HOUSE
RESEARCH
ORGANIZATION bill analysis 9/16/2003 HB 7
Swinford

SUBJECT: Government reorganization

COMMITTEE: Government Reform — favorable, without amendment

VOTE: 6 ayes — Swinford, Allen, Callegari, Casteel, Cook, Smith

0 nays

1 absent — Gallego

WITNESSES: No public hearing

(*HB 7 is divided into 12 articles, each of which is analyzed separately. Unless otherwise specified, each article would take effect on the 91st day after the last day of the third called session.*)

ARTICLE 1 — Governor's budget authority and repeal of tax refund limit

BACKGROUND: **Governor's budget authority.** Government Code, ch. 401 designates the governor as the state's chief budget officer and establishes the governor's responsibility for preparing a budget and presenting copies to the Legislature no later than the sixth day of the regular legislative session. Sec. 401.047 establishes a fine of between $100 and $1,000, confinement in the county jail for one month to one year, or both for a person who refuses to comply with ch. 401, subchapter C, which details the governor's budget responsibilities, except for provisions calling for cooperation with the Legislative Budget Board (LBB).

Texas Constitution, Art. 4, sec. 9 requires the governor, at the commencement of each legislative session, to give the Legislature information on the condition of the state, commonly called the state-of-the-state message.

Tax refund payment limits. Rider 11 in the comptroller's fiscal programs bill pattern of HB 1 by Heflin, the general appropriations act for fiscal 2004-05 authorizes the comptroller to set aside revenue to pay tax refunds and sets

a four-year deadline for payment of refunds, either from the original collection due date or the date received by the state. Refunds may not exceed the amount of available revenue generated by the relevant source during the fiscal 2004-05 biennium.

Rider 11 also sets a new $250,000 limit on payments of refund claims, final judgments, or settlements, including interest, attorneys' fees, or court-ordered costs. The limit also applies to aggregate payments made to individuals or entities. Payments of claims exceeding $250,000 must be paid by specific legislative appropriation. The limits do not apply to final judgments, settlements, or comptroller's decisions made before HB 1 took effect, nor to refunds granted through informal reviews or for unclaimed property. Settlement and final judgment payments must release all claims against the state, and judgment payments must fully satisfy judgments. All refunds of taxes, fees, penalties, interest and other charges collected or administered by the comptroller are subject to the limits.

DIGEST:

Article 1 of HB 7 would require the governor to deliver a copy of the governor's budget before the state-of-the-state message, rather than no later than the sixth day of the regular legislative session. It would repeal Government Code, sec. 401.047, the penalties for failure to comply. Article 1 also would delete the $250,000 limits and other new related restrictions and requirements added to the comptroller's fiscal programs budget Rider 11 during the regular session.

SUPPORTERS SAY:

Article 1 is necessary to establish a more realistic time frame for the governor to submit a budget proposal and to remove inappropriate criminal penalties for not following budget requirements. Currently, the governor must submit a budget proposal by the sixth day of the legislative session. This can be difficult, especially since the comptroller's estimate of available review can occur immediately before a session begins and subsequently may be revised. Art. 1 would address this problem by allowing governors to submit their budgets by the time they give their state-of-state-address, a realistic, flexible deadline.

Governors would not submit their budgets in an untimely manner, nor would the Legislature's review of the appropriations process be delayed, because the Constitution requires the state-of-the-state address to be given at the

commencement of the session. The address usually occurs in late January or early February. In fact, Art. 1 would help the legislative process by allowing the governor time to confer with legislative leaders, particularly after a leadership transition such as the one that occurred before the 2003 regular session. In the state-of-the-state address, governors lay out their priorities for the session, so this would be an appropriate time for them also to specify their budget priorities.

It is inappropriate for the governor to be subject to potential jail time for not meeting the Government Code's requirements about the budget, so Art. 1 would remove the criminal penalties.

Arbitrarily limiting the amounts of tax refunds, especially in cases already decided or agreed, is patently unfair to taxpayers. In effect, it is tantamount to an unauthorized taking of private property because the money belongs to individuals or businesses, not the state. A $250,000 threshold is extremely low for many corporations doing business in Texas, and applying it in the aggregate is unduly onerous. Forcing taxpayers to wait on legislative action to receive what is already theirs constitutes an unjustifiable penalty that could cost them millions of dollars, in some cases.

These elements of Rider 11 were added at the last minute during conference committee negotiations in order to help balance the budget. They had not been discussed or debated before. Now that the budget has been certified with federal and other funds and vetoed expenditures, the state no longer needs the money generated by this unprecedented eleventh-hour maneuver. It should be returned to its rightful owners – the taxpayers. Also, repealing the limits in Rider 11 would render moot the comptroller's proposed rules implementing it.

OPPONENTS SAY:

If it is unrealistic to require the governor to submit a budget by the sixth day of the legislative session, it would be better to set a more realistic, explicit deadline than to leave the timing of the submission up to the governor's discretion. Although the Constitution requires the state-of-the-state address to be given at the commencement of each session, no hard and fast rule establishes when that must occur. Because the deadline for the governor's budget submission would be pegged to that address, Art. 1 would eliminate an exact deadline for the governor's budget submission. To facilitate the orderly

writing of a state budget, the comptroller and LBB have explicit deadlines for submitting budget information, and so should the governor.

The state is undergoing its tightest fiscal period in many years. The Legislature already limits to $250,000 how much the state may pay in legal judgments and settlements (Art. 9, sec. 6.24). It is well within the state's rights and responsibilities to ensure the fiscal integrity of the budget by partially withholding or delaying tax refunds, some of which may still be in dispute or subject to change or negotiation, in order to allow their review by the Legislature.

The limits could save the state up to $120 million this biennium without adversely affecting most individuals or small businesses. Rider 11 also helps insulate the state from the impact of a potentially damaging tax case now on appeal. If a major defense contractor prevails in its contention that it is entitled to a sales tax exemption for overhead under federal rules regarding title transfer, the state could incur losses in the hundreds of millions of dollars. Such a huge liability could jeopardize the budget and deepen state government cutbacks at a time when economic recovery is uncertain.

OTHER OPPONENTS SAY:

Revising Rider 11 is unnecessary. The comptroller is proposing a new rule that would apply the $250,000 limit and aggregation to each state tax, but not to credits. Surpluses within limits could be applied to other taxes owed, and credits could be assigned to other businesses. If adopted, the rule would lessen Rider 11's impact significantly and make it applicable to only a few large companies.

NOTES:

HB 3 by Swinford, identical to Article 1 of HB 7 except for the effective date, passed the House during the second called session, but died in the Senate when it could not be referred to committee due to the lack of a quorum.

ARTICLE 2 — Duration of dormancy for abandoned wages

BACKGROUND: Property Code, sec. 72.101 sets forth state law regarding abandoned property. Personal property is presumed to be abandoned if, for more than three years, the existence and location of the owner is unknown to the property holder and no claim or act of ownership has been exercised.

