

BILL ANALYSIS

Senate Research Center
80R19142 JRJ-D

C.S.S.B. 2039
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Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, if a legislative audit committee finds that a condition of gross fiscal mismanagement exists in a state agency, the committee is to notify the governor of the finding and to recommend that the governor appoint a conservator for that agency or to recommend to the agency that it agree within a specified time to enter into a rehabilitation plan. After this step, the governor is authorized to issue a proclamation that appoints a conservator, in accordance with the recommendation, to act as conservator of the agency. However, such steps could jeopardize the accreditation of Texas Southern University, and as a result, there may be a need for an alternative method for solving financial or administrative concerns.

C.S.S.B. 2039 creates the position of interim president to work with a new board of regents and a team of experts to develop and implement a rehabilitation plan to address financial and administrative concerns. This bill provides for the use of a rehabilitation plan to ensure sustained financial oversight and accountability for the agency and to include benchmarks and timelines for achieving specific goals. This bill requires continued reporting on the progress of the rehabilitation plan by the interim president, creates a legislative oversight committee, and authorizes the governor to appoint a new board of regents.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. INTERIM ADMINISTRATION OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SECTION 1.01. Amends Subchapter G, Chapter 51, Education Code, by adding Section 51.358, as follows:

Sec. 51.258. INTERIM ADMINISTRATION OF CERTAIN INSTITUTIONS ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY. (a) Defines "university."

(b) Provides that this section applies only to a university or university system.

(c) Authorizes the governor to make an independent finding that a condition of financial or administrative exigency exists within a university or university system (system) that creates continuing and pervasive instability in the operation and management of, or results in the consistent failure to properly perform all or part of the primary functions or duties of the university or system.

(d) Requires the governor to notify each member of the legislative audit committee of such a finding. Requires the legislative audit committee to meet to act on the governor's finding, at the call of either chair of the committee, not later than the 10th business day after the latest date a committee member receives notice from the governor under this subsection.

(e) Authorizes the governor to abolish the governing body of the university or university system (governing body) if the legislative audit committee concurs with the governor's finding under Subsection (c).

(f) Provides that an interim governing board (interim board) for the university or system is reconstituted and composed of five members appointed by the governor with the senate's advice and consent if a governing body is abolished under this section. Provides that each interim member holds office for a term expiring on the second anniversary of the date of the first appointment of such a member. Authorizes the interim board to appoint an interim president or chancellor to the university or system, with duties determined by the interim board, to serve during the term of the interim board.

(g) Provides that the governing body is reconstituted under the law providing for the governance of the university or system following the expiration of the term of the interim board. Requires the initial members of the reconstituted governing body to be appointed for terms that expire on dates necessary to conform with law providing for such terms.

(h) Provides that the law establishing the governing body and the terms of office for those members is suspended during the period in which an interim board is in effect.

(i) Requires the interim board, with the assistance of the interim president or chancellor, if any, to develop and implement a comprehensive administrative improvement plan (plan) for the university or system and to submit the plan to the governor and to each of the joint chairs of the legislative audit committee. Sets forth certain issues which the plan is required to address.

(j) Requires the plan to include timelines, benchmarks, and projected outcomes for improvements in the areas described under Subsection (i), to provide a procedure for the investigation and reporting of any possible criminal activity to the appropriate district attorney or county attorney and, unless prohibited by law, to certain elected officials, if the activity meets certain criteria, and to be prepared in a format specified by the governor with the legislative audit committee's approval.

(k) Authorizes the interim board to consult with appropriate experts as the interim board considers necessary in developing and implementing the plan.

(l) Authorizes the interim board to contract with another university system's administration office to provide financial and accounting services, including consulting services, to assist the university or system under interim administration in taking certain actions.

(m) Requires the interim board to prepare an annual financial statement for the university or system. Requires an audit of that statement to be prepared by the state auditor or an independent private auditor, as determined by the legislative audit committee. Requires such an audit to include a review of each contract entered into by the university or system that has a value greater than \$50,000 and is active or was entered into by the university or system during the two-year period immediately preceding the date the interim administration took effect.

(n) Requires the interim board to report to certain elected officials on the plan's progress and on the progress of the outcomes for each area described by Subsection (i), including specific information regarding that progress. Sets forth certain times at which this report is required to be provided.

(o) Requires an interim board and an interim president or chancellor to consult with the accreditation agencies which accredit the university or system and to take the appropriate action, to the extent necessary, to ensure that the university or

system maintains accreditation during the period in which the interim board is in effect.

(p) Entitles a person appointed as interim president or chancellor to receive a salary for performing those duties that is equal to the salary of the chief administrative officer of the university or system under interim administration. Requires the university or system to pay the salary of the interim president or chancellor from funds appropriated or otherwise available to the university or system, except to the extent that money to pay the salary is specifically approved or made available through the budget execution process for that purpose.

