

SUBJECT: Conservators for state agencies and public junior colleges

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Wolens, S. Turner, Brimer, Carter, Counts, Craddick, Danburg, Hilbert, Hunter, D. Jones, Longoria, McCall, Ramsay

0 nays

2 absent — Alvarado, Stiles

WITNESSES: None

BACKGROUND : The governor may place a state agency or institution of higher education guilty of gross fiscal mismanagement under the supervision of the State Conservatorship Board (SCB). The SCB assumes the duties of the agency's director or governing board and responsibility for the policy direction of the agency. The board consists of three members appointed by the governor and approved by the Senate for staggered six-year terms.

Agencies under the direction of an elected board, officer, or commission are not subject to conservatorship. Public junior colleges may only be placed under the conservatorship of the Texas Higher Education Coordinating Board.

DIGEST: CSHB 2520 would amend conservatorship procedures to abolish the State Conservatorship Board and allow the governor to appoint a single conservator for an agency guilty of gross fiscal mismanagement. A conservator would be entitled to a salary equal to that of the agency's chief administrative officer. Limits provided by appropriation on reimbursement of state officers would not apply to reasonable and necessary expenses incurred by a conservator in the course of duty. Salary and reimbursement could be paid from money appropriated or otherwise available to the agency or by money specifically appropriated by the Legislature. Conservators' terms would last two years or for the duration of the conservatorship, whichever was shorter. Conservators could be reappointed if their term expired before the conservatorship was dissolved.

If the Texas Higher Education Coordinating Board determined that gross fiscal mismanagement existed at a public junior college, the governor could appoint a conservator instead of requesting the coordinating board to execute the conservatorship.

The Legislative Audit Committee could recommend as an alternative to conservatorship that an agency enter into a rehabilitation plan. The agency would hire an independent management consulting team and adopt a plan for achieving sound fiscal management, including performance goals and timetables for achieving those goals. The costs of the management team could be paid by available agency funds or by specific appropriations. Both the consulting team and rehabilitation plan would require approval by the governor and the Legislative Audit Committee. If the agency did not adopt the plan within a reasonable time or did not make adequate progress toward its completion, the governor could appoint a conservator.

The State Conservatorship Board would be abolished when the bill took effect. If an agency was under the board's conservatorship at that time, SCB would continue until the conservatorship was dissolved. A conservatorship ongoing at the time the bill became effective would not be affected by its enactment.

CSHB 2520 would take immediate effect if finally approved by a record two-thirds vote of the membership in each house.

**SUPPORTERS
SAY:**

CSHB 2520 would improve the state's conservatorship process by incorporating lessons learned during the conservatorship of the Texas Commission on Alcohol and Drug Abuse (TCADA). The statutes governing conservatorship are old and had never been used, and the TCADA episode yielded important information on how best to remedy fiscal mismanagement that now may be used to fine tune the program and better manage any future situations that call for drastic measures.

An appointed three-member State Conservatorship Board creates unnecessary inefficiencies and delays in the conservatorship process. The board convenes under much different circumstances than other governance boards and needs to act quickly and confidentially. However, because the board is subject to open meeting provisions, members must post the required

notice and hold public hearings in order to exchange information on a project. Preliminary discussion of possible agency violations, if conducted in public before being evaluated or confirmed, can result in misunderstandings and damage the progress of the conservatorship. State auditors are exempted from open meeting provisions to prevent just such occurrences, and conservators should be afforded similar protection.

CSHB 2520 would remedy this problem by allowing single individuals to undertake conservatorships and authorizing them to take swift and appropriate action to restore sound financial management at state agencies. In the private sector, conservatorships of bankrupt or otherwise delinquent corporations are routinely awarded to single individuals. The state should adopt this strategy and eliminate the inefficiencies that often accompany the assembly of a management team.

Furthermore, retaining a standing SCB places the same individuals in charge throughout their six-year terms, whether or not they are the best qualified individuals to assume conservatorship of a given agency. CSHB 2520 would allow the governor to appoint individual conservators whose experience and expertise were best suited to the needs of a given agency, providing for quicker and more efficient resolution of fiscal mismanagement. Should the job prove too big for one individual to handle, current law provides that conservators may contract with others for management or administrative services necessary to effect the conservatorship.

The bill would also revise the conservatorship of public junior colleges. Currently, conservatorship of junior colleges is automatically assumed by the coordinating board. Under CSHB 2520, the governor could appoint the conservator best suited to the needs of an individual junior college.

Assuming the conservatorship of a troubled agency is a demanding task that requires considerable expertise and a large time commitment. It is in the state's best interest to recruit the best qualified individuals to serve as conservators, and this could be best achieved by paying them fair salaries. Paid conservatorships would not compromise the process in any way. Conservators would be appointed by the governor, who would have no

incentive to promote continued fiscal mismanagement of a state agency by appointing an unqualified or unscrupulous individual.

The rehabilitation plan proposed by CSHB 2520 would provide an intermediate step for agencies that could work to remedy their fiscal mismanagement with internal resources and some outside help. This would provide agencies with an incentive for improvement, while reminding them that conservatorship would be the next step if they did not improve.

OPPONENTS
SAY:

The three-person SCB provided for by current law ensures that a full complement of perspectives and skills is available and that no one individual becomes enmeshed in any inappropriate activities taking place at the agency. Open meeting provisions bring SCB deliberations and actions into public view, adding citizen accountability to that provided by the board itself. CSHB 2520 would circumvent open meeting requirements by appointing a single conservator to whom the requirements would not apply and move the conservatorship process behind closed doors.

Conservatorship can be too big a job for one person to handle. The nature of the problems faced in taking over a grossly mismanaged agency requires the collective expertise of a team. CSHB 2520 would remove the assurance that such expertise would be available.

State agencies are not private companies and should not be treated as such. Paying conservators potentially large salaries could result in the position being given an individual as political patronage or for other reasons unrelated to that individual's fitness to restore an agency to fiscal health.

OTHER
OPPONENTS
SAY:

There are better ways to address the conservator issues. Instead of putting an agency in the charge of a single individual, the Legislature could reduce communication problems by exempting the SCB from open meetings provisions for a given period of time.

NOTES:

The original version of the bill would have allowed the governor to appoint conservatorship boards for individual agencies as needed. The committee substitute would allow appointment of individual conservators instead of an entire board.

