

BILL ANALYSIS

Senate Research Center
86R20816 SRA-D

H.B. 1962
By: Lambert et al. (Hall)
Business & Commerce
5/12/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1962 amends current law relating to the continuation and functions of the Texas State Library and Archives Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Library and Archives Commission in SECTION 4 (Section 441.0065, Government Code), SECTION 7 (Section 441.153, Government Code), and SECTION 10 (Sections 441.207 and 441.208, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 441.001(q), Government Code, to provide that the Texas State Library and Archives Commission (TSLAC) is subject to Chapter 325 (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, TSLAC is abolished September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 441.0011, Government Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the training program for TSLAC members (training program) to provide the person with information regarding:

(1) the law governing TSLAC operations, rather than the legislation that created TSLAC;

(2) makes no changes to this subdivision;

(3) the scope of and limitations on the rulemaking authority of TSLAC;

(4) creates this subdivision from existing text and makes no further changes;

(5) redesignates existing Subdivision (4) as Subdivision (5). Requires the training program to provide the person with information regarding the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest, rather than conflicts of interest; and

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

(6) redesignates existing Subdivision (5) as this subdivision and makes no further changes.

(d) Requires the director and librarian of TSLAC (director and librarian) to create a training manual that includes the information required by Subsection (b). Requires the

director and librarian to distribute a copy of the training manual annually to each member of TSLAC. Requires each member of TSLAC to sign and submit to the director and librarian a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Section 441.006(b), Government Code, to authorize TSLAC to perform certain tasks, including using general revenue, grants, donations, gifts, and, if authorized by federal law, federal funds to advertise and promote TSLAC programs and increase participation in and awareness of those programs. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter A, Chapter 441, Government Code, by adding Section 441.0065, as follows:

Sec. 441.0065. ADVISORY COMMITTEES. (a) Authorizes TSLAC to establish an advisory committee (committee) to make recommendations to TSLAC on programs, rules, and policies affecting the delivery of information services in the state.

(b) Requires TSLAC, in establishing the committee under this section, to adopt rules regarding:

- (1) the purpose, role, responsibility, and goals of the committee;
- (2) the size and quorum requirement of the committee;
- (3) qualifications for committee membership;
- (4) appointment procedures for members;
- (5) terms of service for members;
- (6) training requirements for members;
- (7) a periodic review process to evaluate the continuing need for the committee;
and
- (8) a requirement that committee meetings be open to the public.

SECTION 5. Amends Sections 441.0945(a) and (b), Government Code, as follows:

(a) Authorizes a county record to be destroyed if the record is listed on a valid records schedule and implementation plan, rather than on the records schedule and implementation plan accepted for filing by the director and librarian, and either its retention period has expired or it has been microfilmed or stored electronically in accordance with applicable law.

(b) Requires the retention period of a record as listed on the records schedule and implementation plan to be at least as long as the retention period for the record established on a records retention schedule issued by TSLAC, rather than authorizing the director and librarian or a person on the staff of the director and librarian to reject the records schedule and implementation plan for a record if the retention period of the record as listed on the plan is less than the retention period for the record established by the county records manual. Deletes existing text requiring the director and librarian or staff person, if the plan is rejected, to file with the custodian the rejected schedule and a statement of the reasons for rejection not later than the 30th day after the date the director and librarian or staff person received the records schedule and implementation plan. Deletes existing text authorizing the custodian, if a schedule is rejected under this subsection, to submit an amended schedule.

SECTION 6. Amends Sections 441.095(d) and (e), Government Code, as follows:

(d) Authorizes a custodian to dispose of a county records that is not listed on a records retention schedule issued by TSLAC, if not later than the 10th day before the date the record is destroyed, the custodian files and records a notice with the county clerk, rather than requiring the custodian to file and record, not later than the 10th day before a record is destroyed, a notice with the county clerk.

(e) Authorizes the custodian to destroy the record at any time after the notice required by Subsection (d) has been posted for 10 days by the county clerk, rather than any time after the director and librarian has approved the destruction and the notice required by Subsection (d) has been posted for 10 days by the county clerk.

SECTION 7. Amends Section 441.153, Government Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Creates an exception under Subsection (g) to the requirement that title to historical resources placed in a depository by TSLAC remains with TSLAC and prohibiting the historical resources from being intermingled with other holdings of the institution that serves as a depository.

(g) Authorizes a depository to apply to TSLAC to transfer to the depository title to local historical resources placed in the depository by TSLAC. Requires TSLAC to approve the application only if the transfer of title is in the state's best interest. Requires TSLAC, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories. Provides that this subsection does not authorize TSLAC to transfer title to state historical resources.

