

By: Callegari

H.B. No. 1618

A BILL TO BE ENTITLED

AN ACT

relating to the criteria for review by the Sunset Advisory Commission of an agency that licenses an occupation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 325.011, Government Code, is amended to read as follows:

Sec. 325.011. CRITERIA FOR REVIEW. (a) The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency and effectiveness with which the agency or the advisory committee operates;

(2)(A) an identification of the mission, goals, and objectives intended for the agency or advisory committee and of the problem or need that the agency or advisory committee was intended to address; and

(B) the extent to which the mission, goals, and objectives have been achieved and the problem or need has been addressed;

(3)(A) an identification of any activities of the agency in addition to those granted by statute and of the authority for those activities; and

(B) the extent to which those activities are

1 needed;

2 (4) an assessment of authority of the agency relating
3 to fees, inspections, enforcement, and penalties;

4 (5) whether less restrictive or alternative methods of
5 performing any function that the agency performs could adequately
6 protect or provide service to the public;

7 (6) the extent to which the jurisdiction of the agency
8 and the programs administered by the agency overlap or duplicate
9 those of other agencies, the extent to which the agency coordinates
10 with those agencies, and the extent to which the programs
11 administered by the agency can be consolidated with the programs of
12 other state agencies;

13 (7) the promptness and effectiveness with which the
14 agency addresses complaints concerning entities or other persons
15 affected by the agency, including an assessment of the agency's
16 administrative hearings process;

17 (8) an assessment of the agency's rulemaking process
18 and the extent to which the agency has encouraged participation by
19 the public in making its rules and decisions and the extent to which
20 the public participation has resulted in rules that benefit the
21 public;

22 (9) the extent to which the agency has complied with:

23 (A) federal and state laws and applicable rules
24 regarding equality of employment opportunity and the rights and
25 privacy of individuals; and

26 (B) state law and applicable rules of any state
27 agency regarding purchasing guidelines and programs for

1 historically underutilized businesses;

2 (10) the extent to which the agency issues and
3 enforces rules relating to potential conflicts of interest of its
4 employees;

5 (11) the extent to which the agency complies with
6 Chapters 551 and 552 and follows records management practices that
7 enable the agency to respond efficiently to requests for public
8 information; ~~and~~

9 (12) the effect of federal intervention or loss of
10 federal funds if the agency is abolished; and

11 (13) for an agency that licenses an occupation or
12 profession, an assessment as to:

13 (A) whether the occupational licensing program:

14 (i) serves a meaningful, defined public
15 interest, particularly with regard to protecting public health,
16 safety, and welfare; and

17 (ii) provides the least restrictive form of
18 regulation that will adequately protect the public interest;

19 (B) whether the conditions that led to the
20 initial regulation of the occupation or profession have changed in
21 a way that would warrant more, less, or the same degree of
22 regulation;

23 (C) the extent to which the regulatory objective
24 of the occupational licensing program may be achieved through
25 market forces, private or industry certification and accreditation
26 programs, or enforcement of other law;

27 (D) the extent to which licensing criteria, if

1 applicable, ensures that applicants with occupational skill sets or
2 competencies that correlate with a public interest obtain a license
3 and the impact that those criteria have on individuals,
4 particularly those with moderate or low incomes, seeking to enter
5 the occupation or profession;

6 (E) the economic impact of the regulation,
7 including the extent to which the program stimulates or restricts
8 competition and affects consumer choice and the cost of services;

9 (F) whether the composition of the agency's board
10 or commission adequately represents the public interest;

11 (G) whether the agency encourages public
12 participation in its decisions or limits participation only to
13 people regulated by the agency;

14 (H) whether complaint, investigation, and
15 disciplinary procedures adequately protect the public; and

16 (I) whether final dispositions of complaints are
17 made in the public interest or are self-serving to the occupation or
18 profession.

19 (b) In this section, "license" means a license,
20 certificate, registration, permit, or other form of authorization
21 required by law or a state agency rule that must be obtained by an
22 individual to engage in a particular occupation or profession.

23 SECTION 2. Chapter 325, Government Code, is amended by
24 adding Section 325.023 to read as follows:

25 Sec. 325.023. PREVIEW OF PROPOSED LEGISLATION REGULATING AN
26 OCCUPATION. (a) A person may submit proposed legislation that
27 would create an occupational licensing program or significantly

1 affect an existing occupational licensing program to the commission
2 for review and analysis.

3 (b) If the commission reviews and analyzes legislation
4 proposing the regulation of an occupation, the commission shall
5 submit a report to the legislature before the start of the next
6 legislative session regarding the commission's findings on the need
7 for regulating the occupation and the type of regulation
8 recommended, if any.

9 (c) In analyzing legislation proposing the creation of an
10 occupational licensing program, the commission shall determine
11 whether:

12 (1) the unregulated practice of the occupation would
13 clearly harm or endanger the health, safety, or welfare of the
14 public;

15 (2) the public can reasonably be expected to benefit
16 from an assurance of initial and continuing professional liability;
17 and

18 (3) the public can be more effectively protected by
19 means other than state regulation.

20 (d) If the commission reviews and analyzes proposed
21 legislation amending an existing occupational licensing program,
22 the commission shall submit a report to the legislature before the
23 start of the next legislative session regarding the commission's
24 findings on the need for the amendment.

25 SECTION 3. This Act takes effect September 1, 2011.