Property Code, sec. 74.301 requires entities holding abandoned property to deliver it to the state comptroller by November 1 of each year. Reversion of abandoned property to the state, called escheat, occurs when a bank account is left inactive for an extended period or when a person dies without a legal will and without any legally recognizable heirs. The comptroller acts as custodian for unclaimed property until the owners or heirs are located. Cash is held in general revenue until claimed; personal property is auctioned periodically, with the proceeds held in general revenue.

During the 2003 regular session, the 78th Legislature enacted HB 826 by Y. Davis, which amended the duration of the dormancy period for unclaimed wages before escheat occurs. Subch. G of ch. 61 of the Labor Code, which will become effective September 1, 2003, shortens the dormancy period from three years to six months for unclaimed wages of less than $100. The bill does not require companies that hold abandoned unclaimed wages of less than $100 to revert ownership to the state by escheat until the payment has been abandoned for three years.

DIGEST: Article 2 of HB 7 would repeal subch. G of ch. 61 of the Labor Code. It would amend the Property Code by adding Sec. 72.1015, which would establish wages as abandoned after one year if the existence and location of the person to whom the wages are owed is unknown to the holder of the wages and no claim of ownership has been asserted or act of ownership has been exercised.

SUPPORTERS SAY: Article 2 of HB 7 is needed to make the dormancy period for unclaimed wages consistent with other states and resolve issues raised by the changes made during the regular session. Over 30 other states have a one-year dormancy period for unclaimed wages, and adding Texas to that list would help ease accounting and reporting.

One year would be an appropriate dormancy period for unclaimed wages. Companies often lose track of former employees, but the state makes an effort to return the money to its rightful owner. Each year, the Comptroller's Office publishes a list of people for whom it is holding unclaimed property and posts a searchable list on its website. The Comptroller's Office and local news media make people aware that they should check the Comptroller's Office for any unclaimed property they may be owed. A three-year dormancy period hinders people from obtaining their unclaimed wages in a timely manner because little effort is made to notify them until the period has expired. By setting a six-month period for wages under $100, HB 826, enacted during the regular session, sought to solve this problem for those with relatively small amounts of unclaimed wages, but it would be more practical and workable to set a one-year dormancy period for all unclaimed wages.

The change made by HB 826 would be difficult to implement. The accounting software used by many companies cannot distinguish between the amounts determined by the $100 cutoff and so would be unable to alert the payroll department that the six-month dormancy period had passed for wages under $100.

Companies currently report unclaimed wages once a year, but HB 826 could require them to report every six months. The comptroller's unclaimed property division is equipped to handle one peak per year, but not a second.

Article 2 also would clear up an inconsistency in HB 826. The legislation declares some wages abandoned after six months but does not require companies to revert ownership to the state by escheat until the payment has been abandoned for three years. All other unclaimed property law requires holders to turn over ownership when the property is declared abandoned.

Article 2 would add more money to the state's coffers. The fiscal note attached to HB 826 estimated a net benefit to general revenue of $1.5 million in fiscal 2005. Only about 30 to 35 percent of money received as unclaimed property is claimed; the other 65 to 70 percent remains in general revenue and can be used to pay for state operations until claimed. By establishing a shorter time frame for escheat of abandoned wages, Article 2 would be a one-time boost to general revenue as the receipt of unclaimed wages would be

recognized earlier than under prior law. The fiscal note attached to Article 2 estimates that it will generate a net $6.5 million in fiscal 2005.

OPPONENTS SAY:

No apparent opposition.

NOTES:

HB 4 by Swinford, identical to Article 2 of HB 7 except for the effective date, passed the House during the second called session, but died in the Senate when it could not be referred to committee due to the lack of a quorum.

ARTICLE 3 — Accelerating escheat of abandoned proceeds from demutualization

BACKGROUND: Property Code, sec. 72.101 sets forth state law regarding abandoned property. Personal property is presumed to be abandoned if, for more than three years, the existence and location of the owner is unknown to the property holder and no claim or act of ownership has been exercised. Abandonment of stock or intangible ownership interest in a business association begins on the first date that either a sum payable as a result of the ownership interest is unclaimed by the owner, or a communication to the owner is returned undeliverable by the U.S. mail.

Property Code, sec. 74.301 requires entities holding abandoned property to deliver it to the state comptroller by November 1 of each year. Reversion of abandoned property to the state, called escheat, occurs when a person dies without a legal will and without any legally recognizable heirs, or when a bank account is left inactive for an extended period. If the abandoned property is stock or some other intangible ownership interest, a property holder must deliver a duplicate certificate or other evidence of ownership to the state. The comptroller acts as custodian for unclaimed property until the owners or heirs are located. Cash is held in general revenue until claimed; personal property is auctioned periodically, with the proceeds held in general revenue.

A mutual insurance company is a corporation with no shareholders. Mutual companies return surplus value or profits to their policyholders through refunds or lowered rates. Policyholders have an intangible interest, represented by their voting rights in the company, to mutual company surpluses. The policyholders, as members of the corporation, have the right to vote at annual meetings and to receive any remaining surplus value if the corporation is liquidated or demutualized.

Demutualization is a process by which a mutual life insurance company reorganizes its corporate structure to become a stock company, a corporation with shareholders who may or may not be policyholders. Each shareholder's ownership interest is represented by shares of stock, which usually can be sold. Demutualization gives policyholders two potential interests in the company: the cash value of their intangible interest in any company surplus, and shares in the company's capital stock.

DIGEST: Article 3 of HB 7 would specify that property distributable under a demutualization is presumed abandoned on the first anniversary of the demutualization if the property owner could not be reached by U.S. mail and had not communicated with the property holder or the holder's agent about his or her interest in the property. Abandoned proceeds from a demutualization or related insurance company reorganization would have to be delivered to the comptroller on or before the following August 1.

SUPPORTERS SAY: Accelerating the dormancy period for abandoned proceeds would speed the escheat on demutualization, adding to state general revenue in the coming biennium. During fiscal 2002, the comptroller received $165.5 million in unclaimed property revenue, of which more than $60.5 million was returned to the rightful owners. Only about 30 to 35 percent of money received as unclaimed property is claimed; the other 65 to 70 percent remains in general revenue and can be used to pay for state operations until claimed. According to the comptroller, under the current dormancy period, about $10 million in abandoned demutualized funds would not be reportable until fiscal 2006-07. Article 3 would make those funds reportable to the state during fiscal 2004-05, potentially making available an estimated $6.5 million in additional funds to general revenue. While the state can use these funds, it holds them in perpetuity for the rightful owners or their heirs, so policyholders never lose their legal interest in their property.

Mutual insurance companies take their fiduciary responsibilities seriously and would not use this legislation to harm consumers or to pass responsibility to the state. The only economic incentive for a mutual company to demutualize is to attract more capital in order to expand business surplus, not to avoid compensating policyholders for their ownership interests in company surplus. With the new regulatory environment for rates, financial monitoring requirements, and other state and federal rules, it is highly unlikely that a financially troubled insurance company would demutualize without strict state and federal oversight that ultimately would protect the rights of consumers.

OPPONENTS SAY: While it might help the state to gain general revenue, Article 3 would not benefit consumers. In fact, it could leave some policyholders and their heirs, especially those who have left the state of Texas, without an easy way of recovering their lost assets. Policyholders are better off having their assets held for three years with the insurance company, which is more likely to have

their last known address and the names of surviving heirs than is the state. For solvency reasons alone, active policyholders benefit from keeping abandoned proceeds with the insurance company longer, because they create more surplus, thus helping insurers maintain a greater margin of error for paying out future claims.

