

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 4181
By: Geren (Hancock)
Business & Commerce
5/16/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 4181 amends current law relating to the organization and efficient operation of the legislative branch of state government.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 301.001, 301.002, 301.003, 301.004, and 301.005, Government Code, as follows:

Sec. 301.001. New heading: TIME AND PLACE OF MEETING. Requires the legislature to convene at the seat of government in regular session at 12 noon on the second Tuesday in January of each odd-numbered year, rather than convene in regular session at 12 noon on the second Tuesday in January of each odd-numbered year.

Sec. 301.002. WHO MAY ORGANIZE. (a) Creates this subsection from existing text. Authorizes the following individuals only to organize the senate, rather than authorizing the following persons only to organize the senate and house of representatives:

(1) makes no changes to this subdivision; and

(2) individuals who have received certification of election to the senate, rather than individuals who have received certification of election to the house of representatives or senate.

(b) Authorizes only the individuals who have received certification of election to the house of representatives to organize the house of representatives.

Sec. 301.003. New heading: PRESIDING OFFICERS. (a) Requires the secretary of state (SOS) to attend and preside at the organization of the house of representatives, rather than requiring SOS to attend the convening of each regular legislative session and to preside.

(b) Requires the Texas attorney general (attorney general), if there is no SOS or if SOS is absent or unable to attend, to attend and preside at the organization of the house of representatives, rather than attend and preside.

(c) Requires the lieutenant governor to attend and preside at the organization of the senate. Authorizes the lieutenant governor, if the lieutenant governor is absent or unable to attend, to designate a member of the senate who is entitled to organize the senate under Section 301.002(a)(1) (relating to authorizing senators who have not completed their terms of office to organize the senate) to preside. Deletes existing text requiring SOS to appoint a clerk to take the minutes of the proceedings. Deletes existing text requiring SOS, if the chief clerk of the house of

representatives for the previous session is present, to appoint that person to act as clerk.

(d) Requires the senator with the greatest number of years of cumulative service as a member of the senate who is entitled to organize the senate under Section 301.002(a)(1), if there is no lieutenant governor, to preside.

Sec. 301.004. New heading: TEMPORARY OFFICERS; DUTIES. (a) Requires the secretary of the senate for the previous session, if that individual is present, to act as temporary secretary of the senate. Requires SOS, if the chief clerk of the house of representatives for the previous session is present, to appoint that individual to act as temporary chief clerk. Requires the presiding officer of each house of the legislature to appoint any temporary officers necessary to ensure the organization of the legislature

(b) Creates this subsection from existing Subsection (a) and redesignates subsequent subsections accordingly. Requires the secretary of the senate or chief clerk, under the direction of the presiding officer, to call the districts of the appropriate house in numerical order regardless of whether SOS has received the election returns for each district, rather than requiring the clerk, under the direction of SOS, to call the counties in alphabetical order regardless of whether SOS has received the election returns for each county.

(c) Makes a nonsubstantive change to this subsection.

(d) Requires the official oath to be administered to each senator-elect by an officer authorized by law to administer oaths after the secretary of the senate has called the districts and the senators-elect have appeared and presented their credentials.

(e) Creates this subsection from existing text. Requires the chief clerk, after the chief clerk has called the districts and the members-elect of the house of representatives have appeared and presented their credentials, to administer the official oath to each member-elect, rather than requiring the clerk, after the clerk has called the counties and the members-elect have appeared and presented their credentials, to administer the official oath to each member-elect.

(f) Requires the presiding officer of each house to ensure that a journal of the proceedings of that house is kept.

Sec. 301.005. LACK OF QUORUM. Requires the presiding officer of a house of the legislature and the secretary of the senate or chief clerk, as appropriate, if a quorum is not present in a house of the legislature on the day the legislature is to convene, rather than requiring SOS and the clerk, if a quorum is not present on the day the legislature is to convene, to attend each day until a quorum appears and is qualified.

SECTION 2. Amends Section 301.006, Government Code, by adding Subsection (c) to require the senate, after the senators-elect have taken the official oath, to choose necessary officers, and to require the lieutenant governor or an officer authorized by law to administer oaths to administer the official oath to those officers.

