

SUBJECT: Transferring certain occupational regulatory programs from DSHS

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña, Price, Spitzer
0 nays
1 absent — Klick

SENATE VOTE: On final passage, May 14 — 31-0

WITNESSES: (*On House companion bill, HB 2510*)
For — Chase Bearden, Coalition of Texans with Disabilities; Debra King, Texas Academy of Nutrition and Dietetics; Susan Ross, Texas Dental Association; John Holcomb, Texas Medical Association; Kate Murphy, Texas Public Policy Foundation; Russell Graham, Texas Society for Respiratory Care; Brian Rich, Texas Society of Radiologic Technologists; (*Registered, but did not testify:* Grace Davis, Hays Caldwell Council on Alcohol and Drug Abuse; Andrew Brummett, Institute For Justice; Will Francis, National Association of Social Workers - Texas Chapter; Richard Briley, Texas Association of Municipal Health Officials; Nora Belcher, Texas e-Health Alliance; Scott Pospisil, Texas Hearing Aid Association, Inc.; Kenneth Besserman, Texas Restaurant Association; Daniel Schorre and Gaylene Lee, Texas Society for Respiratory Care; Tiffani Walker, Texas Society of Radiological Technologists; David Anderson, Texas State Athletic Trainers Association; and 11 individuals)

Against — Courtney Hoffman, Academic Language Therapy Association; Lee Spiller, Citizens Commission on Human Rights; Cindy Corley, Texas Environmental Health Association; Manuel Campos; Robin Cowsar; Rebecca Gould; (*Registered, but did not testify:* Larry Higdon, Texas Speech-Language-Hearing Association)

On — Cynthia Humphrey, Association of Substance Abuse Programs; Kathryn Lewis, Disability Rights Texas; Catherine Mize, Hanger Clinic;

Gyl Switzer, Mental Health America of Texas; Katharine Teleki, Sunset Advisory Commission; Scott Jameson and Robb Walker, Texas Chapter of the American Academy of Orthotists and Prosthetists; Donald Lee, Texas Conference of Urban Counties; Lee Johnson, Texas Council of Community Centers; George Ferrie, Texas Department of Licensing and Regulation; Mari Robinson, Texas Medical Board; Katie Brinkley; Mark Kirchner; Ray Smith; (*Registered, but did not testify*: Kirk Cole, Department of State Health Services; Kyle Janek, Health and Human Services Commission; Ken Levine and Erick Fajardo, Sunset Advisory Commission; Michael Kelley, Texas Department of Licensing and Regulation; Eric Woomer, Texas Dermatological Society)

BACKGROUND: The Department of State Health Services was formed in 2003 when the 78th Legislature consolidated the Texas Department of Health, Texas Commission on Alcohol and Drug Abuse, Texas Health Care Information Council, and the mental health functions of the Texas Department of Health and Mental Retardation. The agency's mission is to improve health and well-being in Texas. Unless continued by legislation enacted by the 84th Legislature, the agency would be abolished on September 1, 2015.

Governing structure. The executive commissioner of the Health and Human Services Commission (HHSC) appoints the commissioner of DSHS. A nine-member State Health Services Council appointed by the governor helps to develop rules and policies for the agency. More than 40 advisory committees and councils also provide the agency with advice and expertise on agency rules, policies, and programs. There are 11 additional governor-appointed boards that are administratively attached to DSHS and that license and regulate certain health professions. DSHS administers more than 70 regulatory programs and licensed more than 360,000 individuals, facilities, and other entities in fiscal 2014.

Funding. The 83rd Legislature appropriated \$6.5 billion to DSHS in the fiscal 2014-15 budget, including \$2.6 billion in general revenue funds, \$956.2 million in dedicated general revenue funds, \$2.5 billion in federal funds, and \$539.2 million in other funds over the biennium. The 83rd Legislature appropriated about \$456 million in additional general revenue

funds to DSHS for the 2014-15 biennium, largely to support programs for mental health and substance abuse and women's health.

Staffing. In fiscal 2013, DSHS employed about 12,000 staff, most of whom work at the agency's state facilities, including nine state mental health hospitals. More than 2,600 employees work at the DSHS state headquarters in Austin.

DIGEST: SB 202 would transfer certain occupational licensing programs from DSHS to the Texas Department of Licensing and Regulation (TDLR) and others to the Texas Medical Board.

Texas Department of Licensing and Regulation. *Transfers during the biennium ending August 31, 2017.* The bill would transfer regulation of midwives; speech-language pathologists and audiologists; hearing instrument fitters and dispensers; athletic trainers; orthotists and prosthetists; dyslexia therapists and practitioners; and dieticians from DSHS to TDLR during the biennium ending August 31, 2017.

The bill would remove the separate Sunset dates for the regulatory programs. The bill would reconstitute the existing boards and committees associated with these professions as advisory boards at TDLR and would make them responsible for providing advice and recommendations to TDLR on technical matters relevant to the administration of the laws associated with the regulatory programs. The bill would specify the advisory boards' appointments, meeting requirements, and duties. The Orthotists and Prosthetists Advisory Board would consist of seven members, of whom there would be two licensed orthotist members who each had practiced orthotics for the past five years and two licensed prosthetist members who had each practiced prosthetics for the past five years.

