance of a gift, grant, or donation by a committee created by resolution for purposes of funding the committee's activities is not effective until the committee on administration for the appropriate house of the legislature, or the committees on administration for both houses in the case of acceptance by a joint committee, approves the acceptance.

C.S.H.B. 4181 makes the following communications with a parliamentarian confidential and subject to legislative privilege:

- communications, including conversations, correspondence, and electronic communications, between a member, officer, or employee of the legislative branch and a parliamentarian appointed by the presiding officer of either house that relate to a request by the member, officer, or employee for information, advice, or opinions from a

parliamentarian; and

- information, advice, and opinions given privately by a parliamentarian to a member, officer, or employee of the legislative branch acting in the person's official capacity.

The bill provides that a member, officer, or employee of the legislative branch is authorized to choose to disclose all or part of such communications, information, advice, or opinions and establishes that such disclosure does not violate state law and that records relating to requests made of a parliamentarian for assistance, information, advice, or opinion are not public information and are not subject to state public information law. The bill establishes that such records are not subject to request, inspection, or duplication under state public information law and authorizes a governmental body to withhold the records without the necessity of requesting a decision from the attorney general. The bill defines the terms "member, officer, or employee of the legislative branch" and "parliamentarian" for purposes of these provisions.

C.S.H.B. 4181 changes the name of the Robert E. Johnson Building to the Robert E. Johnson Sr. Legislative Office Building and requires the presiding officers of each house of the legislature to jointly decide the following with regard to the building and facilities, including the grounds used by the occupants of the building:

- the use of space, in addition to current authority to jointly decide the allocation of space;
- security and building access for the legislative offices and agencies occupying the building;
- the manner in which a legislative office or agency contracts for construction and remodeling projects affecting the space assigned to the office or agency occupying the building; and
- the timing and logistics of maintenance and construction on the building, facilities, or grounds that affect the legislative offices and agencies occupying the building.

The bill authorizes the presiding officers to delegate such authority as well as the authority to decide the use and allocation of the space in the building and facilities to a legislative office or agency occupying the building.

C.S.H.B. 4181 increases from \$500 to \$1,000 the maximum amount of an aggregate of cash or value of contributions that may be made by a contributor to the speaker's reunion day ceremony.

C.S.H.B. 4181, to protect the public's interest in the proper performance of the deliberative and policymaking responsibilities of the legislature and to preserve the legislative branch's independence under the fundamental principle of separation of powers under relevant provisions of the Texas Constitution, provides that a communication is confidential and subject to legislative privilege if the communication meets the following conditions:

- is given privately;
- concerns a legislative activity or function; and
- is among or between any of the following:
 - a member of the house or senate;
 - the lieutenant governor;
 - an officer of the house or senate;
 - a member of the governing body of a legislative agency; or
 - a legislative employee.

C.S.H.B. 4181 provides that such a communication is subject to attorney-client privilege if the following conditions are met:

- one of the parties to the communication is a legislative attorney or a legislative employee working at the direction of a legislative attorney; and

- the communication is made in connection with the legislative attorney's provision of legal advice or other legal services.

C.S.H.B. 4181 provides that a member of the house or senate, an officer of the house or senate, or the lieutenant governor is authorized to choose to disclose all or a part of a communication that is subject to legislative privilege or attorney-client privilege under the bill's provisions and to which the individual or a legislative employee acting on behalf of the individual was a party. The bill defines the terms, "legislative agency," "legislative attorney," and "legislative employee" for purposes of these provisions.

C.S.H.B. 4181 specifies that a member of the house or senate, the lieutenant governor, the office of a member or the lieutenant governor, an officer of the legislature house or senate, or a legislative agency, office, or committee is the custodian of the records for purposes of state public information law and possesses, maintains, or controls the records for purposes of litigation if the applicable person:

- uses a system made available by the Texas Legislative Council (TLC) to transmit, store, or maintain records; or
- stores records with or transfers records to the Legislative Reference Library (LRL) or the Texas State Library and Archives Commission (TSLAC).

The bill makes the provision with regard to records stored with or transferred to LRL or TSLAC inapplicable to a member of the legislature or the lieutenant governor after the individual's service as a member or lieutenant governor ends.

C.S.H.B. 4181 specifies that TLC is required to provide legal advice and other legal services to the legislature. The bill provides that communications between an officer of the house or senate, a legislative agency, office, or committee, or a member of the staff of any of those officers or entities and an assistant or employee of the council that relate to a request by the officer or entity for information, advice, or opinions from an assistant or employee of TLC are confidential and subjects those communications, in addition to communications between a member of the legislature or the lieutenant governor, to legislative privilege. The bill provides that such a communication is subject to attorney-client privilege if the communication meets the following conditions:

- the assistant or employee of TLC who is a party to the communication is a TLC attorney or is working at the direction of a council attorney;
- the communication is given privately; and
- the communication is made in connection with the TLC attorney's provision of legal advice or other legal services.

