

## **BILL ANALYSIS**

Senate Research Center

S.B. 359  
By: Brown  
Health & Human Services  
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As Filed

### **DIGEST**

Currently, the Department of Protective and Regulatory Services' (DPRS) primary role is to protect children, the elderly, and persons with disabilities from abuse and neglect. DPRS receives reports of mistreatment, investigates those reports that meet the statutory definitions of abuse or neglect, and provides social services to the victim and family. DPRS also sets minimum standards for and regulates child care providers, including both day care providers and 24-hour care providers, and regulates maternity homes. DPRS is governed by a six-member board, has a budget of \$523,633,585, and 6,598 employees for fiscal year 1996.

DPRS is subject to the Sunset Act and will be abolished September 1, 1997 unless continued by the legislature. As a result of its review of DPRS, the Sunset Advisory Commission recommended continuation and several statutory modifications contained in this legislation.

### **PURPOSE**

As proposed, S.B. 359 establishes the continuation and operation of the Department of Protective and Regulatory Services, the provision of services to children and families, and suits affecting the parent-child relationship; and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Board of Protective and Regulatory Services in SECTION 17 (Section 42.0495, Human Resources Code), SECTIONS 35 and 37 (Sections 261.3015(a) and 261.315(b), Family Code), and SECTION 55(b) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 40.003, Human Resources Code, to provide that unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act), DPRS is abolished and this chapter expires September 1, 2009, rather than September 1, 1997.

SECTION 2. Amends Chapter 40A, Human Resources Code, by amending Section 40.004, and adding Section 40.0041, as follows:

Sec. 40.004. New heading: PUBLIC INTEREST INFORMATION. Requires the Board of Protective and Regulatory Services (board), rather than DPRS, to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and speak on certain issues. Deletes the provisions regarding public interest complaints. Makes conforming changes.

Sec. 40.0041. COMPLAINT PROCESS. Adds standard language developed by the Sunset Commission regarding complaints.

SECTION 3. Amends Chapter 40A, Human Resources Code, by adding Section 40.008, to add standard language developed by the Sunset Commission regarding program accessibility.

SECTION 4. Amends Section 40.021(a), Human Resources Code, to update standard language developed by the Sunset Commission regarding the composition of the board.

SECTION 5. Amends Section 40.022, Human Resources Code, to update standard language developed by the Sunset Commission regarding restrictions on board appointment or membership.

SECTION 6. Amends Chapter 40B, Human Resources Code, by adding Section 40.0225, to add standard language developed by the Sunset Commission regarding restrictions on board members and employees.

SECTION 7. Amends Chapter 40B, Human Resources Code, by adding Section 40.0226, to add standard language developed by the Sunset Commission regarding training.

SECTION 8. Amends Section 40.028(b), Human Resources Code, to require the board to develop and implement policies that clearly separate the policy making responsibilities of the board and the management responsibilities of the executive director and DPRS staff, rather than require the board to develop and implement policies that separate the respective responsibilities of the board and department staff.

SECTION 9. Amends Chapter 40B, Human Resources Code, by adding Section 40.0305, as follows:

Sec. 40.0305. STRATEGIC TECHNOLOGY STEERING COMMITTEE. Sets forth the terms by which DPRS is required to establish a strategic technology steering committee within DPRS to evaluate major information technology project proposals. Requires the committee to make recommendations to the executive director based on the committee's performance of its duties.

SECTION 10. Amends Section 40.032, Human Resources Code, to update standard language developed by the Sunset Commission regarding personnel policies.

SECTION 11. Amends Chapter 40C, Human Resources Code, by adding Section 40.0525, to add standard language developed by the Sunset Commission regarding separation of investigatory and service delivery functions.

SECTION 12. Amends Chapter 40C, Human Resources Code, by adding Sections 40.0563-40.0565, as follows:

Sec. 40.0563. COUNTY OUTREACH PROGRAM. Adds standard language developed by the Sunset Commission regarding the county outreach program.

Sec. 40.0564. DEPARTMENT FUNDS. Adds standard language developed by the Sunset Commission regarding department funds.

Sec. 40.0565. REPORT. Adds standard language developed by the Sunset Commission regarding an annual report.

SECTION 13. Amends Section 40.058, Human Resources Code, to update standard language developed by the Sunset Commission regarding contracts and agreements.

SECTION 14. Amends Chapter 40C, Human Resources Code, by adding Sections 40.066 and 40.067, as follows:

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. Adds standard language developed by the Sunset Commission regarding cooperation with the state office of administrative hearings.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. Sets forth the required action of DPRS regarding delivery of services in areas bordering the United Mexican States.