The bill also would make conforming changes to existing TDLR requirements and procedures and would transfer administration and enforcement of the regulatory programs to TDLR's executive director and rulemaking authority to the Texas Commission of Licensing and

Regulation. The bill would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

The Commission of Licensing and Regulation could not adopt a new rule relating to the scope of practice or a health-related standard of care for regulation of a profession that would be transferred in the 2017 biennium unless the rule had been proposed by the advisory board established for that profession. The commission would retain authority for final adoption of all rules and would be responsible for ensuring compliance with all laws regarding the rulemaking process.

The Commission of Licensing and Regulation would adopt rules clearly specifying the manner in which TDLR and the commission would solicit input from and provide information to a profession's advisory board regarding the general investigative, enforcement, or disciplinary procedures of the department or commission.

Transfers during the biennium ending August 31, 2019. Effective September 1, 2017, the bill would transfer regulation of offender education providers, laser hair removal, massage therapists, code enforcement officers, sanitarians, and mold assessors and remediators from DSHS to TDLR during the biennium ending August 31, 2019. The TDLR executive director would administer and enforce the regulatory programs, and TDLR would take over rulemaking authority associated with the programs. The bill would authorize TDLR to establish an advisory committee to provide advice and recommendations to TDLR on technical matters relevant to administration of code enforcement officer and sanitation programs.

The bill would make conforming changes related to administration and enforcement for each of the regulatory programs to conform with existing TDLR requirements and procedures. The bill also would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

Transition provisions. The bill would require DSHS and TDLR to adopt a transition plan as soon as practicable after the effective date of the transfer to provide for the orderly transfer of power, duties, functions, programs, and activities. The transition plan would have to be completed by the respective effective dates of each program's transition. The bill would require TDLR to create a health professions division by August 31, 2017, to oversee programs transferred from DSHS and to ensure that TDLR develops necessary health-related expertise.

Transition of staff. The bill would specify that on the date the transition plan would require the transfer of a particular program to TDLR, all full-time equivalent employee positions at DSHS that concerned the administration or enforcement of the program being transferred would become positions at TDLR. TDLR would post the positions for hiring and would give consideration to an applicant who was an employee at DSHS immediately before the date of the transfer and was primarily involved in administering or enforcing the transferred program. TDLR would not be required to hire a former DSHS employee.

Texas Medical Board. *Medical radiologic technologists and respiratory care practitioners.* The bill would transfer the regulation of medical radiologic technologists, respiratory care practitioners, medical physicists, and perfusionists from DSHS to the Texas Medical Board (TMB) and would establish associated advisory boards and advisory committees. The bill would require these programs to undergo Sunset review at the same time as TMB. The bill would require fingerprint-based background checks for new applications and renewals for all four professions transferring to TMB and would require the advisory boards and TMB to adopt rules and guidelines for consequences of criminal convictions. The background checks would apply to applications or renewals starting January 1, 2016. The bill would repeal provisions of law associated with the regulatory programs that duplicate or conflict with other provisions of law that currently apply to TMB and would make conforming changes.

Rules related to nurses and physician assistants. The bill would require certain agencies to adopt rules to regulate the manner in which a person

who held a license issued by the agency could order, instruct, or direct another authorized person in the performance of a radiologic procedure.

The Texas Board of Nursing and the Texas Physician Assistant Board would adopt rules governing registered nurses or physician assistants, as applicable, who performed radiologic procedures without being required to hold a certificate in medical radiologic technology, including rules establishing mandatory training guidelines and requiring registered nurses performing radiologic procedures to register with the Texas Board of Nursing or Texas Physician Assistant Board, as applicable, and to identify the practitioner ordering the procedures.

Medical physicists and perfusionists. The bill would transfer the regulation of medical physicists and perfusionists from DSHS to TMB, abolish their associated boards, and would create informal advisory committees for the professions. The bill would set requirements for appointments, terms, and meetings of the advisory committees and their members. The advisory committees would have no independent rulemaking authority, and the bill would require TMB to adopt rules and implement policies necessary to regulate the medical physicist and perfusionist regulatory programs.

Transition provisions. The bill would require DSHS and TMB to adopt a transition plan to provide for the orderly transfer of powers, duties, functions, programs, and activities for programs transferred by DSHS to TMB as soon as practicable after September 1, 2015. The bill would specify that rules and fees; licenses, permits, or certificates; and complaints, investigations, contested cases, or other proceedings continue or transfer from DSHS to TMB until the authorized entities change them.

The bill would abolish the existing Texas Board of Licensure for Professional Medical Physicists and the Texas State Perfusionist Advisory Committee on September 1, 2015, and would require the governor and the president of TMB, as appropriate, to appoint members to the Texas Board of Medical Radiologic Technology, the Medical Physicist Licensure Advisory Committee, the Perfusionist Licensure Advisory Committee,

and the Texas Board of Respiratory Care as soon as practicable after September 1, 2015.