OTHER OPPONENTS SAY:

Article 3 could encourage more insurance firms to convert to stock companies, a trend that might not be in the best interest of policyholders. While it might benefit insurers' bottom lines to demutualize, accelerate losses, and transfer responsibility to the state for finding and paying policyholders for surplus value, consumers might not benefit. Because stock companies must satisfy the demands of outside investors rather than the demands of policyholders, profit motives inherent in the demutualization process could create potential conflicts of interest between shareholders and policyholders.

NOTES:

HB 7 by Swinford, identical to Article 3 of HB 7 except for the effective date, passed the House during the second called session, but died in the Senate when it could not be referred to committee due to the lack of a quorum.

ARTICLE 4 — Allowing the LBB to meet by teleconference

BACKGROUND: The Legislative Budget Board (LBB) is a legislative service agency that develops recommendations for legislative appropriations. Other duties include evaluating agency programs and estimating the probable cost of legislation. Composition of the 10-member board is established by statute. The chair is the lieutenant governor, the vice-chair is the House speaker, and four ex-officio members are the chairs of the House Appropriations, House Ways and Means, Senate Finance, and Senate State Affairs committees. Two other House members are appointed to the board by the speaker, and two senators are appointed by the lieutenant governor.

Government Code, sec. 322.003 requires the board to meet in Austin unless a majority of the members from each house agree to meet elsewhere.

DIGEST: Article 4 of HB 7 would allow LBB members, except the chair and vice-chair, to attend meetings of the board by use of telephone conference call, video conference call, or other telecommunication device. The chair and vice-chair would have to be physically present at a meeting for other board members to attend by telecommunication device. The bill would apply for purposes of constituting a quorum, voting, and any other participation in a meeting by board members, regardless of the subject of the meeting or the topics considered.

A meeting held by use of a telecommunication device would be subject to standard notice requirements and would have to specify in the notice the location of the meeting where the chair and vice-chair would be present. It would have to be open to the public and audible to the public at the location where the chair and vice-chair were present, and it would have to provide two-way audio communication between all members of the board.

SUPPORTERS SAY: Article 4 of HB 7 would allow more members of the LBB to participate in meetings and reduce state expenditures while still protecting the public's right to attend meetings and to monitor governmental deliberations. Currently, when the LBB meets, its members must travel to the meeting from throughout the state, typically held in Austin. Given legislators' busy schedules and outside job demands, it often is difficult for all members to attend a meeting. In addition, traveling to a meeting can involve travel expenses and significant

time. Art. 4 would address these problems by allowing the LBB to meet through a teleconference call or other telecommunication device.

Government Code, sec. 551.125, part of the open meetings law, allows other state boards, commissions, and agencies to meet through teleconference calls. Art. 4 simply would give the LBB the same flexibility.

The bill contains safeguards to ensure that the public's right to government information is not abridged. The LBB's chair and vice-chair would have to be physically present at the meeting site. This would ensure that at least two live persons were at every meeting, encouraging public participation and ensuring public accountability. Meetings would have to continue to meet all applicable notice requirements; the notice would have to specify the location where the chair and vice chair would be present; and the meeting would have to be open and audible to the public.

OPPONENTS SAY: The authority granted to the LBB in Article 4 is too broad and should be limited to emergencies or when an urgent public necessity exists. Government Code provisions allowing for governmental bodies to meet by telephone conference calls are limited to emergencies or when public necessities exist and convening at one location is difficult or impossible. Although Art. 4 would allow the public to hear an LBB meeting held by teleconference, this would not encourage public participation or accountability in the same way that meetings with live persons do.

NOTES: HB 8 by Swinford, identical to Article 4 of HB 7 except for the effective date, passed the House during the second called session, but died in the Senate when it could not be referred to committee due to the lack of a quorum.

ARTICLE 5 — Using fuel-saving technologies and savings from certain utility contracts

DIGEST:

Article 5 of HB 7 would require a state agency, other than a higher education institution, with 10 or more vehicles or nonroad diesels to reduce fuel consumption by at least 5 percent from 2002 levels by using cost-effective fuel-saving technologies. A fuel-saving technology would be considered cost-effective if the projected savings in fuel cost over a one-year period exceeded the cost of buying and using the technology. An agency would not have to begin meeting the goal until the State Energy Conservation Office (SECO) provided a list of proven fuel-saving technologies. An eligible technology would not include one that was known to increase nitrogen-oxide emissions or other toxic contaminants; that reasonably could be judged to degrade air quality, human health, or the environment; or that was known to affect negatively the manufacturer's warranty of a motor vehicle or a non-road diesel.

The bill would specify that a state agency:

- could purchase fuel-saving technologies out of its fuel budget;
- would have to evaluate competitively similar technologies;
- could require a vendor to refund the cost of the technology if it was determined to be ineffective within 90 days;
- could use technologies that it determined were cost-effective in applications providing other benefits, such as emissions reduction;
- could establish a voluntary program for employees to buy fuel-saving technologies and document fuel savings and emissions reductions; and
- would have to report annually to SECO.

Field demonstration. Under SECO's direction, the Texas Department of Transportation (TxDOT) would have to demonstrate the effectiveness of at least four technologies to determine which could reduce fuel consumption cost-effectively and save state revenue. The demonstration would have to include assessing a technology's performance in the normal course of operations and performing controlled field tests. In selecting technologies for evaluation, SECO would have to consult with organizations that now use fuel-saving technology; consider proven technologies that achieved fuel-efficiency gains in government or business fleets; and determine whether a

technology had the potential to be cost-effective. A technology could be disqualified if it negatively affected engine life or performance, required additional maintenance, or degraded air quality.

Other agencies could be designated to assist with the field demonstration or reporting results, including the Texas Council on Environmental Technology (TCET), the University of Texas Center for Transportation Research, or the University of Houston Diesel Emissions Center.

On completing the demonstration, SECO would have to rank the technologies and list recommended applications, document negative or positive effects, and prepare a report of these findings. The office would have to provide the report to each affected state agency and to the Legislative Budget Board. TCET would have to research any technology that appeared to reduce emissions and could use the information to award grants for development of new emissions technology under Texas Emissions Reduction Plan.

The field demonstration and associated reports would have to be completed by September 1, 2004. SECO would have to provide on its website results from the demonstration and an updated list of proven technologies. Money from the state highway fund could not be used to buy, install, maintain, or operate the technologies. Any repairs to state equipment resulting from the demonstration would have to be paid from the same funds used to implement the demonstration.

Utility cost-savings contracts. Before a state agency other than an institution of higher education could make a capital expenditure to build, improve, or maintain a state building or facility, the agency would have to determine whether the expenditure could be financed with money generated by a utility cost-savings contract. If an agency found it impractical to finance a capital expenditure in such a manner, it would have to justify the expenditure to the Legislative Budget Board. An agency would have to consider whether money from a utility cost-savings contract in one department could be used to finance a facility project in another department.

