

- SUBJECT:** Abolishing the Board of Vocational Nurse Examiners
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 6 ayes — Capelo, Laubenberg, Dawson, McReynolds, Taylor, Zedler
0 nays
3 absent — Truitt, Coleman, Naishtat
- WITNESSES:** For — Mary Mancini, Texas Organization of Nurse Executives and Texas Nurses Association

Against — Pam Brashears and Jonell Brownback, Texas League of Vocational Nurses; Greg Davault; Patrick Debold, Concorde Career Colleges; Deborah Simmons Johnson; Rebecca Zielinski, Extended Health Education

On — Terrie Hairston and Geneva Harvey, Board of Vocational Nurse Examiners; Katherine Thomas, Board of Nurse Examiners
- BACKGROUND:** The Board of Nurse Examiners (BNE) regulates registered nurses (RNs), and the Board of Vocational Nurse Examiners (BVNE) regulates licensed vocational nurses (LVNs). RNs are licensed to practice generally, while LVNs work under the direction of their employers, such as nursing homes or clinics. Occupations Code, ch. 301 is the Nursing Practice Act for RNs; ch. 302 is the Vocational Nurse Act for LVNs; and ch. 303 governs nursing peer review.
- DIGEST:** CSHB 1483 would abolish the BVNE on January 31, 2004, and transfer all of its functions, activities, rules, references, complaints, investigations, assets, obligations, licenses, and employees, except its executive director, to the BNE on February 1, 2004. It would repeal Occupations Code, ch. 302 as of February 1, 2004.

The bill would reconstitute the BNE with 13 members, rather than the current nine, including one advanced practice nurse, two RNs, three LVNs, one nurse faculty of a bachelor's degree RN program, one nurse faculty of an associate

degree RN program, one nurse faculty of a higher education LVN program, and four public members. It would abolish the nurse faculty position from a graduate school program preparing advanced practice nurses. The board's transition to new membership would begin on February 1, 2004, and would require the early termination of one board member who otherwise would leave the board in 2007.

The bill would include LVNs comprehensively in the Nursing Practice Act. Among other changes, it would require the BNE to prescribe programs of study for vocational nurses, grant title and practice protection to LVNs, establish professional conduct guidelines, extend the duty to report, and amend complaints and investigations statutes. It also would extend peer review, "safe harbor," and nonretaliation protection provisions in Occupations Code, ch. 303 to LVNs.

CSHB 1483 would extend the BNE (now scheduled to expire in 2005) until September 1, 2017, and would limit the Sunset Advisory Commission's scheduled review of the BNE for the 79th Legislature to across-the-board recommendations. The bill would make conforming changes to various sections of the code to reflect BVNE's abolition.

This bill would take effect September 1, 2003. The conforming amendments would take effect February 1, 2004.

**SUPPORTERS
SAY:**

Nursing is a single continuum of care, from nurse aides to advanced practice nurses, and it makes sense for a single entity to regulate the full spectrum, rather than regulating various levels of expertise as if they were different professions. Consumers and employers of nurses would benefit from the consolidation proposed by CSHB 1483 by having to contact only one board and to refer all nursing-related questions to that board. Nurses and employers would have only one set of rules and regulations to follow, and LVNs and RNs would have greater consistency in disciplinary actions and monitoring. Texas is one of only five states that governs LVNs and RNs with separate boards, although the Sunset Advisory Commission recommended in 1993 that the two boards be merged and legislators consistently have questioned the wisdom of maintaining separate boards.

The state would gain both efficiency and lower costs with a combined board.

This bill would save more than \$500,000 in fiscal 2004-05, which legislators could use to help fund other vital programs. Though the only position that would be eliminated in the short run is that of BVNE's executive director, synergies could reduce the number of staff needed by a combined board over the longer term, saving taxpayers unnecessary salary and benefit costs.

A primary benefit of this bill to LVNs is that it would change their governing statute from a title control act to a practice act. The laws that now govern LVNs require only that people calling themselves LVNs be licensed as such. Bringing LVNs under the Nursing Practice Act would allow the BNE to decide what was within the scope of practice for LVNs, to guide LVNs and their employers accordingly, and to protect the profession from nonlicensed people engaging in those acts. The BVNE can sanction LVN imposters, but under this bill, the BNE also could sanction anyone who practiced vocational nursing without a license, even if the person never claimed to be a LVN. Creating a practice act for LVNs would be achieved best by putting RNs and LVNs under a single practice act, as this bill would do. Regulating the two categories of nurses under separate practice acts could lead to incongruous amendments and additional disparities.

When an employer assigns a nurse to an area outside his or her scope of practice without placing that nurse under the supervision of a more qualified practitioner, it puts the nurse and patients at risk. The safe harbor component of this bill would allow a LVN to refuse to perform a task for which he or she had not been trained, without being disciplined for refusing to do so. LVNs need safe harbor protection in such instances just as do RNs, who already have it under current law. Nurses do not seek to abuse this right or to evade assignments. Rather, they need this protection to avoid unintentionally harming patients.