SECTION 15. Amends Chapter 42C, Human Resources Code, by adding Section 42.0461, as follows:

Sec. 42.0461. LICENSES RELATING TO FOSTER CARE. Sets forth the terms by which DPRS must require the applicant or license holder to publish notice; conduct a public hearing on whether the proposed action should be taken; and determine the support for, resources available for, and impact of the proposed action. Establishes the conditions by which certain applicants for a license and certain license holders are required to publish notice of the proposed action in certain newspapers. Sets forth the conditions under which DPRS is authorized to deny a license to an entity seeking to provide foster care services or deny a request to expand such an entity's capacity under a license.

SECTION 16. Amends Section 42.049(f), Human Resources Code, to delete the provision making a license valid until revoked or surrendered.

SECTION 17. Amends Chapter 42C, Human Resources Code, by adding Section 42.0495, as follows:

Sec. 42.0495. STAGGERED RENEWAL DATE OF LICENSE. Authorizes the board, by rule, to adopt a system under which licenses expire on various dates during the year. Sets forth the terms by which license fees are required to be prorated on a monthly basis. Provides that on renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 18. Amends Chapter 42C, Human Resources Code, by adding Section 42.0505, to add standard language developed by the Sunset Commission regarding renewal of a license.

SECTION 19. Amends Chapter 42C, Human Resources Code, by adding Section 42.057, to add standard language developed by the Sunset Commission regarding competitive bidding or advertising rules.

SECTION 20. Amends Chapter 42D, Human Resources Code, by adding Section 42.0705, to add standard language developed by the Sunset Commission regarding range of penalties.

SECTION 21. Amends Chapter 42D, Human Resources Code, by adding Section 42.0715, to add standard language developed by the Sunset Commission regarding costs charged to a facility.

SECTION 22. Amends Section 42.072, Human Resources Code, to update standard language developed by the Sunset Commission regarding sanctions.

SECTION 23. Amends Chapter 42D, Human Resources Code, by adding Section 42.078, to add standard language developed by the Sunset Commission regarding administrative penalties.

SECTION 24. Amends Chapter 43, Human Resources Code, by adding Section 43.0042, Human Resources Code, as follows;

Sec. 43.0042. RECOGNITION OF LICENSE ISSUED BY ANOTHER STATE. Sets forth the terms by which DPRS is authorized to waive any prerequisite to obtaining a license for an applicant. Authorizes DPRS to enter into an agreement with another state to permit licensing by reciprocity.

SECTION 25. Amends Chapter 43, Human Resources Code, by adding Section 43.0055, to add standard language developed by the Sunset Commission regarding competitive bidding or advertising rules.

SECTION 26. Amends Section 43.006, Human Resources Code, to update standard language developed by the Sunset Commission regarding fees.

SECTION 27. Amends Chapter 43, Human Resources Code, by adding Section 43.0081, to add standard language developed by the Sunset Commission regarding provisional licenses.

SECTION 28. Amends Chapter 43, Human Resources Code, by adding Section 43.0082, to add standard language developed by the Sunset Commission regarding staggered renewal dates of licenses.

SECTION 29. Amends Sections 43.009(b)-(f), Human Resources Code, to update standard language developed by the Sunset Commission regarding continuing education.

SECTION 30. Amends Section 43.010, Human Resources Code, as follows:

Sec. 43.010. New heading: LICENSE REVOCATION, SUSPENSION, OR REFUSAL; REPRIMAND OR PROBATION. Updates standard language developed by the Sunset Commission regarding license revocation, suspension, or refusal; and reprimand or probation.

SECTION 31. Amends Chapter 43, Human Resources Code, by adding Sections 43.0105 and 43.0106, as follows:

Sec. 43.0105. REVOCATION OF PROBATION. Adds standard language developed by the Sunset Commission regarding revocation of probation.

Sec. 43.0106. DISCIPLINARY HEARING. Adds standard language developed by the Sunset Commission regarding disciplinary hearings.

SECTION 32. Amends Section 48.081, Human Resources Code, to update standard language developed by the Sunset Commission regarding investigation of reports.

SECTION 33. Amends Section 161.001, Family Code, to authorize the court to order termination of a parent-child relationship if the court finds that the parent's parent-child relationship was previously terminated with respect to another child based on a finding that the parent's conduct was in violation of certain provisions of the law of another state; abandoned the child who has been in the conservatorship of DPRS or an authorized agency for not less than six months, rather than one year; or failed to comply with the provisions of a certain court order.