The bill provides that information, advice, and opinions given privately by an assistant or employee of TLC to an officer of the house or senate; a legislative agency, office, or committee; and a member of the staff of any applicable officer or entity in their official capacity are confidential and subjects that information, advice, and opinion, in addition to that given privately to a member of the legislature or the lieutenant governor, to legislative privilege. The bill provides that the house or senate officer, or legislative agency, office, or committee, in addition to a member of the legislature or the lieutenant governor, is authorized to choose to disclose all or a part of the communication, information, advice, or opinion that is subject to legislative privilege or attorney-client privilege under the bill's provisions and to which the individual or entity was a party. The bill removes a clarification that such a disclosure by a member of the legislature, the lieutenant governor, a house or senate officer, or legislative agency, office, or committee does not violate the law. The bill provides that records relating to requests of TLC staff for the drafting of proposed legislation or for assistance, information, advice, or opinion are subject to legislative privilege and not subject to state public information law. The bill provides that such records are not subject to request, inspection, or duplication under state public information law and authorizes a governmental body to withhold the records without the

necessity of requesting a decision from the attorney general.

C.S.H.B. 4181 establishes that LRL is the depository for any record created or received by the office of a member of the legislature or the lieutenant governor during that official's term of office and that the legislative entity that transferred records to LRL retains ownership and legal custody of those records, including records placed in a depository outside LRL. The bill authorizes the legislative entity to retrieve the records for the legislature's use and requires the director of LRL and LRL employees to assist the legislative entity with retrieval of the records and to return the records to LRL following the legislature's use. The bill requires the LRL director to protect privileged or confidential legislative records held by LRL from public disclosure at the direction of the legislative entity that transferred the records to LRL. The bill requires the director of LRL to receive requests under state public information law for legislative records held by LRL and respond as directed by the officer for public information of the legislative entity that transferred the records to LRL and to notify the appropriate officer for public information as soon as practicable after receiving the request.

C.S.H.B. 4181 authorizes a member of the legislature to apply to the Legislative Library Board to place records that were created or received by the member's office during the member's term in a depository other than LRL and requires the Legislative Library Board to create a list of preapproved depositories in which members of the legislature may place records of their legislative offices and to adopt by rule policies and procedures to approve additional depositories. The bill establishes that the director of LRL is responsible for the preservation of such records placed in a depository other than LRL and that ownership and legal custody of the records remain with the legislature. The bill establishes that the records may not be intermingled with other holdings of the institution that serves as a depository. The bill amends the law governing the Texas State Library and Archives to exclude a "legislative record," as defined by the bill, from the definition of "state record" and to exclude a member of the legislature or the lieutenant governor from the definition of "state agency" under that law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4181 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions:

- a provision establishing that an acceptance of a gift, grant, or donation by a legislative committee created by resolution is not effective until the committee on administration for the appropriate house of the legislature, or the committees on administration for both houses in the case of acceptance by a joint committee, approves the acceptance;
- a provision including an officer or employee of the legislative branch among the individuals for whom the bill makes certain communications with a parliamentarian confidential and subject to legislative privilege;
- a requirement that the presiding officers of each house of the legislature jointly decide certain matters with regard to the Robert E. Johnson Sr. Legislative Office Building, as renamed by the substitute, and facilities;
- provisions establishing that an applicable individual or entity that stores records with or transfers records to LRL or TSLAC possesses, maintains, or controls the records for purposes of litigation and is the custodian of the records for purposes of state public information law; and

- a provision specifying TLC is required to provide legal advice and other legal services to the legislature.

The substitute includes provisions specifying the conditions under which a communication is confidential and subject to legislative privilege and the conditions under which a communication is subject to attorney-client privilege. The substitute includes a definition of "legislative agency," among other terms, for purposes of these provisions and specifies that the term does not include the Texas Ethics Commission.

The substitute includes provisions relating to confidential communications between certain individuals and an assistant or employee of TLC and providing those communications and information, advice, and opinions given privately by an assistant or employee of TLC to certain individuals are subject to legislative privilege.

The substitute includes provisions establishing LRL as the depository for any record created or received by the office of a member of the legislature or the lieutenant governor during that official's term of office and providing for the placement of those records created or received by the office of a member in a depository other than LRL.

The substitute includes provisions establishing that certain records relating to requests made of a parliamentarian and certain records relating to requests of TLC staff are not subject to request, inspection, or duplication under state public information law and authorizing a governmental body to withhold the records without the necessity of requesting a decision from the attorney general.

The substitute includes a provision increasing certain maximum contribution amounts for a contributor to the speaker's reunion day ceremony.