The bill would not require an agency to evaluate the use of an utility cost-savings contract if a capital expenditure required rapid action to prevent a hazard or avoid undue additional cost to the state.

Water conservation. The Texas Building and Procurement Commission would have to appoint a task force to develop design recommendations that encouraged rain harvesting and water recycling by a state agency using appropriated money to finance a capital expenditure for a state facility.

SUPPORTERS SAY:

Article 5 of HB 7 would save the state money by reducing fuel costs and capital expenditures. New technologies provide a cost-effective method of reducing fuel consumption by vehicles and nonroad diesel engines. Requiring agencies to implement these technologies could create significant savings. Also, utility cost-savings contracts or performance contracts provide a means of financing capital improvements to certain facilities without using general revenue.

This article would lower fuel costs by requiring state agencies with 10 or more vehicles to reduce fuel consumption at least 5 percent through cost-effective fuel-saving technologies. New technologies, such as fuel additives or installed devices, can reduce fuel consumption by up to 15 percent. Using these new technologies could save the state more than $5 million per year. Moreover, by improving combustion in an engine, many of these technologies provide additional benefits, such as reducing emissions and lowering maintenance costs. No new technology would be required unless it would produce savings greater than the cost of buying and using the technology, nor could it be used if it would degrade the environment or negatively affect a vehicle warranty.

Before any agency adopted a fuel-saving technology, TxDOT and SECO would conduct a field demonstration to evaluate available technologies and determine the best technologies for specific applications. The assessment and testing would weed out any questionable technologies. No highway funds could be used for the demonstration, so vendors would have cover the cost of providing the technologies for the demonstration. After the demonstration, SECO would provide the results to agencies and the public.

The bill also would encourage state agencies to use performance contracts for capital expenditures. Current law already authorizes the use of such contracts (Government Code, sec. 2166.406). In a performance contract, an outside company conducts an energy analysis of a facility and identifies retrofits or improvements that could reduce energy costs, such as a more efficient boiler

or higher-quality insulation. The company agrees to pay for the cost of buying and installing the energy-saving improvements in the facility, in exchange for the savings produced by the improvements. If the savings turn out to be less than the cost of the improvements, the company makes up the difference. A performance contract allows the state to avoid the cost of necessary upgrades or maintenance to a facility, while an outside company bears the risk if the improvements do not pay for themselves. HB 9 simply would require an agency to determine whether using a performance contract would be a practical means of financing a capital expenditure.

Article 5 of HB 7 also would establish a task force to develop design recommendations that encouraged water conservation at state agencies. Reducing water consumption in state facilities would provide both an economic and environmental benefit.

OPPONENTS SAY:

While saving the state money is a worthy goal, claims of fuel savings from these new technologies may be questionable. Some supposedly “fuel-saving” technologies promise efficiency gains that they do not necessarily produce.

NOTES:

Article 5 of HB 7 is identical to HB 9 by Swinford, which passed the House during the second called session but died in the Senate, except that it does not include a floor amendment by Rep. Hughes that would have allowed a county, municipality, or utility district to collect from a private institution of higher education a fee charged for control of excess water or storm water only if the fee had been imposed before May 30, 2003.

ARTICLE 6 — Allowing the governor to name presiding officers of agency governing bodies

DIGEST:

Article 6 of HB 7 would allow the governor, notwithstanding any other law, to designate a member of the governing body of each state agency as the presiding officer to serve at the governor's pleasure. State agencies would include university systems, higher education institutions, river authorities as defined under the Water Code, departments, commissions, boards, offices, councils, authorities, and other agencies in the executive branch of state government.

The bill would not apply to an agency headed by one or more statewide elected officials, entities that advise or report to state agencies headed by one or more statewide elected officials, river authorities with elected governing bodies, or junior college districts.

SUPPORTERS SAY:

Article 6 of HB 7 would grant the governor the authority necessary to manage the executive branch appropriately. Under current law, the governor names many but not all presiding officers of state boards, commissions, agencies, and other entities. As a result, parts of the executive branch inappropriately can operate outside of the governor's influence. Many Texans erroneously believe that the governor — as the most visible statewide elected official and the head of the executive branch — already has this power to manage state government. Art. 6 would give the governor broad authority to appoint the presiding officers of all state agencies, boards, and commissions.

This change would ensure that the governor had some authority over all executive branch entities and therefore could be held accountable for their operations and actions and also would promote more consistent and uniform policies. Giving the governor the power to appoint presiding officers has been a standard recommendation of the Sunset Advisory Commission for years, and about half of the state agencies already operate this way.

Texas government would retain checks and balances. The governor's authority would extend only to appointing presiding officers, whose authority generally includes setting up and running meetings and setting agendas. The governor would receive no additional appointments or votes nor the authority to replace sitting board members. The executive branch would remain

fragmented by a multitude of boards and commissions whose members serve long, staggered terms. Most boards and commissions, rather than the governor, appoint the chief executive officer for the agency, and this bill would not change that system.

There is no reason that certain state entities such as university systems or river authorities with appointed members should not operate like all other agencies with the governor appointing the board's presiding officers.

Voter approval of the change proposed by Art. 6 would be unnecessary. The decision about who appoints presiding officers for state agencies is a policy decision that should be made by the Legislature, just as lawmakers have done by establishing a policy similar to Art. 6 through the sunset process. Since the bill does not deal with appointment of chief executive officers, it would not establish a cabinet form of government or make such a fundamental change in current practice that would require the Legislature to take the extraordinary step of seeking voter approval.

Art. 6 would not apply to agencies headed by statewide elected officials. These officials, chosen by Texas voters, would continue to be able name their own presiding officers. Similarly, the bill would not apply to river authorities who board members are elected nor to junior college districts, most of which have elected boards.

It would be inappropriate to limit the governor's appointments to board members who have been confirmed since the Senate currently does not have a say in who becomes a presiding officer. No other interim appointees of the governor have restrictions on their authority merely because they have not been confirmed by the Senate.

OPPONENTS SAY:

Art. 6 would violate the long-standing Texas tradition of not concentrating too much power in the hands of a single elected official. The current structure of state government was crafted carefully to ensure that some boards and commissions elect their own presiding officers to retain enough autonomy to operate without undue political influence from the governor.

Even though the governing boards of many agencies now have presiding officers appointed by the governor, it is better to make decisions about giving

the governor this power on an agency-by-agency basis, as happens through the sunset process, than to give the governor the broad authority proposed by Art. 6 Some boards, such as those governing universities, might operate more effectively and efficiently when members are empowered to elect their own presiding officers.

Voters should decide on proposals to grant such sweeping additional power to the governor and to change the structure of state government. Voters have spoken on similar issues before, such as in 1999, when more than 52 percent of the voters rejected constitutional amendments to allow the adjutant general and human services commissioner to serve at the governor's pleasure.

OTHER OPPONENTS SAY:

To ensure a check and balance on the governor's authority and to preserve the role of the Legislature in approving important appointments, the governor's authority to name presiding officers should be limited to naming persons whose appointments to governing bodies have been confirmed by the Senate. Otherwise, the governor could appoint as presiding officer someone who has never undergone Senate review.