SECTION 3. Amends the heading to Subchapter B, Chapter 301, Government Code, to read as follows:

SUBCHAPTER B. COMMITTEES AND COMMITTEE PROCEDURE

SECTION 4. Amends Section 301.014, Government Code, as follows:

Sec. 301.014. POWERS AND DUTIES OF STANDING COMMITTEES. (a) Requires each standing committee to:

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

(3) makes a nonsubstantive change to this subdivision; and

(4) recommend to the appropriate house any legislation the committee believes is necessary and desirable, rather than formulate legislative programs. Deletes Subdivision (5) and existing text requiring each standing committee to initiate, draft, and recommend to the appropriate house any legislation the committee believes is necessary and desirable.

(b) Deletes existing text requiring the chair of each standing committee to introduce or cause to be introduced the legislative programs developed by the committee and to mobilize committee efforts to secure the enactment into law of committee proposals. Creates this subsection from existing Subsection (c) and redesignates subsequent subsections accordingly.

(c) Requires each committee to search for problems within its jurisdiction and develop, formulate, and recommend passage of, rather than develop, formulate, initiate, and secure passage of, any legislative solution the committee believes is desirable.

SECTION 5. Amends Section 301.015(b), Government Code, as follows:

(b) Provides that each committee is required to meet in Austin, except that if authorized by rule or resolution, rather than authorized by resolution, of the house creating the committee, the committee is authorized to meet in any location in this state that the committee determines necessary. Makes a conforming change to this subsection.

SECTION 6. Amends Sections 301.016 and 301.017, Government Code, as follows:

Sec. 301.016. SPECIAL COMMITTEES. (a) Authorizes each house acting individually, or the two houses acting jointly, to create special committees by rule or resolution, rather than by resolution.

(b) and (c) Makes conforming changes to these subsections.

Sec. 301.017. GENERAL INVESTIGATING COMMITTEES. (a) Authorizes each house, by rule or resolution, rather than by resolution, to create a general investigating committee.

(b) Requires the president of the senate to designate one committee member as chairman and one committee member as vice chairman, rather than designate a committee member as chairman, of the senate general investigating committee.

(c) Requires the speaker of the house of representatives to designate one committee member as chairman and one committee member as vice chairman, rather than designate a committee member as chairman, of the house general investigating committee.

(d) and (e) Makes no changes to these subsections.

(f) Deletes existing text requiring each general investigating committee to select a vice-chairman and secretary from among its members. Creates this subsection from existing Subsection (g) and redesignates subsequent subsections accordingly.

(g) Requires all expenses of a general investigating committee, including compensation of the committee's employees and expenses incurred by members, to be paid out of any appropriation to the legislature under Section 301.029 (Appropriations For Salaries, Per Diem, and Expenditures), rather than paid out of

any appropriation to the legislature for mileage, per diem, and contingent expenses.

SECTION 7. Amends Section 301.018(e), Government Code, as follows:

(e) Requires the general investigating committees, if the general investigating committees decide not to conduct joint hearings as provided by Section 301.019 (Joint General Investigating Committee Hearings), to establish a liaison to fully inform each other of the nature and progress of committee inquiries, rather than establish a liaison to fully inform the chairman of the inactive committee of the nature and progress of any inquiry by the other committee.

SECTION 8. Amends Section 301.019(c), Government Code, to provide that a majority of the members from each house's committee constitutes a quorum of a joint general investigating committee, rather than providing that seven members of a joint general investigating committee constitute a quorum.

SECTION 9. Amends Section 301.020(e), Government Code, as follows:

(e) Provides that information held by a general investigating committee is confidential and not subject to public disclosure except as provided by the rules of the house establishing the committee, rather than providing that information held by a general investigating committee that if held by a law enforcement agency or prosecutor would be excepted from the requirements of Section 552.021 (Availability of Public Information) under Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information) is confidential and not subject to public disclosure.