SECTION 8. Amends Section 441.167, Government Code, as follows:

Sec. 441.167. New heading: ASSISTANCE AND INFORMATION. Authorizes the director and librarian to designate employees of TSLAC to provide assistance and information to local governments on records management issues under Subtitle C (Records Provisions Applying to More Than One Type of Local Government), Title 6, Local Government Code, or rules adopted under it, rather than authorizing the director and librarian to designate employees of TSLAC to act as deputies in the approval or disapproval or acceptance or rejection for filing of any records control schedule, destruction authorization request, electronic storage authorization request, or other statutory filing required by Subtitle C, Title 6, Local Government Code, or rules adopted under it.

SECTION 9. Amends Subchapter J, Chapter 441, Government Code, by adding Section 441.169, as follows:

Sec. 441.169. DUTIES OF LOCAL GOVERNMENTS. Requires each local government to:

(1) submit to the director and librarian the name of the local government's records management officer identified under Section 203.001 (Records Management Officer), Local Government Code, or designated under Section 203.025 (Designation of Records Management), Local Government Code, and the name of the new officer in the event of a change;

(2) file a plan or an ordinance or order establishing a records management program and any amendments to the plan or ordinance or order with the director and librarian as required by Sections 203.005 (Records Management Program to be Established) and 203.026 (Records Management Program to be Established), Local Government Code;

(3) notify TSLAC at least 10 days before destroying a local government record that does not appear on a records retention schedule issued by TSLAC; and

(4) file with the director and librarian a written certification as provided by Section 203.041 (Preparation and Filing of Record Control Schedules), Local Government Code, that the local government has prepared a records control schedule that:

(A) establishes a retention period for each local government record as required by Subchapter C (Management and Preservation of Records), Chapter 203, Local Government Code; and

(B) complies with a local government records retention schedule distributed by the director and librarian under Section 441.158 (Local Government Records Retention Schedules) and any other state and federal requirements.

SECTION 10. Amends Subchapter L, Chapter 441, Government Code, by adding Sections 441.1815, 441.1935, 441.1965, 441.206, 441.207, and 441.208, as follows:

Sec. 441.1815. STATE ARCHIVES STRATEGIC PLAN. Requires TSLAC, with input from interested persons, to develop and implement a comprehensive strategic plan regarding the state archives. Requires TSLAC to update the strategic plan at least once every five years. Requires the plan to include:

(1) an assessment of any current archives backlog;

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

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

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

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

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

Sec. 441.1935. REQUIREMENTS FOR REQUESTS FOR INFORMATION HELD BY STATE ARCHIVES PROGRAM. (a) Requires TSLAC to promulgate a form that persons are required to use to request access to information held by the state archives program. Requires the form to allow the requestor to designate the request as either a request for public information made under Chapter 552 (Public Information) or as a research request not subject to the requirements of that chapter. Requires the form to include certain information.

(b) Provides that, notwithstanding any other law, a request for information held by the state archives program is considered to be a request for public information under Chapter 552 only if the requestor makes the request using the form described by Subsection (a) and on the form designates the request as a request for public information under Chapter 552.

Sec. 441.1965. SALE OF REPLICAS FROM STATE ARCHIVES. (a) Authorizes TSLAC to sell replicas of archival state records and other historical resources in its custody subject to the approval of TSLAC.

(b) Requires money received from the sale of replicas under Subsection (a) to be deposited in the general revenue fund and may be appropriated only to TSLAC

for the purposes of preservation, digitization, archives information services, and education.

Sec. 441.206. ARCHIVAL LEGISLATIVE RECORDS. (a) Requires TSLAC, except as otherwise provided by this section, to preserve archival state records of the legislature in the same manner as other archival state records under Section 441.181.

(b) Provides that, notwithstanding Section 441.181(a), Section 441.193(a), or any other law, the legislative entity that transferred the state records to TSLAC retains ownership and legal custody of the records held by the state archives program, including records placed in a depository outside the Texas State Library and Archives. Authorizes the legislative entity to retrieve the records for the legislature's use. Requires TSLAC to assist the legislative entity with retrieval of the records and to return the records to the state archives program following the legislature's use.

(c) Requires TSLAC to protect privileged or confidential legislative state records held by the state archives program from public disclosure at the direction of the legislative entity that transferred the records to TSLAC.

(d) Requires TSLAC to receive requests under Chapter 552 for legislative state records held by the state archives program and respond as directed by the officer for public information of the legislative entity that transferred the state records to TSLAC. Requires TSLAC to notify the appropriate officer for public information as soon as practicable after receiving a request described by this subsection.