The bill would add medical radiologic technologists, medical physicists, perfusionists, and respiratory care practitioners to the list of professions scheduled to be subject to Sunset review and expiration on September 1, 2017, unless continued in statute. TMB, the Texas Board of Medical Radiologic Technology, or the Texas Board of Respiratory Care, as appropriate, could make a referral to the Texas Physician Health Program and require participation in the program as a prerequisite for issuing or maintaining a license, certificate, permit, or other authorization as a medical radiologic technologist, medical physicist, perfusionist, or respiratory care practitioner.

Transition of staff. The bill would specify that on September 1, 2015, all full-time equivalent employee positions at DSHS that concerned the administration or enforcement of programs transferred to TMB would become positions at TMB. TMB would post the positions for hiring and would give consideration to an applicant who was an employee at DSHS immediately before September 1, 2015, and was primarily involved in administering or enforcing the transferred program. TMB would not be required to hire a former DSHS employee.

Report. The bill would require TDLR to submit a report regarding the implementation of the provisions of the bill related to transfer of programs from DSHS to TDLR to:

- the Sunset Advisory Commission;
- each standing committee of the Senate and House of Representatives with primary jurisdiction over health and human services or the occupational licensing of health-related professions; and
- each advisory board or committee established to advise TDLR regarding a program transferred to the department.

The report would be posted on the TDLR's website and would include

detailed information regarding:

- the status of the implementation of the transition plan, including an explanation of any delays or challenges in implementing the plan;
- appointments to each advisory board or committee advising TDLR;
- the establishment and operation of the health professions division of TDLR;
- any other information TDLR would consider relevant to the transfer of programs to the department.

Reporting requirements would expire January 1, 2020.

Deregulation of activities and occupations. The bill would discontinue various regulatory programs.

Repealed sections related to state licensing, regulation, and permitting.

The bill would repeal provisions and make conforming changes to discontinue state involvement in the licensing, registration, and permitting of:

- indoor air quality in state buildings;
- rendering;
- tanning bed facilities;
- bottled and vended water certifications;
- personal emergency response systems;
- opticians;
- contact lens dispensers; and
- bedding.

Tanning bed facilities. The bill would require a sign posted at a tanning facility to include a statement stating, “a tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority.” The sign would

no longer include a statement that a customer could call the DSHS toll-free telephone number to report an alleged injury regarding a tanning device.

Expiration of licenses, permits, certification of registration, or authorization. The bill would specify that a license, permit, certification of registration, or other authorization repealed by the bill would not affect the validity of a disciplinary action taken, offense committed, or a fee paid before September 1, 2015, and that was pending before a court or other governmental entity on that date. The bill would specify that an offense or violation of law repealed by the bill was governed by the law in effect when the violation was committed and would continue the former law for that purpose. The repeal of law in the bill would not entitle a person to a refund of an application, licensing, or other fee paid before September 1, 2015.

The bill also would include conforming changes to SB 219 enacted by the 84th Legislature.

The bill would take effect September 1, 2015, except for the transfer of regulatory programs from DSHS to TDLR in the biennium ending August 31, 2019, which would take effect September 1, 2017.

**SUPPORTERS
SAY:**

SB 202 would eliminate unnecessary regulation and would reduce DSHS' role in occupational licensing so the agency could focus on its core function: improving the health and well-being of Texans. The bill is narrowly focused on occupational licensing and is not a DSHS Sunset bill. For this reason, the bill does not include provisions related to continuation of the agency or other Sunset recommendations. Sunset provisions related to DSHS as well as other Sunset recommendations for the agency will be addressed in other legislation and are outside the scope of this bill.

Discontinuing regulatory programs housed at DSHS and moving certain programs to the Texas Department of Licensing and Regulation or to the Texas Medical Board would improve the agency's focus on protecting public health while maintaining necessary licensing and regulation for

certain professions. The bill represents a compromise among stakeholders on several issues related to the Orthotists and Prosthetists Advisory Board, dyslexia therapists and practitioners, radiology, rulemaking input for boards transferring to TDLR, hiring of former DSHS regulatory staff, tanning bed warning signs, and certification of food handler education.

The bill would require TDLR to provide the Legislature, the Sunset Advisory Commission, and related advisory boards with public status reports to allow for monitoring the transfer of regulatory programs from DSHS to TDLR.

OPPONENTS
SAY:

SB 202 does not contain a Sunset provision for DSHS and leaves uncertainty regarding whether the agency would be continued after its expiration date in current statute of September 1, 2015.

OTHER
OPPONENTS
SAY:

SB 202 should include recommendations from the Sunset Advisory Commission to require DSHS to develop a comprehensive inventory of the public health responsibilities of the state and local departments and for HHSC to conduct a strategic review of behavioral health services. These recommendations were included in previous versions of this bill and would provide needed coordination of health services across the state.

NOTES:

The bill would have a negative net fiscal impact of \$8.3 million through the biennium ending August 31, 2017, according to the Legislative Budget Board's fiscal note.