SECTION 10. Amends Section 301.032, Government Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Authorizes a committee created by rule or resolution, subject to Subsection (c), to accept gifts, grants, and donations for purposes of funding the committee's activities unless the rule or resolution prohibits the acceptance, rather than authorizing a committee created by resolution to accept gifts, grants, and donations for purposes of funding the committee's activities unless the resolution prohibits the acceptance.

(c) Provides that the acceptance of a gift, grant, or donation under Subsection (b) is not effective until the committee on administration for the appropriate house, or the committees on administration for both houses in the case of acceptance by a joint committee, approves the acceptance.

(d) Creates this subsection from existing text and makes no further changes to this subsection.

SECTION 11. Transfers Section 301.041, Government Code, to Subchapter B, Chapter 301, Government Code, redesignates it as Section 301.033, Government Code, and amends it as follows:

Sec. 301.033. New heading: TERMINATION OF MEMBERSHIP ON INTERIM COMMITTEE. Makes no further changes to this section.

SECTION 12. Amends the heading to Subchapter C, Chapter 301, Government Code, as follows:

SUBCHAPTER C. LEGISLATIVE OFFICERS AND EMPLOYEES

SECTION 13. Amends Subchapter C, Chapter 301, Government Code, by adding Sections 301.041, 301.042, and 301.043, as follows:

Sec. 301.041. COMMUNICATIONS WITH PARLIAMENTARIANS. (a) Provides that communications, including conversations, correspondence, and electronic communications, between a member, officer, or employee of the legislative branch and a parliamentarian appointed by the presiding officer of either house that relate to a request by the member, officer, or employee for information, advice, or opinions from a parliamentarian are confidential and subject to legislative privilege. Provides that information, advice, and opinions given privately by a parliamentarian to a member, officer, or employee of the legislative branch, acting in the member's, officer's, or employee's official capacity, are confidential and subject to legislative privilege. Authorizes the member, officer, or employee of the legislative branch to choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and provides that such disclosure does not violate the law of this state.

(b) Provides that records relating to requests made of a parliamentarian appointed under Subsection (a) for assistance, information, advice, or opinion are not public information and are not subject to Chapter 552 (Public Information).

(c) Defines "member, officer, or employee of the legislative branch" and "parliamentarian" for purposes of this section.

Sec. 301.042. COMMUNICATIONS WITH ENGROSSING AND ENROLLING DEPARTMENT. (a) Defines "department," for purposes of this section, as an engrossing and enrolling department maintained by either house of the legislature.

(b) Provides that communications, including conversations, correspondence, and electronic communications between a member of the legislature or the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee, or a member of the staff of any of these officers or entities and an assistant or employee of a department that relate to a request of the officer or entity for information, advice, or opinions from an assistant or employee of the department are confidential and subject to legislative privilege.

(c) Provides that a communication described by Subsection (b) is subject to attorney-client privilege if:

(1) the assistant or employee of the department who is a party to the communication is a department attorney or is working at the direction of a department attorney;

(2) the communication is given privately; and

(3) the communication is made in connection with the department attorney's provisions of legal advice or other legal services.

(d) Provides that information, advice, and opinions given privately by an assistant or employee of a department to a member of the legislature or the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee, or a member of the staff of any of these officers or entities, when acting in the person's official capacity, are confidential and subject to legislative privilege.

(e) Authorizes the member of the legislature, lieutenant governor, house or senate officer, or legislative agency, office or committee to choose to disclose all or part of the communications, information, advice, or opinions to which this section applies and to which the individual was a party.

(f) Provides that this section does not affect the authority of a court to analyze and apply attorney-client privilege under this applicable rules of evidence governing a judicial proceeding.

Sec. 301.403. ENGROSSING AND ENROLLING DEPARTMENT RECORDS OF DRAFTING AND OTHER REQUESTS. (a) Defines "department" for purposes of this section.

(b) Provides that records relating to requests of department staff for the drafting of proposed legislation or for assistance, information, advice, or opinion are subject to legislative privilege and are not public information and not subject to Chapter 552.