(q) Entitles a member of an interim board or an interim president or chancellor to reimbursement for the necessary and reasonable expenses incurred by that person in the course of performing the person's duties under this chapter. Requires reimbursement to be paid from funds appropriated or otherwise available to the university or system, except to the extent that money to pay for those expenses is specifically approved or made available through the budget execution process for that purpose.

(r) Requires the lieutenant governor and the speaker of the house of representatives to appoint a legislative oversight committee composed of two members of the senate and three members of the house of representatives to review the activities of the board and the succeeding, reconstituted governing body, as soon as practicable after appointing a board. Provides that such a committee expires on the third anniversary of the date of the first appointment of a member to the interim board.

(s) Requires the university or university system placed under the interim administration to continue to report to the governor and the legislative audit committee at least once each quarter after the termination of an interim administration under this chapter. Requires the report to include the information required by Subsection (i).

ARTICLE 2. INTERIM ADMINISTRATION OF CERTAIN STATE AGENCIES ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SECTION 2.01. Amends Subtitle C, Title 10, Government Code, by adding Chapter 2116, as follows:

CHAPTER 2116. INTERIM ADMINISTRATION OF CERTAIN STATE AGENCIES ON FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITION. Defines "state agency."

Sec. 2116.002. APPLICABILITY OF CHAPTER. Provides that this chapter does not apply to an agency that is under the direction of an elected officer, board, or commission, or a university system or institution of higher education.

[Reserves Sections 2116.003-2116.010 for expansion.]

SUBCHAPTER B. INTERIM ADMINISTRATOR

Sec. 2116.011. APPOINTMENT; TERM. (a) Authorizes the governor, with the senate's advice and consent, to appoint an interim administrator to oversee the interim administration of a state agency if the required finding is made under Section 2116.021. Requires an appointment under this subsection to be made in consultation with the legislative audit committee.

(b) Requires a person to be qualified, by experience or education, to administer under the prevailing circumstances of the state agency, in order to be eligible for appointment.

(c) Provides that the term of an interim administrator expires on the date the interim administration terminates as determined under Section 2116.026. Authorizes an interim administration to be reappointed to continue the interim administration if said administration is extended under Section 2116.026.

Sec. 2116.012. TITLE. Requires the governor to provide that the interim administrator has the title of interim administrator or interim commissioner, as appropriate to the state agency to which the interim administrator is appointed.

Sec. 2116.013. COMPENSATION. (a) Entitles a person appointed as an interim administrator to receive a salary for performing those duties that is equal to the salary of the chief administrative officer of the state agency under interim administration.

(b) Requires the state agency to pay the salary of the interim administrator from funds appropriated or otherwise available to the state agency, except to the extent that money to pay the salary is specifically approved or made available through the budget execution process for that purpose.

Sec. 2116.014. REIMBURSEMENT OF EXPENSES. (a) Entitles an interim administrator to reimbursement for the necessary and reasonable expenses incurred by that person in the course of performing the person's duties under this chapter. Requires reimbursement to be paid from funds appropriated or otherwise available to the state agency, except to the extent that money to pay for those expenses is specifically approved or made available through the budget execution process for that purpose.

(b) Provides that a limit prescribed by general law or the General Appropriations Act on the amount of reimbursement of expenses that state officers or members of state boards and commissions may generally receive does not apply to the reimbursement of the reasonable and necessary expenses incurred by an interim administrator in the course of performing duties under this chapter.

[Reserves Sections 2116.015-2116.020 for expansion.]

SUBCHAPTER C. INTERIM ADMINISTRATION

Sec. 2116.021. FINDING OF FINANCIAL OR ADMINISTRATIVE EXIGENCY. (a) Authorizes the governor to make an independent finding that a condition of financial or administrative exigency exists within a state agency that creates continuing and pervasive instability in the operation and management of, or results in the consistent failure to properly perform all or part of the primary functions or duties of, the state agency.

(b) Requires the governor to notify each member of the legislative audit committee of such a finding. Requires the legislative audit committee to meet to act on the governor's finding, at the call of either chair of the committee, not later than the 10th business day after the latest date a committee member receives notice from the governor under this subsection.

(c) Authorizes the governor to place the agency under interim administration and appoint an interim administrator as provided by this chapter only if the legislative audit committee concurs with the governor's finding under Subsection (a).

Sec. 2116.022. GOVERNING POWERS; SUSPENSION; TRANSFER. (a) Authorizes the governor to suspend the powers and duties of the governing officer or body, as applicable, of a state agency placed under interim administration unless the governor abolishes the position of said officer or body under Section 2116.021. Provides that the suspension terminates when the interim administration terminates.