NOTES:

HB 11 by Swinford, identical to Article 5 of HB 7 except for the effective date, passed the House during the second called session, but died in the Senate when it could not be referred to committee due to the lack of a quorum.

ARTICLE 7 — Reorganizing legislative service agency governing boards

BACKGROUND: Under Government Code, ch. 321, the Legislative Audit Committee includes the lieutenant governor, the House speaker, and the chairs of the Senate State Affairs and Finance committees and of the House Appropriations and Ways and Means committees. The committee elects one member to serve as chair and one to serve as secretary. The committee must appoint a state auditor to direct and control the expenditure of any money appropriated to the State Auditor's Office and to oversee the office in other ways.

The Legislative Budget Board (LBB) develops recommendations for legislative appropriations, evaluates agency programs, and estimates the probable cost of legislation. Composition of the 10-member board is established under Government Code, ch. 322. The chair is the lieutenant governor, the vice-chair is the House speaker, and four ex-officio members are the chairs of the House Appropriations, House Ways and Means, Senate Finance, and Senate State Affairs committees. Two other House members are appointed to the board by the speaker, and two senators are appointed by the lieutenant governor. The chairman or a majority of the board members from each house may call a board meeting.

The Texas Legislative Council's duties include helping legislators draft proposed legislation, providing data-processing services to legislators, studying and investigating the functions and problems of state agencies, conducting studies for the Legislature, gathering and disseminating information for the Legislature, and performing other services by agreement with either legislative house or with a legislative agency. Under Government Code, ch. 323, the council includes the lieutenant governor, House speaker, chair of the House Administration Committee, five senators appointed by the president of the Senate, and nine House members appointed by the speaker. The lieutenant governor is the chair of the council, and the speaker is the vice-chair. Twelve members constitute a quorum.

The Sunset Advisory Commission guides the sunset process, the Legislature's regular assessment of the continuing need for a state agency to exist. Under Government Code, ch. 325, the 10-member commission includes four senators, four House members, a public member appointed by the lieutenant governor, and a public member appointed by the speaker. The offices of chair

and vice-chair of the commission alternate every two years between the Senate and the House, with the lieutenant governor appointing the chair from among the senators and the speaker appointing a chair from among the House members. The chair and vice-chair may not be from the same chamber of the Legislature.

DIGEST:

Article 7 of HB 7 would amend the Government Code to make the lieutenant governor and the House speaker joint chairs of the Legislative Audit Committee, LBB, and Texas Legislative Council. It would add an additional senator and an additional House member to the Sunset Advisory Commission.

Legislative Audit Committee. Article 7 would make the lieutenant governor and the House speaker joint chairs of the Legislative Audit Committee, rather than requiring the committee to elect its chair.

Subpoenas issued at the request of the state auditor or on the committee's own motion could be signed by either of the joint chairs, and either of the joint chairs could make a request to have the subpoenas served.

LBB. The lieutenant governor and House speaker also would be joint chairs of the LBB. A majority of the members from each house would constitute a quorum, as under current law. If a quorum were present, the board could act on any matter by a majority vote. Meetings could be held at any time at the request of either of the joint chairs. Either of the joint chairs could approve expenses of board members, sign subpoenas, and, with board approval, appoint inspection committees.

Texas Legislative Council. The lieutenant governor and House speaker would serve as joint chairs of the council. The bill would reduce the speaker's appointments to the council from nine to five House members, in addition to the House Administration Committee chair. If more than five members of the House were serving on the council on Article 7's effective date, those members' terms would expire, and the speaker would have to appoint five House members to the council as soon as possible.

The number of senators on the council would be increased from five to six. The lieutenant governor would have to appoint an additional senator to serve on the council as soon as possible on or after Article 7's effective date.

Council meetings could be held at any time at the request of either of the joint chairs. A majority of the members from each house, rather than 12 council members, would constitute a quorum. Either of the joint chairs could approve payment of expenses, appoint statutory revision advisory committees, sign subpoenas, or request attorney general's opinions.

Sunset Advisory Commission. Article 7 would increase the commission's membership to 12, including five senators and five House members, rather than four of each. Seven members of the commission, rather than six, would constitute a quorum. The lieutenant governor and the speaker would have to appoint the additional members of the commission as soon as possible after the new requirement is effective. The requirement would become effective immediately if HB 7 is finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the session.

SUPPORTERS SAY:

Article 7 would change the chairmanships of legislative service agencies so that both chambers of the Legislature would be represented fairly and adequately on the agency boards. The bill would allow either of the joint chairs to call a meeting, so the business of the governing bodies could be conducted even in the unlikely event of a conflict between the chairs. Also, the bill would authorize either of the joint chairs to perform other specific functions to ensure that business could be conducted.

Reducing the number of House members on the Texas Legislative Council to seven (including the speaker) and increasing the Senate's membership to seven (including the lieutenant governor) would equalize the representation on the council's governing board. Whatever the original reasons for the disparity, representation should now be equal because the council serves both the House and the Senate.

Increasing the membership of the Sunset Advisory Commission would allow more legislators to be involved in this important agency review process. This change would allow more members with special knowledge or expertise to participate in the process and would give the speaker and the lieutenant governor more flexibility in their appointments. Legislators who serve on the Sunset Advisory Commission frequently are the authors of the Sunset bills for

the agencies under review, so increasing the membership from four to five from each house would help spread the workload.

OPPONENTS SAY:

Having joint chairs of legislative service agency boards would be unnecessary and possibly unworkable. It is unclear how joint chairs would operate, especially if a conflict arose between the chairs over whether to call a meeting and what the agenda should be.

There is no need to increase the membership of the Sunset Advisory Commission. The commission works well with 10 members, and the current structure allows each chamber to have equal partisan representation.

OTHER OPPONENTS SAY:

The article should not reduce the House's representation on the Legislative Council because the current structure better protects the House's interests. If the Legislative Council should need to decide any issue between the houses, the House's larger representation on the council would give its members an advantage.

NOTES:

HB 12 by Swinford, almost identical to Article 7 of HB 7, passed the House on second reading during the second called session, but died before receiving a third reading vote.

ARTICLE 8 — Repealing TCEQ reporting requirements and studying permitting procedures

DIGEST:

Article 8 of HB 7 would repeal statutes that require the Texas Commission on Environmental Quality (TCEQ) to:

- develop strategic plans for state solid waste management and municipal solid waste management;
- assess the state's needs for commercial hazardous and nonhazardous waste management or disposal capacity, and update the assessments and related rules every two years;
- report jointly with the Public Utility Commission on the status of the development of landfill gas;
- report biennially on pollution-source reduction and waste minimization;
- report in even-numbered years on the status of the used-oil recycling account; and
- report biennially on alternative fuels.

Article 8 also would create a seven-member study committee to evaluate and assess TCEQ permitting procedures and report its findings by December 1, 2004. The committee would consist of three appointees of the lieutenant governor, three appointees of the House speaker, and one public member appointed by the governor. The committee's evaluation would have to include the identification of problems with TCEQ's permitting processes, potential options, and solutions. The solutions identified in the assessment would have to ensure that:

- all relevant environmental protection standards were maintained at least at the current level;
- TCEQ's permitting processes were streamlined, user-friendly for citizens, and promoted economic development; and
- all stakeholder concerns were considered.

