

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1485 by Pitts (Relating to rulemaking and performance assessments of certain state agencies.), **As Engrossed**

It is assumed that the bill could have a significant fiscal impact to the state; however, the exact cost cannot be estimated with currently available information.

The bill would amend the Government Code to require state agencies, prior to adopting a new rule, to research the legislative history of a prepare a legislative history on the law under which the rule is to be adopted. The state agency would need to ascertain the identity of the primary author and sponsor of the legislation that authorized the rule change, and identify legislative intent.

Before a state agency gives notice of its intention to adopt a new rule, it would be required to ensure that the proposed rule is consistent with the legislative intent and shall notify the primary author and sponsor of the rule and of any public hearings or informal conferences held in connection with the rule. The primary author or sponsor may advise the governor that the rule is not consistent with the intent of the legislature, and, before the rule is adopted or within 90 days of adoption, the governor may vacate the rule.

Similar notifications would also be required for emergency rules.

For rules that are finally adopted, the agencies would be required to include in the order any written comments received from members of the legislature and the reasons why the agency disagreed with the legislature, and to certify that the adopted rule is consistent with the intent of the legislature.

For these rulemaking provisions, several agencies reported that additional legal and administrative staff would be required over the next five fiscal years. For example, it is assumed that:

- The Department of Public Safety would need 2 FTEs at \$160,000 of General Revenue (GR) each fiscal year;
- The Board of Pardons and Paroles would need 2 FTEs at \$110,000 of GR each fiscal year;
- The Texas Department of Insurance would need 3 FTEs at \$150,000 from the GR Dedicated fund 8042 Insurance Companies Maintenance Tax and Insurance Department Fees each year; and
- The Office of the Attorney General would need 2 FTEs at \$175,000 of GR in fiscal year 2010, 1 FTE at \$81,000 in fiscal years 2011 and 2012, and 0.5 FTEs at \$40,000 in fiscal years 2013 and 2014.

The bill would also amend the Government Code to require each state agency to establish a six-year plan to assess its management, accountability, performance and customer service using the Malcolm Baldrige Criteria for Performance Excellence. The bill would also require agencies to provide progress assessments every two years and to submit the most recent biennial assessment to the Quality Texas Foundation no later than March 1 of each even numbered year.

It is assumed each agency would contract with a vendor that would perform the assessment and provide a report and its recommendations to the presiding officers of each house of the legislature, the Legislative Budget Board, the Governor's Office, and the state agency. If the most recent assessment of a state agency indicates that the agency failed to correct deficiencies from a previous assessment then the agency could be subject to review by the Sunset Commission. Agencies could also receive awards based upon improved performance.

The bill would allow the Governor's Office of Budget and Planning to award up to 10 percent of net savings or revenue increases to a state agency that meets certain criteria. It is assumed that the Governor's Office would only make awards out of funds appropriated or otherwise available for this purpose out of available savings or revenue increases.

The Governor's Office would be required to adopt rules to implement this requirement and to select six state agencies of various sizes to establish the first six year plan and conduct the first assessment. This would be due no later than March 1, 2010. All other state agencies would not be required to submit a biennial assessment before March 1, 2012.

The rulemaking provisions of the bill would apply to a state agency rule for which notice is first published in the Texas Register on or after October 1, 2009, and for an emergency rule adopted on or after September 15, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 301 Office of the Governor, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 362 Texas Lottery Commission, 405 Department of Public Safety, 454 Department of Insurance, 455 Railroad Commission, 456 Board of Plumbing Examiners, 476 Racing Commission, 529 Health and Human Services Commission, 582 Commission on Environmental Quality, 601 Department of Transportation

LBB Staff: JOB, KJG, PJK, KY, MS, BTA