

GOVERNMENT CODE

CHAPTER 2104. CONSERVATORSHIP AS A RESULT OF FISCAL MISMANAGEMENT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2104.001. DEFINITIONS. In this chapter:

(1) "Conservator" means a person appointed by the governor to act as the conservator of a state agency or public junior college in accordance with this chapter.

(2) "Gross fiscal mismanagement" includes:

- (A) failure to keep adequate fiscal records;
- (B) failure to maintain proper control over assets;
- (C) failure to discharge fiscal obligations in a timely manner; and
- (D) misuse of state funds.

(3) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education other than a public junior college, that:

- (A) is in the executive branch of state government;
- (B) is created by statute; and
- (C) does not have statutory geographical boundaries limited to a part of the state.

(4) "State fiscal management policies" means laws or rules relating to:

- (A) fiscal recordkeeping and reporting;
- (B) use or control of state property;
- (C) timely discharge of fiscal obligations; or
- (D) use of state funds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.002. APPLICABILITY OF CHAPTER. This chapter does not apply to an agency that is under the direction of an elected officer, board, or commission.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

SUBCHAPTER B. CONSERVATORS

Sec. 2104.011. APPOINTMENT OF CONSERVATOR; TERMS. (a) A conservator is appointed by the governor with the advice and consent of the senate.

(b) To be eligible for appointment as a conservator, a person must be qualified, by experience or education, in administration or fiscal management.

(c) A public officer is eligible to serve as a conservator.

(d) A conservator's term expires on the earlier of the date the conservatorship for which the conservator is appointed dissolves or the second anniversary of the date of the conservator's appointment. A conservator whose term expires before the conservatorship is dissolved may be reappointed to continue the conservatorship.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 22, Sec. 1, eff. April 24, 1995; Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.012. COMPENSATION OF CONSERVATOR. (a) A conservator appointed to act as the conservator of a state agency or public junior college under this chapter is entitled to receive a salary for performing those duties that is equal to the salary of the chief administrative officer of the state agency or public junior college under conservatorship.

(b) The state agency or public junior college under conservatorship shall pay the salary of the conservator from money appropriated or otherwise available to the state agency or public junior college, except to the extent that money to pay the salary is specifically appropriated or made available through the budget execution process for that purpose.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.013. EXPENSES OF CONSERVATOR. (a) A limit provided by appropriation on the amount of reimbursement that state officers or members of state boards and commissions may generally receive does not apply to reimbursement of the reasonable and necessary expenses incurred by a conservator in the course of performing duties under this chapter.

(b) The reasonable and necessary expenses incurred by a conservator in the course of performing duties under this chapter

shall be paid from funds appropriated or otherwise available to the agency or public junior college under conservatorship, except to the extent that money to pay those expenses is specifically appropriated or made available through the budget execution process for that purpose.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 22, Sec. 2, eff. April 24, 1995; Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.014. RULES. A conservator may adopt and enforce rules necessary to administer the conservatorship for which the conservator is appointed under this chapter. A conservator may adopt initial rules on an emergency basis for the period prescribed by Section 2001.034 if the conservator determines that rules with immediate effect are necessary to ameliorate the effect of the gross fiscal mismanagement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.015. ADMINISTRATIVE SERVICES. (a) The governor shall provide a conservator with administrative services.

(b) If necessary, the governor may use appropriations made under Section 403.075 to provide the administrative services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

SUBCHAPTER C. CONSERVATORSHIP OF STATE AGENCIES

Sec. 2104.021. MISMANAGEMENT FINDING; RECOMMENDATION; CONSERVATORSHIP ORDER. (a) The legislative audit committee, on finding that a condition of gross fiscal mismanagement exists in a state agency, may:

(1) notify the governor of the finding and recommend that the governor appoint a conservator for the agency; or

(2) recommend to the agency that it agree within a specified time to enter into a rehabilitation plan in accordance with Section 2104.0215.

(b) After receipt of a notice under Subsection (a), the governor by proclamation may appoint a conservator, in accordance with the recommendation, to act as conservator of the agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.0215. REHABILITATION PLAN IN LIEU OF CONSERVATORSHIP. (a) A state agency that agrees to enter into a rehabilitation plan shall engage the services of an independent management consulting team approved by the governor and by the presiding officer and assistant presiding officer of the legislative audit committee. The independent management consulting team may include the state auditor, one or more appropriate state agencies, and private consultants.

