

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1438
By: Duncan
State Affairs
4/19/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law does not provide for a pilot project transferring certain professional and occupational licensing boards to self-directed semi-independent status. The pilot program change the manner in which regulatory agencies are accountable to their stakeholders and can with operating as a business. C.S.S.B. 1438 would establish a pilot project transferring certain professional and occupational licensing boards to self-directed semi-independent status and would make an appropriation.

PURPOSE

As proposed, C.S.S.B. 1438 establishes a pilot project transferring certain professional and occupational licensing boards to self-directed semi-independent status and makes an appropriation.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE INTENT. Sets forth the intent of the legislature regarding licensing agencies.

SECTION 2. AMENDMENTS: Amends Title 132, V.T.C.S., by adding Article 8930, V.T.C.S., as follows:

Art. 8930. SELF-DIRECTED SEMI-INDEPENDENT AGENCY PROJECT ACT

Sec. 1. SHORT TITLE: Self-Directed Semi-Independent Agency Project Act.

Sec. 2. AGENCY PARTICIPATION. Sets forth certain agencies to be part of the pilot project created by this Act.

Sec. 3. DEFINITION. Defines "project agency."

Sec. 4. PILOT PROJECT. Requires each project agency to become self-directed and semi-independent as specified in this Act. Requires each project agency to continue to be a state agency, as that term is defined in Section 2001.003(7), Government Code. Provides that this Act is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that this Act expires September 1, 2005, unless continued in existence as provided by that chapter.

Sec. 5. GENERAL DUTIES OF ALL PROJECT AGENCIES. Requires each project agency to have the duties prescribed by SECTION 6 through 9 of this Act, in addition to the duties enumerated in the enabling legislation specifically applicable to each project agency.

Sec. 6. BUDGET. Requires the project agency to adopt a budget annually using generally accepted accounting principles. Requires the budget to be reviewed and approved only by the project agency's governing board notwithstanding any other provision of law, including the General Appropriations Act. Provides that no cost shall be incurred by the general revenue fund. Requires a project agency to be responsible for all costs, both direct and indirect. Requires a project agency to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and operation of the project agency. Requires any surplus

generated by a project agency to be remitted annually to the general revenue fund.

Sec. 7. AUDITS. Provides that nothing in this Act shall affect the duty of the state auditor (auditor) to audit a project agency. Requires the auditor to enter into a contract and schedule with each project agency to conduct audits, including financial reports and performance audits. Requires costs incurred in performing such audits to be reimbursed by the project agency

Sec. 8. REPORTING REQUIREMENTS. Requires a project agency to submit to the legislature and the governor by the first day of the regular session of the legislature a report describing all of the agency's activities in the previous biennium. Requires the report to include certain items.

Sec. 9. DISPOSITION OF FUNDS. Requires the project agency to collect a professional fee of \$200 from its licensees annually which shall be remitted to the state, if provided in a project agency's enabling legislation. Requires the project agency to collect a scholarship fee of \$10 annually and to remit it to the state. Requires all funds other than the \$200 professional fee collected or received by a project agency to be deposited into an account in a depository institution insured by the Federal Deposit Insurance Corporation selected by the project agency.

Sec. 10. GENERAL POWERS OF ALL PROJECT AGENCIES. Requires each project agency to have the powers described in SECTION 11 through 14 of this Act, in addition to the powers enumerated in each project agency's enabling legislation.

Sec. 11. ABILITY TO CONTRACT. Authorizes a project agency to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of its affairs and for the attainment of its purpose, to carry out and promote the objectives of this Act; provided, however, that any indebtedness, liability, or obligation of the project agency shall not create certain liability.

Sec. 12. PROPERTY. Authorizes a project agency to take certain action regarding property.

Sec. 13. SUITS. Authorizes the office of the attorney general to represent a project agency in any litigation.

Sec. 14. FEES. Authorizes each project agency to set the amount of fees by statute or rule as necessary for the purpose of carrying out the functions of the project agency, subject to the limitation, if any, in the applicable enabling legislation.

Sec. 15. LIABILITY. Provides that a project agency and its board members, employees, agents, and volunteers have the protection from liability provided by the agency enabling legislation, common law, and any other statute, including and not limited to Chapter 104, Civil Practice and Remedies Code.

