

## **BILL ANALYSIS**

Senate Research Center

H.B. 3756  
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Government Organization  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Many of the statutory provisions concerning the programs of the Texas State Library and Archives Commission (TSLAC) have not been updated in more than 20 years. Definitions under the Library Systems Act, for instance, relate to programs and population groups that have shifted over the years. Additionally, future growth of the Library Systems and the TexShare Library Consortium is based on allowing TSLAC and the systems the flexibility to expand the program. Finally, ongoing efforts by TSLAC to retrieve lost archival treasures of the state, such as claims for services or supplies provided to the Republic of Texas, and reports of military activities during the Texas revolution, have been hampered because of a lack of clarity in current statute about the state's right of recovery and limitations on the state's definition of an archival record.

H.B. 3756 updates statutes related to the operations of TSLAC by deleting obsolete provisions and modernizing definitions and terms to reflect current practices and standards related to TSLAC's Talking Book Program, the "Texas Reads" license plate, the Library Systems Act, the TexShare program, the local records division, and the archives division. The bill also enables TSLAC to expand the membership of the TexShare program and its advisory board through rulemaking authority and allows regional library systems to serve various types of libraries. The bill also details TSLAC's right of recovery of state archival records by broadening the definitions of "state archival records" and granting TSLAC retroactive authority to retrieve Texas historical records created pre-statehood. Finally, the bill repeals county librarian certification references in statute and corrects drafting errors in legislation from the 80th Legislature, Regular Session, 2007, regarding the reauthorization of TSLAC.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas State Library and Archives Commission (TSLAC) is modified in SECTION 12 (Section 441.130, Government Code), SECTION 21 (Section 441.226, Government Code), and SECTION 22 (Section 441.229, Government Code) of this bill.

Rulemaking authority is expressly granted to TSLAC in SECTION 20 (Section 441.224, Government Code) of this bill.

Rulemaking authority previously granted to the director and librarian of TSLAC is modified in SECTION 14 (Section 441.136, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 441.006(a), Government Code, to require the Texas State Library and Archives Commission (TSLAC) to provide library services to persons with disabilities in cooperation with the federal government. Makes nonsubstantive changes.

SECTION 2. Amends the heading to Section 441.009, Government Code, to read as follows:

Sec. 441.009. STATE PLAN FOR LIBRARY SERVICES AND TECHNOLOGY.

SECTION 3. Amends Sections 441.009(a) and (c), Government Code, as follows:

(a) Authorizes TSLAC to adopt a state plan for improving library services consistent with federal goals, rather than a state plan for improving services of and constructing county, municipal, and other public libraries.

(c) Requires the plan to include a procedure by which a library, rather than a county or municipal library, may apply for money under the plan and a procedure for a fair hearing for a library whose application for money is refused. Authorizes money from local, state, or federal sources to be used. Requires that the money be administered according to local, state, and federal requirements.

SECTION 4. Amends the heading to Section 441.0092, Government Code, to read as follows:

Sec. 441.0092. TEXAS READS PROGRAM GRANTS.

SECTION 5. Amends Section 441.0092(a), Government Code, to require TSLAC, from the money in the Texas Reads program account, rather than the new millennium reading program account, to make grants to fund programs to promote reading provided by public libraries.

SECTION 6. Amends Sections 441.122(1), (10), (11), and (13), Government Code, to redefine "accreditation of libraries," "major resource center," "major resource system," and "regional library system."

SECTION 7. Amends Sections 441.124(a) and (d), Government Code, as follows:

(a) Requires TSLAC to appoint an advisory board composed of five librarians qualified by training, experience, and interest to advise TSLAC on the policy to be followed in applying this subchapter. Provides that Chapter 2110 (State Agency Advisory Committees) does not apply to the composition of the advisory board.

(d) Provides that a member of the board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

SECTION 8. Amends the heading to Section 441.126, Government Code, to read as follows:

Sec. 441.126. AUTHORITY TO ESTABLISH SYSTEMS.

SECTION 9. Amends Section 441.127(c), Government Code, to require the governing body of a public library that proposes to become a major resource center to submit to the director and librarian an annual plan of service for the major resource system made in consultation with the advisory council. Deletes existing text that requires the governing body of a public library that proposes to become a major resource center to submit to the director and librarian an initial plan of service for the major resource system and annually after the library becomes a major resource center is to submit a plan of system development made in consultation with the advisory council.

SECTION 10. Amends the heading to Section 441.1271, Government Code, to read as follows:

Sec. 441.1271. EXTENDING MEMBERSHIP OF SYSTEMS TO CERTAIN NONPUBLIC LIBRARIES.

SECTION 11. Amends Sections 441.1271(a), (b), (c), (d), and (e), Government Code, as follows:

(a) Authorizes a major resource system to extend its membership to include libraries that are not public libraries and that are operated by certain entities, including a public school district, an institution of higher education, a unit of local, state, or federal government, an accredited nonpublic elementary or secondary school, or special or research libraries, rather than a unit of local government. Makes a nonsubstantive change.