SUPPORTERS SAY:

Article 8 of HB 7 would repeal statutes requiring TCEQ to issue legislative reports on various topics. Many of these reports are duplicative and time-consuming to prepare. The information contained in them could be covered easily in a single report, such as the comprehensive biennial report that the

agency already is required to submit to the Legislature. The biennial report details all of the agency's activities during the interim. Moreover, eliminating the current reporting requirements would reduce personnel and printing costs and save the agency about $500,000 per year.

Article 8 also would create a study committee to examine and recommend changes to improve TCEQ's environmental permitting process. Some businesses have cited lengthy delays, which sometimes can take up to 650 days, and the cumbersome nature of the permitting process in Texas as reasons for locating their operations in another state. Moreover, environmental groups have pointed out that the current permitting process could be improved by providing for greater public participation and input. Article 8 would require the committee to evaluate thoroughly the permitting procedures in place currently, and identify solutions that could streamline the process while safeguarding environmental standards and public input.

OPPONENTS SAY:

Although consolidating the legislative reports produced by TCEQ may be a good idea, the bill should specify that the information included in these reports be included in a single report. Many of the topics of the reports that Article 8 of HB 7 would eliminate are worthy of continued investigation, such as waste management and minimization and alternative energy sources and fuels. Because the bill would eliminate reports without specifying that their topics be covered in another report, many important issues could be overlooked.

NOTES:

HB 13 by Swinford, almost identical to Article 8 of HB 7, passed the House during the second called session, but died in the Senate when it was not referred to committee due to lack of a quorum.

ARTICLE 9 — Transferring duties of Commission on Private Security to board within DPS

BACKGROUND: The duties of the Texas Commission on Private Security include licensing private investigation companies, security guard companies, burglar alarm companies, courier companies, armored car companies, guard dog companies, and the security departments of private businesses with armed guards. The entity also commissions security officers who carry firearms and registers private investigators, unarmed guards, installers of alarm and monitor systems, and others.

The commission's eight members, appointed by the governor, include four public members, one licensed private investigator, one member licensed as an alarm systems company, one member who owns or operates a guard company, and one who holds a license, security officer commission, or registration from the commission. Each of the nonpublic members must have at least five years' experience in his or her capacity and may not be employed by a person who employs another member of the commission.

Rider 47 of the Department of Public Safety's (DPS) budget in HB 1 by Heflin, the general appropriations act for fiscal 2004-05, places the private security commission under the financial oversight of DPS. The commission remains an agency, but DPS is responsible for providing administrative support. The budget act reduces the commission's staff from 46.5 full-time employees (FTEs) to 14 and gives DPS an additional five FTEs.

DIGEST: Article 9 of HB 7 would abolish the Texas Commission on Private Security as an independent agency and transfer its most of its duties to DPS, to be administered by a newly created Texas Private Security Board within DPS. Regulation of personal emergency response systems would be transferred to the Texas Department of Health.

The Commission on Private Security's functions would be transferred to the new board within DPS on February 1, 2004. Until then, the current commission would continue to perform the functions.

The new board would have seven members appointed by the governor: four public members, one private investigator, one member licensed as an alarm

system company, and an owner or operator of a guard company. No specific experience requirements would apply to the nonpublic members. The governor would have to make the appointments by February 1, 2004.

The Texas Private Security Board would have to place a high priority on processing applications for licenses, security officer commissions, and registrations from persons who provide protection for critical infrastructure and would have to act on these applications as expeditiously as possible and at least within 60 days of receiving an application.

SUPPORTERS SAY:

Article 9 of HB 7 is necessary to deal with financial mismanagement at the Texas Commission on Private Security and to ensure that the agency's duties are handled by an appropriate, responsible agency in the most efficient way possible. In effect, the Legislature already has voted to implement this change by placing the commission under the financial oversight of DPS in the fiscal 2004-05 state budget. Article 9 would take this decision to its next logical step by abolishing the independent agency and requiring DPS to administer the commission's statutes through a board.

In January 2003, the state auditor reported gross fiscal mismanagement at the private security commission from fiscal 1998 through August 2002, leading to budget shortfalls in violation of the current general appropriations act. The state auditor also pointed to the agency's opportunity to commit fraud and ability to conceal it.

The best way to deal with these problems is to eliminate the agency, where problems were systemic, and transfer its duties to DPS. As a professionally run, competent agency, DPS could absorb the commission's duties, which primarily involve regulating industries that deal with security functions. DPS could perform these duties more efficiently, since administrative and overhead costs could be spread over the large agency.

Art. 9 would ensure that industries and entities now regulated by the commission would receive adequate oversight and services by establishing the Texas Private Security Board as part of DPS. The board could hear contested cases concerning licensing and could handle other specialized duties. The board of gubernatorial appointees would have to include a private investigator, an alarm system company representative, an owner or operator of

a guard company, and four public members to ensure that the industries and the public were represented adequately.

Article 9 also would transfer regulation of personal emergency response systems to the Texas Department of Health. These systems, designed to signal medical emergencies, would be better regulated by an agency with experience and knowledge of medical issues.

OPPONENTS SAY:

It is unnecessary to abolish the Texas Commission on Private Security as an independent agency. The agency's fiscal and management problems have been addressed by new management and a remediation plan put in place to ensure that the problems do not recur. Any remaining issues would be addressed best by leaving the agency independent so that its actions can be scrutinized more easily. Even though the fiscal 2004-05 general appropriations act places the commission under the financial oversight of DPS, it would be best to leave current statutes intact so that the commission could return to independent status.

The specialized professions regulated by the commission would not be served well by moving oversight to DPS, a large agency whose main responsibility is law enforcement. The independent commission can provide levels of expertise and service that regulated industries and the public would miss if DPS took over those duties. Because the board created by Art. 9 would not include representatives from the various industries regulated by the commission, some industries could feel they were not represented adequately.

NOTES:

HB 14 by Swinford, almost identical to Article 9 of HB 7, passed the House during the second called session, but died in the Senate when it was not referred to committee due to lack of a quorum.

ARTICLE 10 — Expanding state auditor's regional planning commission oversight duties

BACKGROUND: Under Local Government Code, ch. 391, the governor oversees the state's 24 regional planning commissions (RPCs) — also known as associations or councils of governments (COGs) or regional or area councils — which deal with issues that transcend member governments' boundaries or that require regional planning. These political subdivisions are subject to state law and receive both state and federal funds, but their decisions are not binding. Sec. 391.009(a) requires the governor to adopt operational, fiscal, and performance standards rules, reporting and audit requirements, and review-and-comment procedural guidelines for RPCs.

The State Auditor's Office (SAO) reviews RPC reports, including audits, and may make findings and recommendations on issues regarding administration, operations, or programs. The Legislative Audit Committee (LAC), composed of the lieutenant governor, House speaker, and the chairs of the Senate State Affairs and Finance committees and the House Appropriations and Ways and Means committees, may direct SAO to conduct additional audits or investigations. Under SB 19 by Ratliff, regular session, effective September 1, 2003, mandatory SAO review of RPC reports becomes discretionary, subject to a risk assessment and LAC approval.

