

SUBJECT: Revising Legislative Budget Board functions

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 5 ayes — Swinford, Gattis, B. Cook, J. Keffer, Martinez Fischer

0 nays

4 absent — Miller, Farrar, Villarreal, Wong

WITNESSES: For — None

Against — Kathy Mitchell, Consumers Union

On — John O'Brien, Legislative Budget Board

BACKGROUND: The Legislative Budget Board (LBB) is a permanent joint committee of the Legislature that employs a staff to provide fiscal and performance analyses of state agencies, proposed legislation, and the budget. The LBB is composed of the lieutenant governor, the speaker of the House of Representatives, the chairs of the Senate Finance Committee and the House committees on Appropriations and Ways and Means, three members of the Senate appointed by the lieutenant governor, and two members of the House appointed by the speaker.

DIGEST: CSHB 2753 would make numerous changes in statutes dealing with the LBB.

The bill would specify that all information prepared or maintained in conducting an efficiency review would be excepted as audit working papers from the requirements of the Public Information Act. It also would make confidential all communication between a member of the Legislature or the lieutenant governor and an LBB employee relating to a request by the official for information, advice, or an opinion. The member or lieutenant governor would be able to disclose all or part of those communications.

The bill would delete several reporting requirements, including:

- reports by a state agency that pays membership dues to an organization that pays all or part of the salary of a person registered as a lobbyist;
- reports by state agencies to the governor and the LBB of each lawsuit filed against the state that alleges a claim due to acts or omissions of the agency and for which the state may be liable for payment of a judgment;
- judicial impact notes prepared by the LBB;
- reports by state agencies on contracts awarded to nonresident bidders; and
- reports by state agencies to the LBB on staff training.

The bill also would:

- give the LBB access to certain criminal justice-related databases and authority to undertake other functions assumed from the Criminal Justice Policy Council;
- allow the LBB to determine which school funding elements to study each biennium in accordance with state education policy;
- allow board members to attend a meeting by use of a telecommunication device only if the meeting was held in Austin;
- allow the director to employ personnel as necessary and set their salaries;
- remove the requirement that a chair of the LBB approve board expenditures; and
- codify the LBB's authority to conduct budget hearings.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 2753 would clean up statutes relating to the operation of the LBB. The bill would eliminate outdated, unnecessary, and inefficient provisions, codify current practices, and clarify the LBB's authority on certain functions assumed during the interim.

Under HB 7 by Swinford, enacted by the 78th Legislature during the third called session in 2003, the LBB acquired from the Comptroller's Office

the responsibility of conducting performance reviews. CSHB 2753 would ensure the integrity and thoroughness of the performance review process by exempting working papers from disclosure. This exemption would allow for the preparation of the most comprehensive and honest performance reviews possible by creating an environment of full and open communication between the LBB and the governmental entity under review. Excluding these working papers would not limit the public's ability to oversee government actions because the review would be available to the public. Moreover, the LBB has indicated that it would release these papers once the review was completed.

CSHB 2753 would extend to the LBB the same provision on confidentiality of communications between legislators and the LBB already enjoyed by the Texas Legislative Council. This confidentiality would improve the legislative process by allowing for more frank and open discussions between legislators and LBB staff during the drafting of the budget or requests for information.

The bill would eliminate several reports that almost never are requested and the production and storage of which consequently cost the state money unnecessarily. This information still would be available from the specific agencies involved if a citizen was concerned about whether a particular agency was the subject of a lawsuit or paid dues to an organization that employed a lobbyist.

**OPPONENTS
SAY:**

Information relating to a performance review conducted by the LBB should not be exempt from open records laws. These reviews, which examine the effectiveness and efficiency of an agency, school district, or institution of higher education, are much broader than an audit and should not be included in the audit working papers exemption. Final reports are not sufficient for this purpose because what appears in a final report may be influenced by political pressure or a conflict of interest. Moreover, the broad language of the bill would allow the LBB to withhold even documentary information that was merely factual and normally would be available under open records. Only by guaranteeing public access to this information could citizens ensure that the process had been impartial and properly monitor governmental entities.

By making all communications between a legislator and the LBB confidential, the bill also would enable legislators to politicize information in order to bias debate on an issue. Under this provision, a legislator could

request information from the LBB and then release just that part of the information supporting the legislator's position. If that information had been prepared just for the legislator, members of the public and advocacy groups would have no way of gaining access to the full information to make an informed decision or to counter biased accounts. This communication should not be made confidential.

By removing the requirement that a state agency report if it paid membership dues to an organization that employs a lobbyist, the bill would remove the public's ability to determine whether tax money was being used to lobby for or against an issue. Similarly, eliminating the reporting requirement on lawsuits filed against the state would reduce public information about the performance of these agencies. These reports should be continued to ensure that taxpayers have adequate information to evaluate the performance of state agencies and the use of their tax dollars.

NOTES:

The committee substitute added provisions that would exempt certain performance review working papers from disclosure and eliminate a biennial study by the LBB on school finance funding elements.

The companion bill, SB 1617 by Ogden, was reported favorably, as substituted, by the Senate Finance Committee on April 25.