Sec. 441.207. RECORDS OF MEMBER OF LEGISLATURE. (a) Authorizes a member of the legislature to apply to TSLAC to place records of the member's legislative office created or received during the member's term of office in a depository other than the Texas State Library and Archives.

(b) Requires TSLAC to create a list of preapproved depositories in which members of the legislature may place records of their legislative offices, including regional historical resource depositories described by Section 441.153 (Regional Historical Resource Depositories) and by rule adopt policies and procedures to approve additional depositories.

(c) Provides that TSLAC is responsible for the preservation of records described by Subsection (a) placed in a depository other than the Texas State Library and Archives. Provides that ownership and legal custody of the records remain with the legislature as provided by Section 441.026. Prohibits the records from being intermingled with other holdings of the institution that serves as a depository.

Sec. 441.208. ELECTION TO DISCLOSE LEGISLATIVE CORRESPONDENCE. (a) Requires TSLAC to promulgate a form that a member of the legislature or lieutenant governor may use before leaving office to elect to disclose records described by Section 306.003 (Confidential Records), communications described by Section 306.004 (Public Discourse Prohibited), or communications, information, advice, or opinions described by Section 323.017 (Confidential Communications) created or received during the member's or lieutenant governor's term of office. Requires the form to include a plain-language description of state law relating to confidentiality of that information and the effects of electing to disclose that information.

(b) Requires TSLAC by rule to adopt policies and procedures relating to distributing, collecting, and reviewing forms described by Subsection (a). Requires the rule to describe the roles and responsibilities of TSLAC, the house and senate records management officers, and the offices of members of the legislature and lieutenant governor in making elections described by Subsection (a).

(c) Requires TSLAC to maintain the confidentiality of information described by Subsection (a) unless the appropriate member of the legislature or lieutenant governor elects to disclose the information.

SECTION 11. Amends Section 202.001(a), Local Government Code, as follows:

(a) Authorizes a local record to be destroyed if:

(1) the record is listed on a valid records control schedule, rather than the record is listed on a records control schedule accepted for filing by the director and librarian as provided by Section 203.041 (Preparation and Filing of Records Control Schedules), and either its retention period has expired or it has been microfilmed or stored electronically in accordance with the requirements of Chapters 204 (Microfilming of Records) and 205 (Electronic Storage of Records);

(2) deletes the requirement that a record appearing on a list of obsolete records is to be approved by the director and librarian; or

(3) the record is not listed on a records retention schedule issued by TSLAC and the local government provides notice to TSLAC at least 10 days before destroying the record as required by Section 441.169, Government Code, rather than a destruction request is filed with and approved by the director and librarian as provided by Section 203.045 (Destruction of Unscheduled Records) for a record not listed on an approved control schedule.

SECTION 12. Amends Section 203.002, Local Government Code, as follows:

Sec. 203.002. DUTIES AND RESPONSIBILITIES OF ELECTED COUNTY OFFICERS AS RECORDS AND MANAGEMENT OFFICERS. Requires the elected county officer to:

(1)–(2) makes no changes to these subdivisions;

(3) deletes existing text requiring the elected county officer to prepare and file with the director and librarian the records control schedules and amended schedules required by Section 203.041 and the list of obsolete records as provided by Section 203.044 (Initial Destruction of Obsolete Records);

(4) deletes existing text requiring the elected county officer to prepare requests for authorization to destroy records not on an approved control schedule as provided by Section 203.045, requests to destroy the originals of permanent records that have been microfilmed as provided by Section 204.008 (Destruction of Permanent Records), and electronic storage authorization requests as provided by Section 205.007 (Electronic Storage Authorization Requests); and

(5)–(6) redesignates existing Subdivisions (5)–(8) as Subdivisions (3)–(6).

SECTION 13. Amends Section 203.023, Local Government Code, as follows:

Sec. 203.023. DUTIES OF RECORDS MANAGEMENT OFFICER. Makes nonsubstantive changes. Requires the records management officer in each local government to:

(1)–(2) makes no changes to these subdivisions;

(3) in cooperation with the custodians of the records prepare, rather than prepare and file with the director and librarian, the records control schedules and amended schedules required by Section 203.041 and the list

of obsolete records as provided by Section 203.044. Deletes existing Paragraph (B) requiring the records officer of each local government to, in cooperation with the custodians of the record, prepare or direct of preparation of requests for authorization to destroy records not on an approved control schedule as provided by Section 203.045, of requests to destroy the originals of permanent records that have been microfilmed as provided by Section 204.008, and of electronic storage authorization requests as provided by Section 205.007; and

(4)–(8) makes no changes to these subdivisions.

SECTION 14. Amends the heading to Section 203.041, Local Government Code, to read as follows:

Sec. 203.041. PREPARATION OF RECORDS CONTROL SCHEDULES.

