

SUBJECT: Reestablishing the State Board of Dental Examiners

COMMITTEE: Select Committee on the Dental Practice Act — favorable, without amendment

VOTE: 10 ayes — Berlanga, Delisi, Coleman, Glaze, Harris, Hirschi, Maxey, McCall, McDonald, Park

0 nays

1 absent — Clemons

SENATE VOTE: On final passage, January 16 — 31-0

WITNESSES: None

BACKGROUND: The State Board of Dental Examiners, created to regulate the practice of dentistry, ceased operation on September 1, 1994, after the 73rd Legislature failed to continue the agency past its "sunset" date. The board had been the licensing agency for dentists and dental hygienists and had registered dental laboratories, among other duties. In 1994 dental students and dental laboratories filed suit in the 345th State District Court in Austin, contending that statutory licensing requirements could not be met without a regulatory board and asking the court to find unconstitutional either the Dental Practice Act or the Sunset Act.

After hearing the case state District Judge Scott McCown gave the 74th Legislature until February 8, 1995, to enact dental licensing legislation. If the deadline were not met, the judge said, he would find the Dental Practice Act unconstitutional. Such a ruling would invalidate all existing dental licenses and statutory standards of dentistry.

The Texas Dental Association and the Texas Dental Hygienists' Association, the primary parties in the dispute that lead to the death of the 1993 licensing bill, subsequently reached agreement over the issue of composition of the dental board and how the board would regulate dental

hygienists. (For more information, see House Research Organization Session Focus Report Number 74-2, *Court Sets Deadline for Dental Board Law*, January 10, 1995).

Since September 1, 1994, former dental board personnel have remained in the former state board office (renamed the Dental Information Resource Center) to carry out certain board duties, with funding allocated through other agencies.

DIGEST:

SB 18 would reestablish the State Board of Dental Examiners until September 1, 2005, and would appropriate \$206,168 to the board for fiscal 1995. All former dental board personnel, property or records and other obligations reallocated to other agencies would return to the board. All rules, decisions and orders made before the board was abolished would be reestablished along with the board itself.

The chief coordinator of the Dental Information Resource Center would serve as the interim executive director of the Board of Dental Examiners until all new members of the board have been qualified.

SB 18 also would amend provisions on composition of the board, dentistry clinical exams, the Dental Hygiene Advisory Committee, the employment of dentists by some nonprofit clinics, board complaint procedures, discipline, fees, penalties and other matters. SB 18 would have immediate effect if approved by a two-thirds vote of the membership of both houses.

Board composition. SB 18 would enlarge the board from 15 members to 18 by increasing the number of public members from three to six. The board would continue to include 10 dentists and two dental hygienists. SB 18 would require that the board president, to be elected by the board, be a dentist. The governor would be required to appoint the members within 90 days from the bill's effective date.

Dental Hygiene Advisory Committee. The Dental Hygiene Advisory Committee, formerly eight hygienists appointed by the board, would instead

include three hygienists appointed by the governor, two public members appointed by the governor and one dentist appointed by the board. The governor would be required to appoint members of the committee as soon as possible after the reestablishment of the board. The board could not abolish the committee for four years.

The advisory committee would be required to develop and recommend rules to the board that would establish licensure qualification and educational requirements for dental hygienists. The board would be required to approve the proposed rules or explain why the rules were not approved and ask the committee for further development.

Independent clinical exams. SB 18 would require the board to contract with an independent or regional testing service to administer clinical exams for licensing dentists and dental hygienists. Licensed dentists or licensed dental hygienists could assist the regional testing service. The written part of the exam would have to be validated by an independent testing professional. The board would be required to set the number and conditions for exam retakes.

Dentists at nonprofit health centers. SB 18 would require the board to approve and certify certain nonprofit health centers to employ dentists. Nonprofit community centers and those serving migrants or the homeless could apply for certification if they are in compliance with federal rules. Dentist services would have to be free or for reduced fees, commensurate with the patient's ability to pay, in accordance with federal rules. The board could refuse to approve an organization determined to be operating with the intent to circumvent any provision of the act.

Miscellaneous. SB 18 would require, instead of permit as in current law, the board to license qualified out-of-state applicants for a dentist or dental hygienist license. Continuing education would be changed from a voluntary program to a mandatory program developed by the board.

The board would be allowed to temporarily suspend the license of a licensee constituting a clear, imminent or continuing threat to a person's

physical health or well-being, order probation for a person whose license had been suspended and reprimand a licensee. Civil and administrative penalties could be imposed in addition to the criminal penalties currently in statute.

General amendments. SB 18 would amend the Dental Practice Act to include provisions included in most health care licensing board sunset bills last session, such as those on board conflict of interest, board membership, board training, advertising, complaint files, access to public information, employment policies and monitoring license holders for compliance.

**SUPPORTERS
SAY:**

SB 18 would reestablish a critically important regulatory agency and enact into law a carefully crafted compromise agreement. SB 18 reflects the 73rd Legislature's sunset process and the agreement subsequently reached by the two parties whose differences lead to the licensing bill's demise in 1993.

The bill reflects resolution of the dispute between dentists and dental hygienists over the regulation of dental hygienists and their role with the dental board. The compromise, reached in September 1995 and included in this bill, would provide dental hygienists some of the regulatory independence they sought by establishing direct governor appointments to the dental hygiene advisory committee and a specified role in the promulgation of certain rules. The dental board would also be prohibited from abolishing the dental hygiene advisory committee within the next four years.

The compromise incorporated in the bill would also allow dentists to retain majority membership on the board and final authority over all rule adoptions. SB 18 would require that the board president be a dentist, increase the number of public board members by three and require the board to appoint a dentist to the dental hygiene advisory committee.

**OPPONENTS
SAY:**

SB 18 reflects a compromise struck between the dentists and the dental hygienists that would not entirely satisfy valid and reasonable concerns

raised last session. Some dentists argued that since dental hygienists work solely under dentist supervision, they should have no independent regulatory authority. Some dental hygienists argued that they should have more autonomy, noting that many other health professionals, such as nurses, have a stronger voice in the promulgation of rules or are regulated by an independent agency.

NOTES:

Additional amendments to the Dental Practice Act may be proposed later in separate bills concerning issues such as statutory definitions of the scope of dental practice and the regulation of dental laboratories.

Gov. Ann Richards submitted the issue of reestablishment of the State Board of Dental Examiners and regulation of the practice of dentistry and dental hygiene as an emergency matter, allowing its early consideration.

Since the House has not yet adopted rules for the 74th Legislature and committees have not yet been appointed, SB 18 was considered under a special rule adopted by the House on January 16. HR 3 by Counts created an 11-member Select Committee on the Dental Practice Act for the exclusive purpose of dealing with the emergency matter. The speaker was authorized to schedule SB 18 for floor consideration no sooner than 24 hours after the bill was reported by the select committee and a copy of the committee report was distributed to all House members. Once the speaker determines that the select committee has fulfilled its assigned purpose, the committee shall be considered discharged.