SECTION 34. Amends Section 261.001, Family Code, by adding Subdivision (7), to define "board."

SECTION 35. Amends Chapter 261D, Family Code, by adding Section 261.3015, as follows:

Sec. 261.3015. FLEXIBLE RESPONSE SYSTEM. Sets forth the terms by which the board, by rule, is required to establish a flexible response system to allow DPRS to allocate resources by investigating serious cases of abuse and neglect and providing assessment and family preservation services in less serious cases.

SECTION 36. Amends Section 261.311, Family Code, as follows:

Sec. 261.311. New heading: INTERVIEW OR EXAMINATION OF CHILD. Requires DPRS or the designated agency to interview or examine a child who is the subject of a report of suspected child abuse or neglect, and make a reasonable effort to notify each parent and legal guardian of the nature of the allegation. Sets forth the terms under which the notice is not required or may be delayed.

SECTION 37. Amends Chapter 261D, Family Code, by adding Section 261.315, as follows:

Sec. 261.315. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM RECORDS. Requires DPRS to remove information from its records about a person who is alleged in a report to have abused or neglected a child and who DPRS determines did not commit abuse or neglect. Requires the board to adopt rules as necessary to administer this

section.

SECTION 38. Amends Section 262.109(a), Family Code, to require DPRS or other agency to give written notice to each parent of the child, rather than either of the parents, under certain circumstances.

SECTION 39. Amends Section 262.201(c), Family Code, to make conforming changes.

SECTION 40. Amends Chapter 263A, Family Code, by adding Sections 263.006 and 263.007, as follows:

Sec. 263.006. WARNING TO PARENTS. Sets forth the conditions under which the court is required to inform each parent in open court that parental and custodial rights may be subject to restriction or termination unless certain conditions are met.

Sec. 263.007. DISMISSAL AFTER ONE YEAR. Sets forth the terms under which the court is required to dismiss the suit affecting the parent-child relationship filed by DPRS that requests termination of the relationship or requests that DPRS be named conservator of the child. Establishes the conditions under which the court is authorized to extend the court's jurisdiction of the suit for a certain period; and sets forth the contents of an extension order. Requires the court to render a final order or dismiss the suit on the specified date, and prohibits the court from granting an additional extension.

SECTION 41. Amends Section 263.201, Family Code, to update standard language developed by the Sunset Commission regarding status hearings, and the date on which they are held.

SECTION 42. Amends the heading of Chapter 263D, Family Code, as follows:

#### SUBCHAPTER D. PERMANENCY HEARINGS

SECTION 43. Amends Sections 263.301(a) and (b), Family Code, to include an attorney ad litem and a volunteer advocate appointed for the child under Chapter 107 among the persons entitled to at least 10 days notice of a permanency hearing, rather than a hearing to review a child's placement, and entitled to present evidence and be heard at the hearing. Makes conforming changes.

SECTION 44. Amends Section 263.302, Family Code, to set forth the terms by which a child is required to attend each permanency hearing, unless the court excuses the child's attendance. Deletes the provision authorizing the court to dispense with the attendance of the child at a placement hearing.

SECTION 45. Amends Chapter 263D, Family Code, by adding Section 263.3025, as follows:

Sec. 263.3025. PERMANENCY PLAN. Sets forth the terms under which DPRS is required to prepare, distribute copies of, and modify a permanency plan for a child for whom DPRS has been appointed temporary managing conservator. Sets forth the contents of a permanency plan.

SECTION 46. Amends Section 263.303, Family Code, as follows:

Sec. 263.303. New heading: PERMANENCY PROGRESS REPORT. Sets forth the terms by which the permanency progress report is required to recommend that the suit be dismissed or continue. Deletes the existing requirements regarding a status report.

SECTION 47. Amends Section 263.304, Family Code, as follows:

Sec. 263.304. New heading: INITIAL PERMANENCY HEARING; TIME. Sets forth the conditions by which the court is required to hold a permanency hearing to review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit. Deletes the existing

provisions regarding a permanency hearing.

SECTION 48. Amends Section 263.305, Family Code, as follows:

Sec. 263.305. New heading: SUBSEQUENT PERMANENCY HEARINGS. Requires a subsequent permanency hearing to be held not later than the 120th day after the date of the last hearing. Authorizes the court to order more frequent hearings. Deletes the provisions regarding subsequent review hearings.