(b) Requires that the decision to extend major resource system membership under Subsection (a) be made in accordance with the bylaws of the library system, rather than made on a two-thirds vote of the governing bodies of the members of the major resource system, and approved by the TSLAC.

(c) Provides that a library that is a type of library to which a major resource system has extended its membership under this section is required to be accredited by TSLAC to be eligible to join the system, and is authorized to join the system by resolution or agreement of its governing body or designee, rather than is authorized to join the system by resolution or ordinance of its governing body and execution of interlibrary contracts for service.

(d) Authorizes TSLAC to terminate the membership of a library that is not a public library and that joined a major resource system under this section if the library loses its accreditation by ceasing to meet the minimum standards established by TSLAC. Deletes existing text authorizing TSLAC to terminate the system membership of a library that is not a public library and that joined a major resource system under this section if the library fails to comply with obligations stated in the applicable resolution or ordinance or interlibrary contracts for service. Makes nonsubstantive changes.

(e) Requires a library that joins a major resource system under this section to agree to loan materials without charge to users of other libraries in the system, rather than requires a library that is not a public library that joins a major resource system under this section to provide benefits to the public through its membership in the system that are sufficient to constitute fair value in exchange for the benefits received by the library through its membership in the system.

SECTION 12. Amends Sections 441.130(a) and (b), Government Code, as follows:

(a) Provides that each major resource system has an advisory council composed of not more than 12 members, rather than composed of six lay members, representing the member libraries of the system.

(b) Requires TSLAC to adopt rules to provide guidance to major resource systems on the administrative operation of advisory councils. Requires major resource systems to use this guidance to develop bylaw provisions for their advisory councils. Deletes existing text requiring the governing body of each member library of the system to elect or appoint a representative to elect council members. Deletes existing text requiring the representatives to meet following their selection and to elect the initial council from their group. Deletes existing text requiring the representatives in an annual meeting to elect members of their group to fill council vacancies caused by expiration of terms of office. Deletes existing text requiring other vacancies to be filled for the unexpired term by the remaining members of the council. Deletes existing text requiring that, at all times, one member be a representative of the major resource center.

SECTION 13. Amends Section 441.131, Government Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Authorizes bylaws adopted or a contract executed under this section to permit other libraries operated by the following entities to become members of the regional library system:

(1) a public school district, rather than public school districts;

(2) an institution of higher education, rather than, institutions;

(3) a unit of local, state, or federal government, rather than units of state or local government;

(4) an accredited nonpublic elementary or secondary school; or a special or research library; or

(5) a special or research library. Makes nonsubstantive changes.

(b-1) Authorizes bylaws adopted under Subsection (b) to provide for reorganization, merger, division, and dissolution.

(b-2) Requires a library that joins a regional system under this section to agree to loan materials without charge to users of other libraries in the system.

SECTION 14. Amends Sections 441.136(a) and (d), Government Code, as follows:

(a) Requires the director and librarian, with the advice of the advisory board, to propose rules, rather than initial rules, necessary to the administration of the program of state grants, including qualifications for major resource system membership. Requires that the rules be proposed and adopted according to Chapter 2001 (Administrative Procedure). Deletes existing text requiring that the proposed rules be published in the official publication of the Texas State Library with notice of a public hearing before TSLAC on the proposed rules to be held on a specified date not less than 30 nor more than 60 days after the date of the publication.

(d) Requires TSLAC to include requirements in its rules to ensure that the constituent member libraries, rather than both the population served and the constituent member libraries, are adequately represented in the conduct of system business relating to activities involved in the development of a plan service and adequately represented on each major resource system advisory council.

SECTION 15. Amends Section 441.160, Government Code, to delete existing text that provides that editorial changes that do not substantively change the description of a record or its retention period and changes to retention periods as the result of changes to retention periods prescribed in a federal or state law, rule of court, or regulation no not require approval of the local government records committee before adaptation.

SECTION 16. Amends Section 441.180(11), Government Code, to redefine "state record."

SECTION 17. Amends Sections 441.192(a), (b), and (c), Government Code, as follows:

(a) Authorizes the governing body of a state agency to demand the return of any state record, rather than any state government record, in the private possession of a person if the removal of the state record from the state agency or the agency's predecessor was not authorized by law.

(b) Authorizes the director and librarian to demand the return of any state record, rather than any state government record of permanent value, or archival state record, in the private possession of any person.

(c) Makes conforming changes.

SECTION 18. Amends Section 441.222, Government Code, as follows:

Sec. 441.222. CREATION OF CONSORTIUM. Requires TSLAC to establish and maintain the TexShare consortium as a resource-sharing consortium operated as a program within the commission for libraries at institutions of higher education and for public libraries, libraries of nonprofit corporations, and other types of libraries. Makes nonsubstantive changes.

