

SUBJECT: Creating a pilot program to make certain agencies self-directed

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 14 ayes — Wolens, S. Turner, Alvarado, Bailey, Brimer, Counts, Craddick, Danburg, Hilbert, Hunter, Longoria, Marchant, McCall, Merritt

0 nays

1 absent — D. Jones

SENATE VOTE: On final passage, April 26 — voice vote

WITNESSES: None

DIGEST: SB 1438 would add the Self-Directed Semi-Independent Agency Project Act as Art. 8930 of Title 132, VTCS. The act would create a pilot project to assess the feasibility of making certain professional and occupational licensing boards self-directed and semi-independent agencies, notwithstanding other provisions of law. The agencies subject to the act would be:

- the Texas State Board of Public Accountancy;
- the Texas Board of Professional Engineers;
- the Texas Board of Architectural Examiners;
- the Board of Tax Professional Examiners; and
- the Texas Board of Professional Land Surveying.

Each agency would remain a state agency as defined by Government Code, sec. 2001.003(7). The agency's participation in the pilot project would not affect any financial debt, contract, or enforcement action of the agency. Except as specified in the act, a project agency's duties and powers would not change.

The Self-Directed Semi-Independent Agency Project Act would be subject to the Texas Sunset Act and would expire on September 1, 2005, unless continued by the Legislature. Each project agency also would be abolished on that date unless continued.

Budget. Each agency subject to the act would have to adopt an annual budget using generally accepted accounting principles. Notwithstanding other provisions of law, only the agency's governing board would review and approve the budget. The project agency would be responsible for all direct and indirect costs. Any generated surplus would have to be remitted annually to the general revenue fund.

Each project agency would have to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and operation of the agency.

Audits. The act would not affect the duty of the state auditor to audit a project agency. The state auditor would have to contract for and schedule audits with each project agency, including financial reports and performance audits. The costs of the audits would be reimbursed by the project agency.

Reporting. By the first day of each regular session of the Legislature, each project agency would have to submit to the Legislature and the governor a report describing its activities in the previous biennium, which would include:

- the required audit by the state auditor;
- the previous fiscal year's financial report;
- a description of any changes in licensing fees;
- a report on the number of exam candidates, licensees, certificate holders, and enforcement activities and the changes in those figures; and
- a description of adopted or repealed rules.

Disposition of funds. If provided in its enabling legislation, each agency would have to continue to collect the annual \$200 professional fee and \$10 scholarship fee from its licensees and remit those fees to the state. The agency would have to deposit all other fees collected into an account in a depository institution selected by the agency and insured by the Federal Deposit Insurance Corp. The bill would eliminate requirements in current law that fees be deposited in special funds in the state treasury.

Ability to contract. A project agency could enter into contracts for reasons necessary for the administration of its affairs. No indebtedness, liability, or obligation of a project agency could create a debt of other liability to the

state, nor to any entity other than the project agency. No indebtedness, liability, or obligation of a project agency could create a personal liability for its board members or employees.

Property. A project agency could acquire and use by any legal means any property or interest in a property necessary to the functions of the agency. It could sell or dispose of any property that was unnecessary to the agency's functions. An agency also could build or improve any facility necessary to its functions. If necessary, the agency could borrow money for a period of no more than five years. The agency's board would have to authorize borrowing by a two-thirds majority.

Suits. The office of the attorney general would have to represent a project agency in any litigation.

Fees. Each project agency could set necessary fees, subject to the limitations specified in the agency's enabling legislation.

Liability. The bill would specify that a project agency and its board members, employees, agents, and volunteers would have the protection from liability provided by the agency's enabling legislation. The agency and its members also would have protection from common law and any other statute, including Civil Practice and Remedies Code, chapter 104, governing state liability for conduct of public servants.

Open government. Subject to confidentiality provisions in the agency's enabling legislation, agency meetings would be subject to the Open Meetings Act (Government Code, chapter 551), and agency records would be subject to the Public Information Act (Government Code, chapter 552).

Employees Retirement System. The bill would specify that the agency's transition to independent status would have no effect on agency employees' membership in the Employees Retirement System of Texas.

Appropriation. To aid in agencies' transition to semi-independent and self-directed status, each project agency would receive an amount equal to 50 percent of the agency's fiscal 1999 appropriation after the conclusion of fiscal

1999. As agency funds became available, the project agency would have to repay that amount to the general revenue fund.

SB 1438 also would make conforming changes to enabling legislation for each project agency.

The bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

SB 1438 would authorize a pilot project to determine the practicality and efficiency of letting certain professional and licensing boards operate semi-independently at their own direction. A number of semi-independent agencies carry out state functions in the public interest with far fewer controls than the agencies that would be affected by this bill. These agencies have well-defined missions and well-run boards and administrations. The pilot project would run for a specified time and would expire if not renewed.

These agencies perform functions vital to the interest of Texans by regulating their respective professions to ensure that persons with professional licenses meet the highest standards of competence and professionalism. The public relies on these professionals for their expert judgment on matters ranging from the soundness of public structures to the financial solvency of potential investments. The public has a vital interest in maintaining professional competence and in improving the quality of the agencies' licensees.

Enactment of this bill would not reduce these agencies' accountability. These agencies still would have to submit biennial reports to the Legislature and the governor and would have to undergo periodic sunset review.

**OPPONENTS
SAY:**

Removing agencies from the appropriations process would reduce their accountability to state employees and to the general public. During the appropriations process, an agency must justify its expenses, explain its actions, and address concerns that would not be dealt with in other forums. Sending a report to the Legislature and undergoing sunset review are not good substitutes for legislative scrutiny of an agency during appropriations. These agencies perform licensing functions that are important to the public, and their accountability should not be reduced.