

BILL ANALYSIS

Senate Research Center

H.B. 1812
By: Hunter (Shapiro)
State Affairs
5-12-97
Engrossed

DIGEST

Current laws relating to state records, archives, and other historical resources were enacted piecemeal over the last 100 years. Although the Texas State Library and Archives Commission (commission) has been able to exercise its responsibilities in the management of state agency records and in preserving state records of historical value, current law is scattered throughout several subchapters of Chapter 441, Government Code, and is often ambiguous, unclear, and contradictory. Current law also does not adequately address electronic media. A revision of the state records and archival statutes would enable the commission to provide more effective leadership in the management and preservation of state records and information. H.B. 1812 consolidates, clarifies, and modernizes statutes relating to the management of state records and the preservation of archival state records and other historical resources.

PURPOSE

As proposed, H.B. 1812 establishes provisions relating to the Texas State Library and Archives Commission and the preservation, management, and disposition of state records and other historical resources.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas State Library and Archives Commission in SECTION 1 (Sections 441.185(e) and (f), 441.187(e), 441.190(a), 441.193(c), 441.199, and 441.203(f), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 441, Government Code, by adding Subchapter L, as follows:

SUBCHAPTER L. PRESERVATION AND MANAGEMENT OF STATE RECORDS AND OTHER HISTORICAL RESOURCES

Sec. 441.180. DEFINITIONS. Defines "agency head," "archival state record," "commission," "confidential state record," "director and librarian," "historical resources," "records management," "records management officer," "state agency," "state archivist," "state record," "state records administrator," and "vital state record."

Sec. 441.181. STATE ARCHIVES PROGRAM. Requires the Texas State Library and Archives Commission (commission) to take legal custody of and preserve archival state records, and to endeavor to collect and preserve certain other historical resources. Requires the director and librarian to appoint a state archivist to administer the state archives program. Requires the state archivist, under the direction of the director and librarian, to fulfill certain responsibilities, including assisting in carrying out the duties of the commission and the director and librarian relating to the preservation of local government records of permanent value.

Sec. 441.182. STATE RECORDS MANAGEMENT PROGRAM. Sets forth the terms by which the commission is required to assist state agencies in managing state records in accordance with this subchapter and rules adopted under this subchapter. Requires the

director and librarian to designate a state records administrator to administer the state records management program by fulfilling certain responsibilities.

Sec. 441.183. **RECORDS MANAGEMENT PROGRAMS IN STATE AGENCIES.** Requires the agency head of each state agency to complete certain responsibilities regarding records management programs.

Sec. 441.184. **RECORDS MANAGEMENT OFFICERS.** Requires each state agency head to act as or appoint a records management officer for the state agency to administer the agency's records management program. Sets forth the duties and terms of service of records management officers.

Sec. 441.185. **RECORD RETENTION SCHEDULES.** Sets forth the terms by which each records management officer is required to survey the state records of the agency and prepare and submit a records retention schedule to the state records administrator. Requires the commission to adopt rules concerning the submission of records retention schedules to the state records administrator. Authorizes the commission, by rule, to prescribe a minimum retention period for any state record under certain circumstances.

Sec. 441.186. **ARCHIVAL STATE RECORDS.** Sets forth the terms by which the state archivist, through review of state records retention schedules and other means, is required to identify and designate which state records are archival state records or which state records of potential archival value are required to be subject to the review of the state archivist prior to their destruction. Sets forth provisions regarding the inspection of state records; the transfer of state records to the commission's custody; the preservation of archival state records by state agencies and components of university systems; and the destruction of state records.

Sec. 441.187. **DESTRUCTION OF STATE RECORDS.** Prohibits a state record from being destroyed by a state agency under certain circumstances. Authorizes a state record to be destroyed when certain conditions are met. Authorizes the commission to adopt rules prescribing the permissible means by which state records may be destroyed.

Sec. 441.188. **MICROFILMED STATE RECORDS.** Authorizes any state record to be maintained on microfilm. Sets forth provisions regarding the microfilming of any state record and the maintenance of a state record on microfilm. Establishes the conditions under which a microfilmed state record is an original record.

Sec. 441.189. **ELECTRONIC STATE RECORDS.** Authorizes any state record to be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission. Establishes the conditions under which a microfilmed state record is an original record.

Sec. 441.190. **PROTECTION, MAINTENANCE, AND STORAGE OF STATE RECORDS.** Authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records.

Sec. 441.191. **ALIENATION OF STATE RECORDS PROHIBITED.** Prohibits a state record from being sold or donated, loaned, transferred, or otherwise passed out of the custody of the state by a state agency without the consent of the director and librarian, with certain exceptions.

Sec. 441.192. **RIGHT OF RECOVERY.** Authorizes the governing body of a state agency to demand the return of any state government record in the private possession of a person if the removal of the state record was not authorized by law. Authorizes the director and librarian to demand the return of any state government record of permanent value in the private possession of any person. Sets forth other provisions regarding the right of recovery, the return of records to state or commission custody, and the seizure of records.

Sec. 441.193. CUSTODY OF STATE RECORDS AND OTHER HISTORICAL RESOURCES OF COMMISSION; PUBLIC ACCESS. Sets forth the terms by which all archival state records transferred to the custody of the commission and all other historical resources acquired by the commission become the property of the commission. Establishes the conditions under which the commission is required to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission. Sets forth provisions regarding requests and authorizations for public access to state records.