SECTION 49. Amends Section 263.306, Family Code, as follows:

Sec. 263.306. New heading: PERMANENCY HEARINGS; PROCEDURE. Sets forth the terms under which the court is required, at each permanency hearing, to review the efforts of DPRS or another agency in accomplishing certain goals; return the child to the parent or parents if certain conditions are met; return the child to a person or entity, other than a parent, if certain conditions are met; evaluate the department's efforts to identify relatives who could provide the child with a safe environment; evaluate the parties' compliance with temporary orders and the service plan; determine whether other plans or services are needed to meet the child's needs; determine whether efforts have been made to place the child in the best institutional environment possible; order the services needed to assist the child in making the transition from substitute care to independent living under certain circumstances; determine plans, services, and further temporary orders necessary to ensure that a final order is rendered on time; and determine the date for dismissal of the suit and give notice to all parties. Deletes the existing provisions regarding the procedure of a review hearing.

SECTION 50. Amends Chapter 263, Family Code, by adding Subchapter E, as follows:

#### SUBCHAPTER E. PLACEMENT REVIEW HEARINGS

Sec. 263.401. PLACEMENT REVIEW AFTER FINAL ORDER. Sets forth the terms by which the court is required to conduct and provide notice of a placement review hearing if DPRS has been named as the child's managing conservator in certain final orders. Authorizes the court to dispense with the requirement that the child attend a placement review hearing.

Sec. 263.402. PLACEMENT REVIEW REPORT. Establishes the conditions by which DPRS or other authorized agency is required to file a placement review report with the court and provide a copy to certain persons. Sets forth the contents of a report and authorizes the court to order that a report is not required for a specific hearing.

Sec. 263.403. PLACEMENT REVIEW HEARINGS; PROCEDURE. Requires the court to make certain determinations at a placement review hearing.

SECTION 51. Amends Chapter 264B, Family Code, by amending Section 264.106, and adding Section 264.1061, as follows:

Sec. 264.106. New heading: CONTRACTS FOR FOSTER CARE SERVICES. Establishes the conditions by which DPRS is required to assess the need for foster care services throughout the state and contract with foster care providers. Sets forth certain requirements of a contract with a foster care provider. Defines "foster care provider." Deletes the existing provision regarding the expenditure of appropriated funds to purchase contract residential care for children.

Sec. 264.1061. FOSTER PARENT PERFORMANCE. Sets forth the terms by which DPRS is required to monitor the performance of a foster parent who does not provide foster care services through an entity under contract with or licensed by the department. Requires DPRS to include references to the criteria in a written agreement concerning the foster parent's services.

SECTION 52. Amends Section 264.107, Family Code, to require the department, in making

a placement of a child removed from the home of the child's custodial parent, to consider placing the child in the home of the child's noncustodial parent. Makes conforming changes.

SECTION 53. Amends Chapter 264C, Family Code, by adding Sections 264.206 and 264.207, as follows:

Sec. 264.206. SEARCH FOR ADOPTIVE PARENTS. Sets forth the conditions under which DPRS is required to begin its efforts to locate qualified persons to adopt a child at the time DPRS decides to petition for the termination of the parent-child relationship.

Sec. 264.207. DEPARTMENT PLANNING AND ACCOUNTABILITY. Establishes the conditions by which DPRS is required to adopt policies that provide for the improvement of the department's services for children and families through increased accountability of DPRS to individuals who receive services and to the public; and by assured consistency of services statewide.

SECTION 54. Repealer: Sections 263.308, Family Code (Parents Unable or Unwilling to Care for Child) and 263.309, Family Code (Review After Termination or Relinquishment of Parental Rights).

SECTION 55. (a) Effective date: September 1, 1997.

(b) Requires the board to adopt rules necessary to administer the changes in law made by this Act not later than November 1, 1997.

(c) Makes application of this Act prospective regarding the qualifications of, and prohibitions applying to, members of the board.

(d) Requires the executive director of DPRS to appoint the members of the strategic technology steering committee not later than November 1, 1997.

(e) Makes application of this Act prospective regarding a disciplinary proceeding or contested case.

(f) Makes application of this Act prospective regarding the imposition of a penalty or other disciplinary action.

(g) Makes application of this Act prospective regarding the qualifications for a license.

(h) Makes application of this Act prospective regarding the termination of the parent-child relationship.

SECTION 56. (a) Makes application of this Act prospective to January 1, 1998 regarding a contested case hearing conducted by the State Office of Administrative Hearings.

(b) Authorizes the executive director of DPRS and the chief administrative law judge of the State Office of Administrative Hearings to agree to transfer contested cases pending before DPRS to the State Office of Administrative Hearings before January 1, 1998.

SECTION 57. Makes application of this Act prospective regarding Section 42.0461, Human Resources Code, as it relates to an application for a license.

SECTION 58. Emergency clause.