Negotiated rulemaking involves conveners and facilitators meeting with state agencies and interested parties, including opponents, to formulate rules being adopted by the agencies and affecting those parties (Government Code, ch. 2008).

DIGEST: Article 10 of HB 7 would delegate several of the governor's RPC oversight functions and duties to SAO and would add some new ones. SAO would have to provide technical assistance to the governor, in the form of a risk assessment subject to LAC approval, in drafting and adopting operational, fiscal, and performance standards rules, reporting and audit requirements, and review- and-comment procedural guidelines. RPCs would have to send all reports, including audits and annual reports, to SAO, which would have to notify the governor if RPCs failed to do so or did not comply with rules, requirements, or guidelines.

SAO could recommend to the governor improvements in RPCs' salary schedules, subject to LAC approval. Portions of salary schedules subject to SAO recommendations could not take effect until revisions or explanations satisfactory to the governor were made based on SAO recommendations.

The governor's adoption of rules, requirements, and guidelines for RPCs would be permissive rather than mandatory. The governor could use negotiated rulemaking procedures to draft and adopt RPC rules. Existing rules, requirements, or guidelines would remain in effect until amended or repealed by the governor.

SUPPORTERS SAY:

For several years, the governor has overseen RPCs by receiving reports, monitoring activities, and promulgating rules. Despite SAO assistance, however, the governor has not had sufficient resources to perform these functions adequately.

Article 10 would delegate to SAO some of the governor's duties that SAO could perform more effectively, such as directly receiving reports, auditing, and making recommendations to deal with noncompliance. The SAO would be integrated better into the oversight process, while the governor would continue to provide administrative direction to the RPCs. This arrangement would maintain the good working relationship between the governor and the RPCs and would preserve local governments' access to the Governor's Office.

The bill also would allow SAO to provide input to the governor on rulemaking without being involved directly. Requiring risk assessments and LAC approval would help SAO target problem RPCs and specific issues instead of having to perform blanket or random reviews or audits. These changes would address concerns raised by the SAO in its December 2002 report about fiscal and federal compliance weaknesses at some RPCs and about information lacking in performance reports.

OPPONENTS SAY:

Article 10 would not address sufficiently the systemic deficiencies in RPC operations. The 2002 SAO report revealed serious fiscal and management problems in 13 RPCs that spent more than $270 million worth of taxpayers' money in fiscal 2001 — almost $21 million in state funds (43 percent of the statewide total) and almost $250 million in federal funds (63 percent of the

total). SAO found that these 13 RPCs failed to implement adequate cash controls, account for fixed assets adequately, or monitor subrecipients of grant funds. Generally, RPC reports often omit key information, including productivity data, salaries, and performance measures, according to SAO. To ensure that these shortcomings are corrected, the bill should give SAO more oversight and enforcement power over RPCs, and reinstate mandatory report and audit review.

NOTES: HB 15 by Swinford, almost identical to Article 10 of HB 7, passed the House during the second called session, but died in the Senate when it was not referred to committee due to lack of a quorum.

ARTICLE 11 — Changing the qualifications of the insurance commissioner

BACKGROUND: Insurance Code, sec. 31.022(a) requires the governor, with advice and consent of the Senate, to appoint the insurance commissioner to a two-year term expiring on February 1 of odd-numbered years. Sec. 31.023 requires the commissioner to have at least 10 years of experience as an executive in the administration of business or government or as a practicing attorney or certified public accountant, with at least five years in the field of insurance or insurance regulation.

DIGEST: Article 11 of HB 7would reduce from 10 to five the number of years of experience required of the insurance commissioner in the administration of business or government, or as a practicing attorney or certified public accountant. It would eliminate the requirement that those years be spent as an executive.

It also would eliminate the requirement that the commissioner of insurance have at least five years of experience in the field of insurance or insurance regulation.

SUPPORTERS SAY: Article 11 of HB 7 would broaden the qualifications for the insurance commissioner's job. The current requirements are unnecessarily restrictive and limit the pool of qualified appointees. Allowing the governor to draw from a broader field of expertise could make the critical difference in being able to fill such an important job quickly and efficiently. The Texas Department of Insurance is scheduled for sunset review in 2006-07, and Article 11 would be a small start toward making some of the changes likely to arise during that process.

Reducing the term of office for the insurance commissioner for two years to one would be impractical at best and would expand the governor's power inappropriately. A one-year term for a position as important as insurance commissioner is unrealistic. No qualified appointee could be expected to hire key staff and get up to speed in such a short period. Also, since the job description no longer would require five years of experience in insurance, a new commissioner could need extra time to develop expertise on the issues.

Reducing the commissioner's term to one year, as proposed in earlier versions of the bill, essentially would make the commissioner an "at-will" employee serving at the governor's pleasure. This would give the governor more power than the framers of the Constitution intended and could lead the commissioner to make short-sighted decisions to please the governor rather than long-term decisions for the health and well-being of the marketplace and consumers.

Because the Senate ordinarily meets every two years, changing the appointment to a one-year term could allow the governor to make an "end run" around the confirmation process. The Constitution allows the Senate to confirm interim appointments early in each session, but if the governor appointed a commissioner in January of an even-numbered year, his or her term would expire before the Senate even had a chance to consider the appointment. In order for the Senate to be able to exercise its constitutional duty to advise and consent, the governor would have to call the Senate into special session once a year to review and confirm a single annual appointment because the Senate cannot convene itself for this purpose. No other high-level official or commissioner is appointed for a one-year term, and no adequate justification or precedent exists for singling out the insurance commissioner for such treatment.

OPPONENTS SAY:

Cutting the requirement that the insurance commissioner have 10 years of executive experience and eliminating the need for five years of insurance experience could imperil the rate-making process. Technical expertise and executive-level experience is critical in the commissioner's position, and many unintended consequences could result from a ratemaking process led by someone who either did not fully understand the complexity of the issues or who did not have the necessary leadership skills.

OTHER OPPONENTS SAY:

Article 11 of HB 7 should reduce the insurance commissioner's term from two years to one year in order to make the insurance commissioner more accountable. Insurance is a rapidly evolving industry, with major changes in the marketplace occurring on a quarterly or even a monthly basis. Insurance markets are on edge now, and missteps by an insurance commissioner could put $70 billion in premiums on the line. Because insurance markets do not wait two years to adjust, the governor should not have to wait two years to respond to an insurance commissioner's missteps. Article 11 should give the governor flexibility to respond to a bad situation before it becomes worse, and

it also should allow a high-performing commissioner to be rewarded on an annual basis.

The Texas Constitution provides a method for the governor to nominate an appointee while the Senate is not in session and allow that person to serve until the next legislative session. Thus, no practical implementation problem would exist with a one-year appointment.

NOTES: HB 16 by Swinford, almost identical to Article 11 of HB 7, passed the House during the second called session, but died in the Senate when it was not referred to committee due to lack of a quorum.

