HOUSE
RESEARCH
ORGANIZATION bill analysis 8/5/2003

HB 15
Swinford

SUBJECT: Expanding the state auditor's regional planning commission oversight duties

COMMITTEE: Government Reform — favorable, without amendment

VOTE: 4 ayes — Swinford, Allen, Casteel, R. Cook

0 nays

3 absent — Gallego, Callegari, T. Smith

WITNESSES: No public hearing

BACKGROUND: Under Local Government Code, ch. 391, the governor oversees the state's 24 regional planning commissions (RPCs) — also known as associations or councils of governments (COGs) or regional or area councils — which deal with issues that transcend member governments' boundaries or that require regional planning. These political subdivisions are subject to state law and receive both state and federal funds, but their decisions are not binding. Sec. 391.009(a) requires the governor to adopt operational, fiscal, and performance standards rules, reporting and audit requirements, and review and comment procedure guidelines for RPCs.

The State Auditor's Office (SAO) reviews RPC reports, including audits, and may make findings and recommendations on issues regarding administration, operations, or programs. The Legislative Audit Committee (LAC), composed of the lieutenant governor, House speaker, and chairs of the Senate State Affairs and Finance committees and the House Appropriations and Ways and Means committees, may direct SAO to conduct additional audits or investigations. Under SB 19 by Ratliff, regular session, effective September 1, 2003, mandatory SAO review of RPC reports becomes discretionary, subject to a risk assessment and LAC approval.

Negotiated rulemaking involves conveners and facilitators meeting with state agencies and interested parties, including opponents, to formulate rules being adopted by the agencies and affecting those parties (Government Code, ch. 2008).

DIGEST:

HB 15 would delegate several of the governor's RPC oversight functions and duties to SAO and would add some new ones. SAO would have to provide technical assistance to the governor, in the form of a risk assessment subject to LAC approval, in drafting and adopting operational, fiscal, and performance standards rules, reporting and audit requirements, and review and comment procedure guidelines. RPCs would have to send all reports, including audits and annual reports, to SAO, which would have to notify the governor if RPCs failed to do so or did not comply with rules, requirements, or guidelines.

SAO could recommend to the governor improvements in RPCs' salary schedules, subject to LAC approval. Portions of salary schedules subject to SAO recommendations could not take effect until revisions or explanations satisfactory to the governor were made based on SAO recommendations.

The governor's adoption of rules, requirements, and guidelines for RPCs would be permissive rather than mandatory. The governor could use negotiated rulemaking procedures to draft and adopt RPC rules.

The bill would take effect December 1, 2003. Existing rules, requirements, or guidelines would remain in effect until amended or repealed by the governor.

SUPPORTERS SAY:

For several years, the governor has overseen RPCs by receiving reports, monitoring activities, and promulgating rules. Despite SAO assistance, however, the governor has not had sufficient resources to perform these functions adequately.

HB 15 would delegate to SAO some of the governor's duties that SAO could perform more effectively, such as directly receiving reports, auditing, and making recommendations to deal with noncompliance. The SAO would be integrated better into the oversight process, while the governor would continue to provide administrative direction to the RPCs. This arrangement would maintain the good working relationship between the governor and the RPCs and would preserve local governments' access to the Governor's Office.

The bill also would allow SAO to provide input to the governor on rulemaking without being involved directly. Requiring risk assessments and

LAC approval would help SAO target problem RPCs and specific issues instead of having to perform blanket or random reviews or audits. These changes would address concerns raised by the SAO in its December 2002 report about fiscal and federal compliance weaknesses at some RPCs and about information lacking in performance reports.

OPPONENTS SAY:

HB 15 would not address sufficiently the systemic deficiencies in RPC operations. The 2002 SAO report revealed serious fiscal and management problems in 13 RPCs that spent more than $270 million worth of taxpayers' money in fiscal 2001 — almost $21 million in state funds (43 percent of the statewide total) and almost $250 million in federal funds (63 percent of the total). SAO found that these 13 RPCs failed to implement adequate cash controls, account for fixed assets adequately, and monitor subrecipients of grant funds. Generally, RPC reports often omit key information, including productivity data, salaries, and performance measures, according to SAO. To ensure that these shortcomings are corrected, the bill should give SAO more oversight and enforcement power over RPCs, and mandatory report and audit review should be reinstated.

NOTES:

Except for the December 1, 2003, effective date, HB 15 is identical to HB 58 by Casteel, first called session, which died in the Senate Government Organization Committee after passing the House on July 10 by nonrecord vote, two members recorded voting nay.