SECTION 14. Transfers Section 301.007, Government Code, to Subchapter D, Chapter 301, Government Code, and redesignates it as Section 301.052, Government Code, as follows:

Sec. 301.052. DISTRIBUTION OF JOURNALS. Makes no further changes to this section.

SECTION 15. Amends Chapter 301, Government Code, by adding Subchapter F, and adds a subchapter heading to read as follows:

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

SECTION 16. Transfers Section 301.034, Government Code, to Subchapter F, Chapter 301, Government Code, as added by this Act, and redesignates it as Section 301.071, Government Code, as follows:

Sec. 301.071. SALE OF TEXAS FLAGS AND SIMILAR ITEMS. Makes no further changes to this section.

SECTION 17. Amends Section 303.003(c), Government Code, to prohibit contributions from a contributor to the speaker's reunion day ceremony from exceeding an aggregate of \$1,000 cash or an aggregate value of more than \$1,000, rather than exceeding an aggregate of \$500 cash or an aggregate value of more than \$500.

SECTION 18. Amends Chapter 306, Government Code, by adding Sections 306.008 and 306.009, as follows:

Sec. 306.008. LEGISLATIVE PRIVILEGE. (a) Provides that, to protect the public's interest in the proper performance of the deliberative and policymaking responsibilities of the legislature and to preserve the legislative branch's independence under the fundamental principle of separation of powers, as guaranteed by Article II (The Powers of Government) and Section 21 (Words Spoken in Debate), Article III, Texas Constitution, a communication is confidential and subject to legislative privilege if the communication:

- (1) is given privately;
- (2) concerns a legislative activity or function; and
- (3) is among or between any of the following:
 - (A) a member of the house or senate;
 - (B) the lieutenant governor;
 - (C) an officer of the house or senate;
 - (D) a member of the governing body of a legislative agency; or
 - (E) a legislative employee.

(b) Provides that a communication described by Subsection (a) is subject to attorney-client privilege if one of the parties to the communication is a legislative attorney or a legislative employee working at the direction of a legislative attorney and the communication is made in connection with the legislative attorney's provision of legal advice or other legal services.

(c) Authorizes a member of the house or senate, the lieutenant governor, or an officer of the house or senate to choose to disclose all or part of a communication to which Subsection (a) or (b) applies and to which the individual or a legislative employee acting on behalf of the individual was a party.

(d) Provides that this section does not affect the authority of a court to analyze and apply legislative or attorney-client privileges under the applicable rules of evidence governing a judicial proceeding.

(e) Defines "legislative agency," "legislative attorney," and "legislative employee" for purposes of this section.

Sec. 306.009. CUSTODIAN OF CERTAIN LEGISLATIVE RECORDS. (a) Provides that a member of the legislature, the lieutenant governor, an officer of the house or senate, or a legislative agency, office, or committee that stores records with or transfers records to the Legislative Reference Library (LRL) or the Texas State Library and Archives Commission (TSLAC) possesses, maintains, or controls the records for purposes of litigation and is the custodian of the records for purposes of Chapter 552.

(b) Provides that Subsection (a) does not apply to a member of the legislature or the lieutenant governor after the individual's service as a member or lieutenant governor ends.

SECTION 19. Amends Sections 314.003(a) and (b), Government Code, as follows:

(a) Requires a fiscal note, if it is required on a bill or resolution, to be attached to the bill or resolution as provided by the rules of the appropriate house of the legislature, rather than requiring a fiscal note, if it is required on a bill or resolution, to be attached to the bill or resolution before a committee hearing on the bill or resolution may be conducted.

(b) Requires the fiscal note to be printed as part of the committee report of the bill or resolution and as part of all subsequent printings, as provided by this rules of the appropriate house of the legislature, rather than requiring the fiscal note to be printed on the first page of the committee report of the bill or resolution and on the first page of all subsequent printings.