Sec. 16. OPEN GOVERNMENT. Provides that subject to the confidentiality provisions of a project agency's enabling legislation, meetings and records are subjected to Chapter 552, Government Code.

Sec. 17. MEMBERSHIP IN EMPLOYEE RETIREMENT SYSTEM. Provides that the employees of the project agencies are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and transition to independent status shall have no effect on their membership.

SECTION 3. AMENDMENT. Amends Section 7, Article 41a-1, V.T.C.S. (Public Accountancy Act), to require the fees received by the Texas Board of Public Accountancy (board) under this Act to be deposited in a depository institution, rather than the state treasury, at the direction of the board. Deletes text regarding special fund and annual report. Makes a conforming change.

SECTION 4. AMENDMENT. Amends Section 9(g), Article 41a-1, V.T.C.S., to require the fee increase to be deposited as provided by SECTION 7, rather than 22A, of this Act.

SECTION 5. AMENDMENT. Amends Section 21D, Article 41a-1, V.T.C.S., to make a conforming change.

SECTION 6. AMENDMENT. Amends Section 22A, Article 41a-1, V.T.C.S., as follows:

Sec. 22A. New heading: ENFORCEMENT COMMITTEES. Deletes existing Subsection (b), regarding a special fund.

SECTION 7. AMENDMENT. Amends Section 28, Article 41a-1, V.T.C.S., to provide that the board is abolished and this Act expires September 1, 2005, rather than 2003.

SECTION 8. AMENDMENT. Amends Section 2a, Chapter 478, Article 249a, V.T.C.S., to make a conforming change.

SECTION 9. AMENDMENT. Amends Subsection (a), Section 4, Chapter 478, Article 249a, V.T.C.S., to make a conforming change.

SECTION 10. AMENDMENT. Amends Section 4A, Article 249a, V.T.C.S., to delete text regarding per diem and the general revenue fund.

SECTION 11. AMENDMENT. Amends Section 10, Chapter 457, Article 249c, V.T.C.S., to require the fees received by, rather than all sums of money paid to, Texas Board of Architectural Examiners (architectural board) under this Act to be deposited and may be used only for the administration of this Act. Requires a project agency to collect a scholarship fee of \$10 annually from its license and to remit it to the state, if provided in a project agency's enabling legislation.

SECTION 12. AMENDMENT. Amends Section 6, Article 249e, V.T.C.S., to require the fees received by, rather than all sums of money paid to, the architectural board under this Act to be deposited and may be used only for the administration of this article. Deletes text regarding General Appropriations Act.

SECTION 13. AMENDMENT. Amends Section 3a, Article 3271a, V.T.C.S., to make a conforming change.

SECTION 14. Amends Section 9, Article 3271a, V.T.C.S. (The Texas Engineering Practice Act), to require the executive director, rather than secretary of the Texas Board of Professional Engineers (engineering board) to receive and account for all moneys derived under the provisions of this Act. Requires the fees received by the board under this Act to be deposited in a depository institution at the direction of the engineering board and may be used only for the administration of this Act and other duties authorized by law. Requires the engineering board to employ an executive director, who shall receive such compensation as annually established by the engineering board. Requires the executive director, rather than engineering board, to employ such engineering, administrative, and clerical staff or other assistance as are necessary for the proper implementation, rather than performance of this Act and other duties authorized by law and may make expenditures from the depository institution consistent with this purpose. Deletes text regarding surety bond, opinion of board and "Professional Engineers' Fund."

SECTION 15. AMENDMENT. Amends Section 5, Article 5282c, V.T.C.S. (Professional Land Surveying Practice Act), to make a conforming change.

SECTION 16. Amends Sections 13 and 23B, Article 5282c, V.T.C.S., as follows:

Sec. 13. RECEIPTS AND DISBURSEMENTS. Makes a conforming change.

Sec. 23B. CIVIL PENALTY. Deletes existing subsections (c), requiring a civil penalty collected under this section to be deposited in the state treasury to the credit of the General Revenue fund.

SECTION 17. AMENDMENT. Amends Section 4(e), Article 8885, V.T.C.S. (The Property Taxation Professional Certification Act), to make a conforming change.