(b) Transfers the powers and duties of the governing officer or body suspended by the governor to the interim administrator, except as provided by Subsection (c).

(c) Requires the interim administrator to consult with the governing officer or body, as applicable, of the state agency to which the interim administrator is appointed to ensure that the state agency maintains accreditation.

Sec. 2116.023. ADMINISTRATIVE IMPROVEMENT PLAN. (a) Requires the interim administrator to develop and implement a comprehensive administration improvement plan (plan) for the state agency and to submit the plan to the governor and to each of the joint chairs of the legislative audit committee. Sets forth certain issues which the plan is required to address.

(b) Requires that the plan include timelines, benchmarks, and projected outcomes for improvements in the areas described under Subsection (a), provide a procedure for the investigation and reporting of any possible criminal activity to the appropriate district attorney or county attorney and, unless prohibited by law, to certain elected officials, if the activity meets certain criteria, and be prepared in a format specified by the governor with the legislative audit committee's approval.

(c) Authorizes the interim administrator to consult with appropriate experts as the interim administrator considers necessary in developing and implementing the plan.

Sec. 2116.024. FINANCIAL OVERSIGHT. (a) Authorizes the interim administrator to contract with another state agency that provides financial and accounting services, including consulting services, to assist the state agency under interim administration in taking certain actions.

(b) Requires the interim board to prepare an annual financial statement for the state agency. Requires an audit of that statement to be prepared by the state auditor or an independent private auditor, as determined by the legislative audit committee. Requires such an audit to include a review of each contract entered into by the state agency that has a value greater than \$50,000 and is active or was entered into by the state agency during the two-year period immediately preceding the date the interim administration took effect.

Sec. 2116.025. REPORT. (a) Requires the interim administrator to report to certain elected officials on the plan's progress and on the progress of the outcomes for each area described by Subsection (a), including specific information regarding that progress at certain times.

(b) Requires the report to include specific information on the progress of the outcomes for each area described by Section 2116.023(a).

Sec. 2116.026. DURATION OF INTERIM ADMINISTRATION. (a) Requires the governor, with the advice of the legislative audit committee, to determine the duration of an interim administration, except that the duration is prohibited from exceeding two years.

(b) Authorizes the governor, with the advice of the legislative audit committee, to extend the duration of the interim administration that lasted less than two years on a determination by the governor that an extension is necessary to accomplish the purposes of this chapter, provided that the initial duration and the extended duration together do not exceed two years.

(c) Requires the governor to review the progress of the interim administration, if said administration has a duration longer than six months, after each six-month period and to consider whether the interim administration is to be continued after that period. Provides that the interim administration terminates on the 30th day

after the end of that period unless the governor, with the advice of the legislative audit committee, elects to continue the administration.

Sec. 2116.027. REPORT FOLLOWING TERMINATION OF INTERIM ADMINISTRATION. Requires the state agency placed under the interim administration to continue to report to the governor and the legislative audit committee at least once each quarter after the termination of an interim administration under this chapter. Requires the report to include the information required by Section 2116.025.

[Reserves Sections 2116.028-2116.040 for expansion.]

SUBCHAPTER D. OPTION FOR INTERIM GOVERNING BOARD AND RECONSTITUTED GOVERNING OFFICER OR BODY

Sec. 2116.041. ABOLITION OF GOVERNING OFFICER OR BODY. Authorizes the governor, on concurrence by the legislative audit committee that a condition of financial or administrative exigency exists within the state agency as described by Section 2116.021 and as an alternative to the appointment of an interim administrator and the options provided under Subchapters B and C, to abolish the governing officer or body, as applicable, of a state agency.

Sec. 2116.042. INTERIM GOVERNING BOARD. Provides that an interim board is reconstituted for the state agency and composed of five members appointed by the governor, with the advice and consent of the senate, if a governing officer or body is abolished under this subchapter. Provides that each interim member holds office for a term expiring on the second anniversary of the date of the first appointment of such a member. Requires consultation with the legislative audit committee in making this appointment.

Sec. 2116.043. RECONSTITUTION OF PERMANENT GOVERNING OFFICER OR BODY. (a) Provides that the governing officer or body, as applicable, is reconstituted under the law providing for the governance of the state agency following the expiration of the term of the interim board members. Requires the initial reconstituted governing officer or members of the governing body to be appointed for terms that expire on the date or dates necessary to conform with the permanent law establishing those terms.

(b) Provides that the law establishing the governing officer or governing body and the term or terms of office for the governing officer or those members is suspended during the period in which a board is in effect.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01 Effective date: upon passage or September 1, 2007.