SECTION 20. Amends Section 323.006(a), Government Code, as follows:

(a) Requires the Texas Legislative Council (TLC) to:

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

(7) makes a nonsubstantive change to this subdivision;

(8) provide legal advice and other legal services to the legislature; and

(9) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 21. Amends Sections 323.017 and 323.018, Government Code, as follows:

Sec. 323.017. New heading: CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS. (a) Provides that communications, including conversations, correspondence, and electronic communications, between a member of the legislature or

the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee, or a member of the staff of any of those officers or entities and an assistant or employee of TLC that relate to a request by the officer or entity for information, advice, or opinions from an assistant or employee of TLC are confidential and subject to legislative privilege, rather than providing that communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of TLC that relate to a request by the official for information, advice, or opinions from an assistant or employee of TLC are confidential.

(b) Provides that a communication described by Subsection (a) is subject to attorney-client privilege if:

(1) the assistant or employee of TLC who is a party to the communication is a TLC attorney or is working at the direction of a TLC attorney;

(2) the communication is given privately; and

(3) the communication is made in connection with the TLC attorney's provision of legal advice or other legal services.

(c) Creates this subsection from existing text. Provides that information, advice, and opinions given privately by an assistant or employee of TLC to a member of the legislature or the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee, or a member of the staff of any of those officers or entities, when acting in the person's official capacity, are confidential and subject to legislative privilege, rather than providing that information, advice, and opinions given privately by an assistant or employee of TLC to a member of the legislature, or the lieutenant governor, acting in the person's official capacity, are confidential.

(d) Creates this subsection from existing text. Authorizes the member of the legislature, lieutenant governor, house or senate officer, or legislative agency, office, or committee to choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies and to which the individual or entity was a party, rather than authorizing the member or lieutenant governor to choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and providing that such a disclosure does not violate the law of this state.

(e) Provides that this section does not affect the authority of a court to analyze and apply attorney-client privilege under the applicable rules of evidence governing a judicial proceeding.

Sec. 323.018. RECORDS OF DRAFTING AND OTHER REQUESTS. Provides that records relating to requests of TLC staff for the drafting of proposed legislation or for assistance, information, advice, or opinion are subject to legislative privilege and are not public information and not subject to Chapter 552, rather than are not public information.

SECTION 22. Amends Chapter 323, Government Code, by adding Section 323.021, as follows:

Sec. 323.021. LEGISLATIVE OFFICE RECORDS. Provides that a member of the legislature, the lieutenant governor, an officer of the house or senate, or a legislative agency, office, or committee that uses a system made available by TLC to transmit, store, or maintain records possesses, maintains, or controls the records for purposes of litigation and is the custodian of the records for purposes of Chapter 552.

SECTION 23. Amends Section 324.001, Government Code, by adding Subdivisions (4), (5), and (6), as follows:

(4) Defines "legislative entity."

(5) Defines "legislative record."

(6) Defines "state record" and "archival state record."

SECTION 24. Amends Sections 324.007(b) and (c), Government Code, as follows;

(b) Requires LRL to contain, as may best be made available for legislative use, certain items, including legislative records and other items designated by the Legislative Library Board (board) or the director of LRL (director).

(c) Requires the director and LRL employees to provide any assistance requested by a member of the legislature in researching, analyzing, evaluating, and preparing bills and resolutions, rather than provide any assistance requested by a member of the legislature in researching and preparing bills and resolutions.

SECTION 25. Amends the heading to Section 324.008, Government Code, to read as follows:

Sec. 324.008. DEPOSIT AND MANAGEMENT OF DOCUMENTS.

SECTION 26. Amends Sections 324.008(a) and (c), Government Code, as follows:

(a) Provides that LRL is a depository library as defined by Section 441.101 (Definitions), rather than as defined by Section 1, Chapter 438, Acts of the 58th Legislature, 1963 (Article 5442a, V.T.C.S.) and is required to receive state documents and publications from other states distributed by the Texas State Library.

(c) Requires each daily legislative journal, bill, or resolution possessed by the senate or house sergeant at arms, at the close of each legislative session, to be delivered to LRL to be managed as a legislative record under Section 324.0085, rather than to be disposed of at the discretion of the director of LRL.