(b) The state agency entering into the rehabilitation plan shall pay the costs of the independent management consulting team's services from money appropriated or otherwise available to the agency, except to the extent that money to pay the costs is specifically appropriated or made available through the budget execution process for that purpose.

(c) The independent management consulting team shall assist the state agency in developing its rehabilitation plan. The rehabilitation plan must include specific performance goals and the period in which the goals must be achieved. The plan must be approved by the governing body of the agency and by the governor and the legislative audit committee.

(d) If the state agency does not adopt the rehabilitation plan within a reasonable time or if the state auditor determines and informs the governor that the state agency is not making sufficient progress in implementing its rehabilitation plan, the governor may appoint a conservator for the agency under Section 2104.021.

(e) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

Added by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 34, eff. Sept. 1, 2003.

Sec. 2104.022. ASSUMPTION OF POLICY FUNCTIONS. The conservator appointed by the governor under Section 2104.021 shall assume all the powers and duties of the officers responsible for policy direction of the state agency that is the subject of the proclamation, and those officers may not act unless authorized by the conservator.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.023. CONSERVATORSHIP POWERS AND DUTIES. (a) The conservator of a state agency under this subchapter shall ensure that the agency complies with state fiscal management policies.

(b) The conservator of a state agency under this subchapter, may:

(1) terminate the employment of any employee whose conduct the conservator determines contributed to the condition that caused the conservatorship;

(2) employ personnel for the agency;

(3) change the agency's organization or structure as necessary to alleviate the conditions that caused the conservatorship; and

(4) contract with persons for management or administrative services necessary to effect the conservatorship.

(c) The conservator may delegate any part of the conservator's powers or duties as conservator other than rulemaking authority to a person with whom the conservator contracts under Subsection (b)(4).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.024. REPORT. (a) The conservator shall report on a conservatorship under this subchapter to the governor and the legislative audit committee not later than the 60th day after the date the governor orders the conservatorship and at the end of each subsequent 60-day period until the conservatorship is dissolved.

(b) The report must include a description of the measures taken to ensure that the state agency complies with state fiscal management policies and an estimate of the progress the conservator has made in attaining that goal.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.025. DURATION OF CONSERVATORSHIP. A conservatorship under this subchapter continues until the earlier of:

(1) the governor's issuing of a proclamation declaring that the condition of gross fiscal mismanagement in the state agency no longer exists and that the conservatorship is dissolved; or

(2) the legislative audit committee's finding and certifying to the governor that the condition of gross fiscal mismanagement in the agency no longer exists, in which case the conservatorship is dissolved.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

SUBCHAPTER D. CONSERVATORSHIP OF PUBLIC JUNIOR COLLEGES

Sec. 2104.031. MISMANAGEMENT FINDING; CONSERVATORSHIP ORDER. (a) On the governor's request, the Texas Higher Education Coordinating Board with the advice and assistance of the state auditor shall determine if a condition of gross fiscal mismanagement exists at a public junior college.

(b) If the coordinating board finds a condition of gross fiscal mismanagement of a public junior college, the governor by proclamation may appoint a conservator for the college.

(c) Except as otherwise provided by this subchapter, a conservator shall act as conservator of a public junior college in the manner provided by this chapter for conservatorship of state agencies by a conservator.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.032. REPORTS. A conservator shall file the reports relating to public junior colleges required by Section 2104.024 with the Texas Higher Education Coordinating Board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.

Sec. 2104.033. DURATION OF CONSERVATORSHIP. A conservatorship of a public junior college under this subchapter continues until the earlier of:

(1) the governor's issuing of a proclamation declaring that the condition of gross fiscal mismanagement no longer exists and that the conservatorship is dissolved; or

(2) the Texas Higher Education Coordinating Board's finding and certifying to the governor that the condition of gross fiscal mismanagement no longer exists, in which case the

conservatorship is dissolved.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 237, Sec. 1, eff. May 28, 1999.