Sec. 441.194. RECORDS OF ABOLISHED STATE AGENCIES. Sets forth the terms by which the General Services Commission is required to take custody of the records of a state agency that is abolished by the legislature and whose duties and responsibilities are not transferred to another state agency. Sets forth other provisions regarding the records of abolished state agencies.

Sec. 144.195. CONTRACTING AUTHORITY. Authorizes the commission to enter into any contract or agreement that it considers necessary to foster the preservation of state records or other historical resources. Prohibits a commission contract or agreement from binding the state for the payment of certain funds.

Sec. 144.196. SALE OF COPIES OF STATE ARCHIVES. Sets forth provisions regarding the sale of copies of state archives.

Sec. 144.197. SALE OF DUPLICATE OR UNNEEDED MATERIAL. Sets forth provisions regarding the sale of duplicate or unneeded archival state records or other historical resources.

Sec. 144.198. AGREEMENT WITH MEXICO. Authorizes the commission to negotiate an agreement with the appropriate authorities in Mexico under which this state will trade or lend to Mexico certain flags and Mexico will trade or lend to this state the flag of the New Orleans Greys captured at the Battle of the Alamo. Sets forth other requirements regarding the agreement with Mexico.

Sec. 441.199. RULEMAKING AUTHORITY. Authorizes the commission to adopt other rules it determines necessary for cost reduction and efficiency of record keeping by state agencies and for the state's management and preservation of records, in addition to other rulemaking authority granted in this subchapter.

Sec. 441.200. AUDIT. Authorizes the state auditor to report on a state agency's compliance with this subchapter and rules adopted under this subchapter.

Sec. 441.201. RECORDS OF OFFICE OF GOVERNOR. Sets forth provisions regarding the records of the executive office of the governor created or received during that governor's term of office.

Sec. 441.202. ARCHIVES OF GENERAL LAND OFFICE. Establishes provisions regarding the archives of the general land office.

Sec. 441.203. RECORDS MANAGEMENT INTERAGENCY COORDINATING COUNCIL. Sets forth the composition of the Records Management Interagency Coordinating Council, as well as provisions regarding its presiding officer, service and compensation of members, and council staff. Requires the council to adopt policies, using the rulemaking procedures prescribed by Chapter 2001 that coordinate the activities of each member agency and that make other improvements in the state's management of records. Requires each member agency to adopt the policies and report on the agency's adoption and implementation of the rules by a certain date. Defines "member agency."

SECTION 2. Amends Section 51.204, Government Code, as follows:

Sec. 51.204. New heading: RECORDS OF COURT. Requires the clerk to destroy all records filed in the court related to a civil case ten years after the final disposition of the case except indexes, original opinions, minutes, and general court dockets, unless the documents are microfilmed in accordance with this section; and other records of the court determined to be archival state records under Section 441.186. Requires the clerk to retain other records of the court in accordance with Section 441.185. Requires the clerk, before microfilming records, to submit a plan in writing to the justices of a court of appeals for that purpose. Sets forth provisions regarding the justices' decision and the clerk's adoption of the plan. Deletes existing text regarding transfer of a record to certain public or private libraries or agencies.

SECTION 3. Amends Section 441.002(g), Government Code, to require the director and the librarian, under the direction of the commission, to administer programs to carry out the duties of the commission and the director and librarian under Title 6C, Local Government Code, and Subchapters J and L. Deletes existing text regarding the responsibilities of the director and the librarian regarding certain state records and historical resources.

SECTION 4. Amends Section 441.003, Government Code, by amending Subsections (a), (c), and (d), and adding Subsection (e), to require, subject to the approval of the commission, the director and librarian to appoint a state records administrator and certain other employees necessary to fulfill the duties of the commission and the director and librarian. Requires a person to have appropriate training and experience to be eligible for appointment as state archivist or state records administrator. Deletes provisions regarding maintenance of libraries and archives in this state and eligibility for appointment as a state archivist, head of a department, and certain other positions. Authorizes the director and librarian to designate a staff member to serve as both state archivist and state records administrator. Establishes that any provision of Subchapter L requiring joint action by the state archivist and the state records administrator requires only the action of the person designated.

SECTION 5. Amends Section 441.006(a), Government Code, to require the commission to take custody of, preserve, and make available for public use certain state records and other historical resources. Deletes certain provisions requiring the commission to fulfill other responsibilities regarding state archival materials.

SECTION 6. Amends Section 441.008(c), Government Code, to provide that this section does not apply to any state archival record or other historical resource that the director and librarian has designated to be part of the state archives program. Deletes existing text regarding a book or document that is an archive of the state library.

SECTION 7. Amends Section 441.013(a), Government Code, to require the commission to make a biennial report to the governor that includes a review of commission activities under Title 6C, Local Government Code, and Subchapters J and L. Deletes existing text regarding the biennial report of the director and librarian required by Section 441.002(g)(15).

SECTION 8. Repealer: Section 51.205, Government Code (Preservation of Records); Section 441.002(i), Government Code (regarding the proper custody of certain documents and data); Section 441.010, Government Code (Custody of Records); Section 441.0105, Government Code (Right of Recovery); Section 441.011, Government Code (Relics); Section 441.0115, Government Code (Agreement with Mexico); Section 441.012, Government Code (Sale of Texas Archives); Chapter 441B, Government Code (Archives of Certain Agencies); Chapter 441C, Government Code (Records Management Division of Texas State Library); Chapter 441D, Government Code (Preservation of Essential Records); and Chapter 441K, Government Code (Reduction and Simplification of Agency Paperwork).

SECTION 9. Effective date: September 1, 1997.

SECTION 10 Emergency clause.