SECTION 27. Amends Chapter 324, Government Code, by adding Sections 324.0085 and 324.0086, as follows:

Sec. 324.0085. LEGISLATIVE RECORDS. (a) Defines "commission" as TSLAC and defines "records management officer," "state records administrator," and "director and librarian of the commission" for purposes of this section.

(b) Provides that LRL is the depository for legislative records.

(c) Requires a legislative record, except as otherwise provided by this chapter, to be managed by the director in the same manner that a state record is managed under Subchapter L (Preservation and Management of State Records and Other Historical Resources), Chapter 441. Provides that for a legislative record, with regard to the requirements of Subchapter L, Chapter 441:

(1) the board is required to perform the functions and duties of TSLAC;
and

(2) the director is required to perform the functions and duties of certain persons.

(d) Requires legislative records to be transferred to LRL or a depository outside of LRL under Section 324.0086, in accordance with any applicable records retention schedule approved by the director of LRL under this section.

(e) Authorizes a legislative entity to retrieve, for temporary use, records transferred by the legislative entity to LRL or a depository outside LRL. Requires

the director and LRL employees to assist the legislative entity with retrieval of the records, and requires the legislative entity to return the records to LRL following the legislative entity's use.

(f) Requires the director, under the direction of the legislative entity that created the records transferred to LRL, or of the public information officer of the appropriate house of the legislature in the case of a former legislative entity, to protect privileged or confidential legislative records held by LRL or a depository outside LRL from public disclosure.

(g) Requires the director, under the direction of the public information officer of the legislative entity that transferred a legislative record to LRL or an authorized depository outside LRL, or of the public information officer of the appropriate house of the legislature in the case of a former legislative entity, to respond to requests received under Chapter 552 for the legislative record. Requires the director to notify the public information officer responsible for the legislative record as soon as practicable after receiving a request described by this subsection.

(h) Authorizes the director to:

(1) transfer legislative records to TSLAC for management under Subchapter L, Chapter 441; and

(2) request TSLAC to return to LRL, without charge to LRL, legislative records held by TSLAC.

(i) Provides that to the extent of any conflict, this section prevails over Chapter 441 or any other state law relating to the management of legislative records.

Sec. 324.0086. PLACEMENT IN OTHER DEPOSITORY. (a) Authorizes a member of the legislature to apply to the board to place records that were created or received by the member's office during the member's term in a depository other than LRL.

(b) Requires the board to create a list of preapproved depositories in which members of the legislature are authorized to place records of their legislative offices and by rule adopt policies and procedures to approve additional depositories.

(c) Provides that the director is responsible for the preservation of records described by Subsection (a) placed in a depository other than LRL. Provides that ownership and legal custody of the records remain with the legislature as provided by Section 324.0085. Prohibits the records from being intermingled with other holdings of the institution that serves as a depository.

SECTION 28. Amends Subchapter L, Chapter 441, Government Code, by adding Section 441.1821, as follows:

Sec. 441.1821. LEGISLATIVE RECORDS MANAGEMENT. (a) Defines "legislative record" for purposes of this section.

(b) Requires TSLAC, upon receipt of a request from LRL for the return of a legislative record in the custody of TSLAC, to immediately return the legislative record to LRL, at no cost to LRL.

(c) Requires LRL, notwithstanding any other law, to manage legislative records under Chapter 324 (Legislative Reference Library). Provides that, to the extent of any conflict, Chapter 324 prevails over this chapter (Libraries and Archives) or any other state law relating to the management of state records that are legislative records.

SECTION 29. Amends Section 602.002, Government Code, to authorize an oath made in this state to be administered and a certificate of the fact given by certain persons and entities, including the secretary of the senate or the chief clerk of the house of representatives.

SECTION 30. Provides that records described by Section 301.041(b) or 301.043, Government Code, as added by this Act, or Section 323.018, Government Code, as amended by this Act, are not subject to request, inspection, or duplication under Chapter 552, Government Code. Authorizes a governmental body to withhold the records without the necessity of requesting a decision from the attorney general under Subchapter G (Attorney General Decisions), Chapter 552, Government Code.

SECTION 31. Effective date: upon passage or September 1, 2019.