SECTION 15. Amends Sections 203.041(a), (d), (f), and (g), Local Government Code, as follows:

(a) Requires the records management officer, on or before January 4, 1999, to:

(1) prepare a records control schedule listing certain records and establishing a retention period for each as provided by Section 203.042 (Retention Records); and

(2) file with the director and librarian a written certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC.

Deletes existing text requiring the records management officer, on or before January 4, 1999, to prepare and file with the director and librarian a records control schedule listing the following records and establishing a retention period for each as provided by Section 203.042 or authorizing the records management officer, in lieu of filing a records control schedule, to file with the director and librarian a written certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC.

(d) Requires the records management officer to file with the director and librarian a written certification of compliance that the local government or the elective county office has amended the records control schedules to comply with the minimum requirements established on records retention schedules issued by TSLAC. Deletes existing text requiring amendments to records control schedules to be filed with the director and librarian in the same manner as the original schedules.

(f) Authorizes records control schedules to be prepared, rather than filed, on an office-by-office basis or an on a department-by-department basis within each office.

(g) Provides that a local government that intends to retain all records permanently or that destroys only those records for which no retention periods have been established in a records retention schedule established under Section 441.158 (Local Government Records Retention Schedules), Government Code, is not required to prepare, rather than submit, a records control schedule under this section.

SECTION 16. Amends Section 204.007(a), Local Government Code, to remove an exception by Section 204.008 to the provision authorizing the original of a record that has been microfilmed pursuant to this chapter and rules adopted under it to be destroyed before the expiration of its retention period on a records retention schedule issued by TSLAC.

SECTION 17. Amends Sections 20.008(a) and (c), Local Government Code, as follows:

(a) Authorizes the source document, if any, for electronically stored local government record data covered by rules adopted under Section 205.003(a), rather than Section 205.007(a), to be destroyed or returned to the person who filed it for record. Deletes the provision providing that this subsection only applies if the electronic storage authorization request is approved.

(c) Makes conforming changes to this subsection.

SECTION 18. Repealer: Section 441.094(e) (relating to when a records schedule, implementation plan, or amendment takes effect), Government Code.

Repealer: Section 441.0945(c) (relating to authorizing the director and librarian or certain staff to condition acceptance of the records schedule and implementation plan on certain records), Government Code.

Repealer: Sections 441.095(a) (relating to authorizing a custodian to dispose of a county record that is not listed on an approved records schedule and implementation plan under certain conditions), Government Code.

Repealer: 441.095(b) (relating to requiring the director and librarian to meet certain criteria after receiving notice), Government Code.

Repealer: 441.095(c) (relating to requiring the custodian to comply with the request or notice of the director and librarian or withdraw the notice of intent to destroy the record), Government Code.

Repealer: Section 203.041(c) (relating to the records management officer, in lieu of filing an amended records control schedule, filing a certain written certification of compliance with the director and librarian), Local Government Code.

Repealer: Section 203.041(h) (relating to the requirement that the director and librarian determine the manner of filing of certain records), Local Government Code.

Repealer: Section 203.042(c) (relating to records control schedules conforming to the TSLAC schedule), Local Government Code.

Repealer: Section 203.043 (Filing of Records Control Schedules), Local Government Code.

Repealer: Sections 203.044(c) (relating to the director and librarian approving lists of obsolete records), Local Government Code.

Repealer: Sections 203.044(d) (relating to requiring the director and librarian to determine the form and manner of submission of requests to destroy obsolete records), Local Government Code;

Repealer: Section 203.045 (Destruction of Unscheduled Records), Local Government Code.

Repealer: Section 204.008 (Destruction of Permanent Records), Local Government Code.

Repealer: Section 205.007 (Electronic Storage Authorization Requests), Local Government Code.

SECTION 19. (a) Provides that except as provided by Subsection (b) of this section, Section 441.0011, Government Code, as amended by this Act, applies to a member of TSLAC who is appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TSLAC who, before the effective date of this Act, completed the training program required by Section 441.0011, Government Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 441.0011, Government Code. Prohibits a TSLAC member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TSLAC held on or after December 1, 2019, until the member completes the additional training.

(c) Requires TSLAC to promulgate a form as required by Section 441.1935, Government Code, as added by this Act, not later than March 1, 2020.

(d) Requires TSLAC, not later than September 1, 2020, to:

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

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

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

(4) promulgate a form and adopt rules relating to the procedure for electing to disclose legislative correspondence as required by Section 441.208, Government Code, as added by this Act.

(e) Makes application of Section 441.206, Government Code, as added by this Act, prospective.

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

SECTION 20. Effective date: September 1, 2019.