ARTICLE 12 — Reorganizing the parole board and authorizing parole commissioners

BACKGROUND: Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles. Government Code, ch. 508 establishes an 18-member board appointed by the governor with advice and consent of the Senate. Members are full-time and salaried and serve six-year terms, with the governor designating the board chair as the presiding officer. A six-member committee of board members, designated by the governor, serves as a policy committee, whose duties include adopting the board's rules.

The board shares responsibility for the parole system with the parole division of the Texas Department of Criminal Justice (TDCJ). Often working in panels of three, the board determines which prisoners are released on parole and the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision. TDCJ's parole division supervises parolees after they have been released.

DIGEST: Article 12 of HB 7 would reduce the number of members on the Board of Pardons and Paroles from 18 to seven, authorize the board to hire parole commissioners to work with board members to make decisions about parole, and eliminate the current board policy committee. The governor would continue to appoint the board's presiding officer, who would be the administrative head of the board and would hire and supervise parole commissioners, with the advice and consent of a majority of the board.

Parole commissioners, along with the seven board members, would determine which inmates were released on parole or mandatory supervision, the conditions of parole and mandatory supervision, and the continuation, modification, and revocation of parole and mandatory supervision. Board members and parole commissioners would act in panels of three to make their decisions. Panels would have to include at least one board member and any combination of board members and commissioners. Parole commissioners could not vote or deliberate on a matter until they had completed at least one course of a required training program.

The presiding officer could delegate responsibilities and authority to other board members, parole commissioners, or board employees; appoint advisory

committees of board members or commissioners; and establish administrative policies and procedures. The presiding officer would assume some of the policy board's current duties, including establishing caseloads and work hours for board members and parole commissioners, updating parole guidelines, reporting to the Legislature on the board's activities, and hiring board employees. The presiding officer also would review jointly with TDCJ all rules and policies relating to the parole process.

The parole board would take over some of the current duties of the policy board, including:

- adopting rules relating to the board's decision-making process;
- developing and implementing training programs for board members, parole commissioners, and employees and preparing a procedural manual and handbook;
- developing and implementing policies for when board members or parole commissioners should disqualify themselves from voting;
- preparing information of public interest and an annual financial report;
- complying with state and federal laws regarding program and facility accessibility and access for non-English speakers; and
- adopting rules relating to inmate eligibility for parole, the conduct of parole hearings, and conditions to be imposed on parolees.

Board members no longer would be exempt from removal from the board because of excused absences.

The board would be subject to the open meetings law and the Administrative Procedure Act, except that, as under current law, certain provisions would not apply to the board's hearings or interviews relating to granting, rescinding, or revoking parole.

The governor would have to appoint new members to the board by February 1, 2004, and the terms of the board members serving on January 31, 2004, would expire with the appointment of the new members. At least three of the new board members could never have been employed by TDCJ and would have to have been serving on the board on May 1, 2003, or have been nominated to the board by that date and been awaiting confirmation.

Former employees of TDCJ could not serve on the board until at least two years after their employment with TDCJ had ended. At no time could more than three members of the board be former TDCJ employees. Previous service on the board would not be considered TDCJ employment. CSHB 23 would express the Legislature's intent that the first opportunities to be hired as parole commissioners be given to people who were serving on the board on May 1, 2003.

SUPPORTERS SAY:

Article 12 of HB 7 is necessary to improve the operations of the Board of Pardons and Paroles, to strengthen the board's organizational structure and chain of command, and to give the governor both more responsibility and more accountability for the board. A smaller board would allow the governor's appointees to operate more efficiently and consistently, when appropriate.

The current 18-member board is too large to handle efficiently both its policy-making role and its day-to-day role in deciding whether to release inmates on parole. The board is larger than most governing boards, making it difficult to hold meetings, and often is unwieldy when making decisions about administrative matters. Also, it can be difficult to ensure that 18 gubernatorial appointees follow the board's procedures, rules, and policies with no clear chain of command among the board members or other clear authority over them. Although a policy board was created in 1997 to address these issues, it too has proved problematic. Also, it is unusual for appointed board members to receive salaries and to work like full-time state employees.

Article 12 would address these problems by reducing the board to a more manageable size so that it efficiently could make decisions relating to procedures and board policy. The bill would establish clearly the duties, responsibilities, and authorities of the board, the presiding officer, and the newly hired parole commissioners.

The article would ensure proper handling of the board's workload by authorizing the hiring of parole commissioners who would work with the board members in making day-to-day parole decisions. Parole commissioners, common in other states, would be criminal justice professionals and would be trained in the parole decision-making process and on the use of parole guidelines.

Parole board members and parole commissioners would retain independence and discretion in making decisions about parole, and the bill would not disrupt board operations. The board has policies and rules in place, and the newly appointed board would have to include at least three people who were on the present board or had been nominated or confirmed to be on the board. Also, newly hired commissioners could include people now on the board. The bill would state the Legislature's intent that such people be given the first opportunities to be hired.

Because of constitutional requirements, board members — and not parole commissioners — would continue to make decisions about commutations and pardons. Because of other statutory provisions, board members would continue to make decisions about parole for offenders convicted of capital murder, certain sex offenses, and certain repeat offenders.

The bill would not specify the number of parole commissioners to be hired so that the number could be adjusted as necessary, depending on the workload. The Legislature would have adequate control of the number of commissioners through the appropriations process and regular committee oversight.

Article 12 would move current requirements that some actions of the board be subject to the open meetings law and Administrative Procedure Act to another section of the code because the bill would repeal the section where these requirements exist now. These provisions would not change current law or procedures, and certain hearings and interviews would remain exempt from these requirements.
CSHB 23 would not amend current law to require board members to meet as a body to consider clemency in capital murder cases. Courts have ruled that current board procedure is constitutional, and instituting such a requirement for capital cases could open the door to potential litigation against the board.

Article 12 addresses the structure of the parole board, not the governor's authority, so it would not be the proper vehicle to make an important change in state policy such as instituting new authority for the governor to commute death sentences to life in prison unilaterally, without a recommendation from the board. The current requirement provides a needed check and balance on the power of the board and the executive branch.

OPPONENTS SAY:

The Legislature established the board's current structure in 1989 to address difficulties with a smaller appointed board that worked in conjunction with hired parole commissioners. Article 12 would be an unwise move back to that problematic structure. The board should remain as independent as possible so that members have complete discretion to base their decisions only on the merits of the case and parole guidelines.

The current board allows gubernatorial appointees — instead of bureaucrats hired as parole commissioners — to be held accountable for the decisions they make concerning public safety. The parole board is a constitutionally mandated board, and its authority should not be diluted by having state employees perform the same job as appointed board members, who are subject to Senate confirmation.

Article 12 would not specify the number of commissioners that could be hired, leaving the potential for unlimited growth in this area of government or even leaving the system short-handed if fewer commissioners than necessary were hired.

OTHER OPPONENTS SAY:

To help prevent the execution of innocent inmates, hold board members more accountable for their decisions, and make certain decisions more transparent to the public, Article 12 should include a requirement that the board meet as a body to consider clemency in capital cases and that the decisions of individual board members be announced publicly.

NOTES:

HB 23 by Swinford, almost identical to Article 12 of HB 7, passed the House during the second called session, but died in the Senate when it was not referred to committee due to lack of a quorum.