SECTION 18. AMENDMENT. Amends Section 8, Article 8885, V.T.C.S., to require the executive director of the Texas Board of Tax Professional Examiners (examiners board) to receive and account for all money derived under the provisions of this Act. Makes conforming changes. Requires the examiners board, to maintain a roster of all persons registered with the examiners board, showing their names, BTPE numbers, places of employment, and classification. Deletes text regarding the comptroller and a roster.

SECTION 19. REPEALER. Repealer: Section 10, Article 5282c, V.T.C.S. (Compensation and Expenses of Board Members).

SECTION 20. APPROPRIATIONS. Provides a reasonable period for each project agency under Article 8930 V.T.C.S. to establish itself as semi-independent and self-directed after the conclusion of fiscal year 1999, each project agency is appropriated an amount equal to 50 percent of that agency's appropriated amounts for fiscal year 1999. Authorizes this appropriation to be repaid to the general revenue fund by the project agency as funds become available.

SECTION 21. EFFECT OF TRANSITION TO INDEPENDENT STATUS. Prohibits the transfer of a project agency under Article 8930, V.T.C.S., as added by this Act, to semi-independent status and the expiration of semi-independent status from acting to cancel, suspend, or prevent certain actions. Requires each project to continue to have and exercise the powers and duties allocated to its enabling legislation, except as specifically amended by this Act. Provides that title to items used by each respective project agency is transferred to each agency. Provides that nothing in this Act shall have any effect on property already owned by the project agencies. Authorizes each project agency to continue to occupy its current premises at the rates prescribed by the General Services Commission for indirect cost and bond debt services for the duration of the pilot project. Requires examination fees collected prior to September 1, 1999 for examinations conducted after September 1, 1999, to be made available to the project agency for costs associated with conducting the examination.

SECTION 22. Effective date: September 1, 1999.

SECTION 23. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 6, Article 8930, V.T.C.S., to require no costs to be incurred by the general revenue fund. Requires a project agency to be responsible for all costs, both direct and indirect. Requires any surplus generated by a project agency to be remitted annually to the general revenue fund.

Amends Section 7, Article 8930, V.T.C.S., to require costs incurred in performing such audits to be reimbursed by the project agency. Deletes text regarding public accounts.

Amends Section 9, Article 8930, V.T.C.S., to require a project agency to collect a scholarship fee of \$10 annually from its license and to remit it to the state, if provided in a project agency's enabling legislation.

Amends Section 13, Article 8930, V.T.C.S., to authorize the office of the attorney general to represent a project agency in any litigation. Deletes text authorizing a project agency to sue and be sued in its own name, provided, however, that the office of the attorney general shall represent the project agency in any litigation.

Amends Section 15, Article 8930, V.T.C.S., to provide that a project agency has the protection from liability provided by the agency enabling legislation, common law, and any other statute, including and not limited to Chapter 104, Civil Practice and Remedies Code.

SECTION 7.

Adds new SECTION 7 to amend Section 28, Article 41a-1, V.T.C.S., to provide that the board is abolished and this Act expires September 1, 2005, rather than 2003.

Redesignates existing SECTIONS accordingly.

SECTION 8.

Adds new SECTION 8 to amend Section 2a, Chapter 478, Article 249a, V.T.C.S., to make a conforming change.

SECTION 13.

Adds new SECTION 13 to amend Section 3a, Article 3271a, V.T.C.S., to make a conforming change.

SECTION 15.

Adds new SECTION 15 to amend Section 5, Article 5282c, V.T.C.S., to make a conforming change.

SECTION 17.

Adds new SECTION 17 to amend Section 4(e), Article 8885, V.T.C.S., to make a conforming change.

SECTION 20.

Amends SECTION 20 to provide that each project agency is appropriated an amount equal to 50 percent of that agency's appropriated amounts for fiscal year 1999. Authorizes this appropriation to be repaid to the general revenue fund by the project agency as funds become available.

SECTION 21.

Amends SECTION 21 to require examination fees collected prior to September 1, 1999 for examinations conducted after September 1, 1999, to be made available to the project agency for costs associated with conducting the examination.