SECTION 19. Amends Section 441.223, Government Code, as follows:

Sec. 441.223. FINDINGS; PURPOSE AND METHODS. Provides that the legislature finds that it is necessary to assist libraries across the state to promote the public good by achieving certain public purposes through certain methods. Deletes existing text providing that the legislature finds that it is necessary to assist libraries at public and

private or independent institutions of higher education, public libraries, designated public school libraries, and libraries of nonprofit corporations to promote the public good by achieving certain public purposes through certain methods including enhancing the ability of public schools to further student achievement and lifelong learning through designated public school library participation in group purchasing agreements.

SECTION 20. Amends Section 441.224(a), Government Code, to authorize TSLAC, by rule, to also admit other types of libraries as members or as affiliated members.

SECTION 21. Amends Sections 441.226(a) and (b), Government Code, as follows:

(a) Requires TSLAC to appoint an advisory board, rather than an eleven-member advisory board, to advise TSLAC on matters relating to the consortium. Requires the composition of the board to be representative of the various types of libraries comprising the membership. Deletes existing text requiring that at least two members be affiliated with a four-year public university in the consortium, at least two members be affiliated with a public community college in the consortium, at least two members be affiliated with a private institution of higher education in the consortium, and at least two members be affiliated with a public library in the consortium.

(b) Requires TSLAC to adopt rules regarding the organization and structure of the advisory board. Deletes existing text requiring the advisory board to meet regularly regarding consortium programs and plans at the call of the advisory board's chairman or of the director and librarian.

SECTION 22. Amends Sections 441.229(b) and (c), Government Code, as follows:

(b) Authorizes TSLAC to designate libraries, rather than public school libraries, that may participate in group purchasing agreements provided to the consortium.

(c) Authorizes TSLAC to allow designated libraries to participate in a group purchasing agreement only to the extent that TSLAC may do so efficiently and in a manner that enhances resource sharing services to the consortium members, rather than authorizes TSLAC to allow designated public school libraries to participate in a group purchasing agreement only to the extent that TSLAC may do so efficiently and only in a manner that does not reduce services to consortium members.

SECTION 23. Amends Section 441.230, Government Code, as follows:

Sec. 441.230. GRANTS TO MEMBERSHIP INSTITUTIONS. Authorizes TSLAC, to achieve the purposes of this subchapter, to grant money to consortium members, rather than institutions of higher education. Requires TSLAC to require a recipient of a grant to report to TSLAC information relating to best practices and performance outcomes.

SECTION 24. Amends Sections 323.005(b) and (d), Local Government Code, as follows:

(b) Deletes existing text providing that a person is not eligible for employment as a county librarian unless the person has first obtained from TSLAC a county librarian's certificate of qualification. Deletes existing text providing that if a person has received the certificate and has served as a county librarian, further examination and certification by TSLAC is not required for employment or reemployment of the person as a county librarian.

(d) Requires that the county librarian, on or before March 31 of each year, report to the commissioners court and the state librarian on the operation of the county library during the previous fiscal year. Deletes existing text requiring the county librarian, on or before October 1 of each year, to report to the commissioners court and the state librarian on the operation of the county library during the year ending on the preceding August 31.

SECTION 25. Amends Section 323.011(b), Local Government Code, to delete existing text requiring the contract to provide that the librarian of the established library hold or secure a county librarian's certificate from TSLAC.

SECTION 26. Repealers: Sections 441.122(3) (relating to the definition of "area library") and (5) (relating to the definition of "community library"), Government Code.

Repealers: Sections 441.130(c) (relating to the term of office of a council member), (d) (relating to persons the council is required to elect), (e) (relating to the frequency that the council is required to meet), and (f) (relating to the compensation and reimbursements that the members of the council receive), Government Code.

Repealer: Section 441.133 (Area Libraries), Government Code.

Repealer: Section 441.134 (Community Libraries), Government Code.

Repealers: Sections 441.136(b) and (c) (relating to the adoption of rules by TSLAC), Government Code.

Repealer: Section 441.139 (Research Fees for For-Profit Entities), Government Code.

Repealer: Section 441.158(d) (relating to the adoption of a records retention schedule), Government Code.

Repealer: Section 441.161 (Local Government Records Committee), Government Code.

Repealer: Section 441.162 (Composition of the Committee), Government Code.

Repealer: Section 441.163 (Appointment of Local Government Records Committee; Compensation), Government Code.

Repealer: Section 441.164 (Term; Qualification; Vacancy), Government Code.

Repealer: Section 441.165 (Certain Commission Rules), Government Code.

Repealers: Sections 441.226(c) (relating to the length of term for members of the advisory board) and (e) (relating to the election of a chairman and vice chairman), Government Code.

SECTION 27. Provides that the changes in law made by this Act to Sections 441.180 (Definitions) and 441.192 (Right of Recovery), Government Code, apply retroactively and apply to all state records regardless of when the records were removed from the custody of this state.

SECTION 28. Effective date: September 1, 2009.