The bill would protect LVNs in advocating for patient care through the nonretaliation or "whistleblower" provision that now applies only to RNs. This would allow a LVN to report negligence or malpractice without being fired, sued, or otherwise punished. The effect of the whistleblower law would be to ensure professional integrity for the vocational nursing profession and to protect patients better.

This bill, like any practice act, essentially would be a consumer protection act,

because it would allow the BNE to educate consumers and patients about the appropriate scope of practice for a LVN. Patients and their families deserve to know this information when making decisions about health care. Also, the bill would allow the BNE, in defining scope of practice, to give clarity to nurse educators as to what they should be teaching future nurses. As long as the scope of practice remains undefined, nursing schools will remain uncertain about what basic competencies are universally expected of LVNs.

The revised BNE board would have 13 members, three of whom would be LVNs, plus one LVN educator. By comparison, there would be one RN and two RN educator members, and one advanced practice nurse member. The remaining four seats would be for public members. LVNs would have as much representation as RNs on the combined board, and arguably more.

CSHB 1483 would not prohibit the BNE from forming a scope-of-practice advisory committee, such as proposed in HB 311 by Villarreal, to assist in developing scope-of-practice definitions for LVNs.

The BNE is scheduled to expire in 2005, and this bill would change that to 2017. However, a floor amendment would move the date to 2007 and would remove the bill's language referring to the 79th Legislature's sunset review. The amended sunset date would be far enough in the future to enable the BNE to implement the changes enacted by this bill before its next sunset review. The floor amendment also would provide that if this bill conflicted with other statutes, this legislation would control.

**OPPONENTS
SAY:**

CSHB 1483 would not benefit LVNs, in part because their representation would be diluted on a single governing board. Though LVNs would have three seats and an LVN educator, who usually is a RN, would have a fourth, LVNs now hold seven of 15 seats on the BVNE board. Also, the cultural differences between the two professions could lead to a combined board being essentially a RN board with LVNs as a secondary concern. The number of licensees makes this danger apparent, as Texas has only 75,000 LVNs, compared to 250,000 RNs. A better option would be to maintain two boards and combine their support services. This could produce the efficiency that supporters seek without decreasing an entire profession's autonomy.

Merging the two boards could lead to operational inefficiency. The BVNE

processes complaints very efficiently with excellent resolution time, and this efficiency might not continue under the more cumbersome structure of the BNE. Combining boards would make Texas' the single largest nursing board in the country, regulating about 325,000 licensees. One of the reasons Texas has more LVNs and LVN education programs than any other state is that it has maintained a separate LVN board that can respond nimbly to requests for school approvals and standards specific to LVNs' needs. Slowing down the response time by enlarging the bureaucracy would not be to any party's benefit. RNs and LVNs have different duties and standards, and it would be difficult for a single board to regulate this bifurcated profession as well as two separate boards have done.

CSHB 1483 would conflict with statutory changes contained in HB 311 by Villarreal, which passed the House on April 30. This bill merely would insert LVNs into the RN practice act without recognizing legitimate differences between the two licenses. HB 311 would respect these differences by creating a LVN practice act separate from the RN practice act and by creating an advisory committee to help the BVNE define the scope of practice for LVNs. This advisory committee is particularly important, since current law does not define LVNs' scope of practice. LVNs, LVN educators, and LVN employers should define scope of practice, not a combined board that might or might not act in LVNs' best interest. Some other states' combined boards have limited LVNs' scope of practice unnecessarily out of deference to RNs who wish to preserve and maximize their own scope of practice.

Both the BNE and BVNE are scheduled for sunset review in 2005. Sunset review would be a more appropriate forum for making sweeping changes to both boards. Also, both agencies charge fees and generate revenues that exceed their appropriations, and this bill likely would not change that. Thus, the fiscal note could be misleading as to the bill's impact on state resources, since neither agency is a net recipient of general revenue.

**OTHER
OPPONENTS
SAY:**

CSHB 1483 would exclude proprietary technical schools from training nurses in Texas because it would not allow the BNE to approve them, even though the BVNE now approves them. Existing programs would have to close because employers would not hire nurses trained by a nonapproved educator. This is the opposite of what the state needs now, since it is suffering from a nursing shortage that will not ease any time soon. The bill should be amended

to include proprietary schools.

NOTES:

The committee substitute integrated LVNs into the RN practice act, added an exemption from the occupation tax and fee for some LVN organizations, and extended the BNE's sunset date.

The fiscal note for CSHB 1483 projects a net gain of \$182,563 in general revenue in fiscal 2004 and a gain of about \$326,000 each year thereafter.

The entirety of CSHB 1483, plus four of five provisions expected to be offered in floor amendments, is contained within HB 2 by Swinford, et al., which was reported favorably, as substituted, by the House Government Reform Committee on May 1.

HB 311 by Villarreal, which would change LVNs' governing statutes from a title control act to a practice act, passed the House on April 30. SB 718 by Madla, which would apply the "safe harbor" provision to LVNs and would modify regulation, workplace safety, title protection, complaints, and reporting for RNs, passed the Senate on April 22 and the House, as amended, on April 30.