

LEGISLATIVE BUDGET BOARD

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Revision 1

April 29, 2013

TO: Honorable Linda Harper-Brown, Chair, House Committee on Government Efficiency & Reform

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB87 by Callegari (Relating to regulation of an individual's occupation.), **Committee Report 1st House, Substituted**

Depending upon the number of challenges that could be brought against the state and the impacts upon all state regulatory agencies, there could be significant but indeterminate costs to the state.

This bill would amend the Labor Code to allow an individual to participate in a lawful occupation free from any "substantial burden" created by state agency regulation. The bill would stipulate that a state agency may substantially burden an individual's right to engage in an occupation only if the agency demonstrates the regulation reflects a "compelling governmental interest in protecting against actual and specific harm to the public health or safety," and that the regulation is narrowly tailored to further this compelling governmental interest.

The bill would create an affirmative defense allowing an individual to assert an agency regulation is substantially burdensome. An individual doing so must demonstrate with a preponderance of the evidence that the state agency regulation substantially burdens the individual's right to engage in an occupation not prohibited by law. If an individual meets this burden of proof, then a state agency must demonstrate also by a preponderance of the evidence that the regulation reflects a compelling governmental interest in protecting against actual and specific harm to the public health or safety, and that the regulation is narrowly tailored to further this compelling governmental interest.

The bill would require judges or other authorities presiding over proceedings where individuals assert the affirmative defense authorized by the bill to make findings of fact and conclusions when making a determination.

The bill would allow individuals to assert a defense for rule violations promulgated by potentially all state agencies involved in the regulation of occupations, including but not limited to: Alcoholic Beverage Commission; State Office of Administrative Hearings; Department of State Health Services; Commission on Environmental Quality; Department of Public Safety; and the Department of Licensing and Regulation.

Agencies would possibly have to hire additional legal or administrative staff and pay additional costs to handle an increased caseload. There may also be significant revenue impacts on affected

state agencies. In cases where the individual receives a favorable ruling the state agency would lose penalty revenue, and in cases where the individual receives an unfavorable ruling the result could be a delay in revenue.

The Department of Public Safety, Texas Commission on Environmental Quality, and Texas Workforce Commission anticipate that any additional work resulting from passage of the bill could be absorbed with current resources. The State Office of Administrative Hearings does not have sufficient information to estimate the bill's fiscal impact, but anticipates the bill could result in additional legal costs.

The Texas Department of Licensing and Regulation notes the agency does not have sufficient information to estimate the bill's fiscal impact, but anticipates the bill could result in additional costs to defend the agency from what may be a significant number of challenges to the agency's enforcement actions. The agency also anticipates successful challenges would eliminate penalty revenues and unsuccessful challenges would delay the receipt of penalty revenues.

The Department of State Health Services also indicates that litigation costs associated with the bill are unknown but could be substantial.

The Alcoholic Beverage Commission notes the bill might not apply to the agency because it licenses business rather than occupations, and cannot estimate how many of its rules, policies and practices would be subject to challenges resulting from enactment of this legislation. The agency has estimated significant costs if the bill applied to the agency's licensing and permit functions.

Office of the Attorney General anticipates significant costs from the bill resulting from an assumed increase in the number of cases brought against agencies represented by the Office of the Attorney General. The agency estimates it would need an additional 13 attorney FTEs and 6.5 support FTEs to handle the increased caseload volume.

The bill would take effect September 1, 2013.

Local Government Impact

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

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 320 Texas Workforce Commission, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 458 Alcoholic Beverage Commission, 537 State Health Services, Department of, 582 Commission on Environmental Quality

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