

- SUBJECT:** Continuing the Speech-Language Pathology and Audiology Board
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 8 ayes — Kolkhorst, Coleman, S. Davis, V. Gonzales, S. King, Laubenberg, Schwertner, Truitt
- 0 nays
- 3 absent — Naishtat, Alvarado, Zerwas
- SENATE VOTE:** On final passage, April 14 — 30-0
- WITNESSES:** (*On House companion bill, HB 2272:*)
For — Larry Higdon, Bess Sirmon-Fjordbak, Texas Speech-Language-Hearing Association; Carl Isett, Livingston Hearing Center; (*Registered, but did not testify:* Brad Shields, Texas Academy of Audiology)
- Against — None
- On — Patricia Brannon, Joyce Parsons, State Board of Examiners for Speech-Language Pathology and Audiology; Ken Levine, Sunset Advisory Commission; (*Registered, but did not testify:* Erick Fajardo, Sunset Advisory Commission)
- BACKGROUND:** In 1983, the Legislature created the State Committee of Examiners for Speech-Language Pathology and Audiology under the Texas Department of Health. The Legislature changed the name to the State Board of Examiners for Speech-Language Pathology and Audiology 10 years later. In 2004, the board was moved to the newly created Department of State Health Services (DSHS).
- The board regulates both speech-language pathologists (SLPs) and audiologists through the DSHS Professional Licensing and Certification Unit that oversees 22 other licensing programs. The board consists of nine members appointed by the governor, including three licensed SLPs, three licensed audiologists, and three public members, one of whom must be a physician certified in either otolaryngology or pediatrics.

In fiscal 2009, the board regulated 9,735 SLPs, 1,059 audiologists, 541 SLP interns, 38 audiologist interns, 2,059 SLP assistants, and six audiologist assistants. The board does not receive a direct appropriation, but receives funding through the DSHS administration of the 23 licensing programs. In 2009, the board spent \$338,356 and generated about \$917,800 to license and regulate professionals.

The board last underwent Sunset review in 1993, and its authorization will expire on September 1, 2011, unless it is continued.

DIGEST:

SB 662 would continue the State Board of Examiners for Speech-Language Pathology and Audiology until September 1, 2017, when other agencies within the DSHS Professional Licensing and Certification Unit would undergo Sunset review.

Conforming rules. The bill would require the board, DSHS, and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt joint rules on hearing instrument sales by May 1, 2012.

The rules would have to address:

- information and other provisions required in each written contract for a hearing instrument sale;
- records retained by those who fitted and sold hearing instruments; and
- guidelines for the 30-day trial period during which a person could cancel a purchase.

Information on the written contract and 30-day trial period would have to be provided to the purchaser in plain language easily understood by the average consumer.

Criminal background checks. SB 662 would require the board to conduct a fingerprint-based criminal background check for the issuance of a license on or after March 1, 2012. The board would be required to adopt rules to implement the criminal history background checks by February 1, 2012.

DSHS would be allowed to contract with the Department of Public Safety (DPS) to administer the background checks and could authorize DPS to collect a fee from the applicants to cover the costs.

Each applicant seeking renewal of a license would have to submit to the fingerprint-based background check, but would not have to do so with each subsequent renewal. This provision would expire on February 1, 2015.

Other provisions. SB 662 would authorize the board to order an audiologist to pay a refund to a customer returning a hearing instrument within the 30-day trial period. The bill also would allow the board, after notice and hearing, to issue a cease-and-desist order to unlicensed individuals and to assess administrative penalties for violations.

SB 662 also would require that board members participating in investigations of complaints recuse themselves from any vote on the complaint at a board meeting. Board members would have to state why they were not voting, and the reason would have to be included in the board minutes.

SB 662 would also include standard Sunset recommendations on conflict of interest prohibitions for board members, grounds for removal, and training. The bill would allow the governor to designate the presiding officer.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

SB 662 would provide the first systematic review of this profession under the Sunset process since 1993 and would modernize the board to fit current times. Although the Oscar-winning film *The King's Speech* raised the profile of SLPs in the popular imagination, the profession has changed greatly since the film's 1930s milieu. Currently, both SLPs and audiologists work in various settings. Most SLPs help schoolchildren with developmental, learning, and language difficulties. They also help patients in hospitals, clinics, and nursing homes. Audiologists work in private practice and dispense hearing instruments. They also assist other medical professionals who treat ear, nose, and throat illnesses and serve with the military and NASA. Audiologists also screen newborns for possible hearing impairment. These health care professionals should continue to be regulated.

Conforming rules. Both audiologists and licensed hearing instrument fitters should adhere to the same set of rules. SB 662 would properly require the State Board of Examiners for Speech-Language Pathology and Audiology, the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, and DSHS to work in tandem to protect the public.

The bill would require standard rules in sales contracts on the 30-day trial period so that a customer could adapt and adjust a hearing aid according to his or her needs. It would help regulators clarify the differences between the 30 consecutive-day standard set by the audiologist board and the 30 days from delivery rule established by the hearing instrument fitter committee. It would help reconcile the differences in the audiologists' and hearing instrument fitters' rules for returning defective or ill-fitting hearing aids.

Precedents exist in Texas and other states for conforming rules for professions that perform similar services. While it is not an exact analogy, barbers and cosmetologists represent two distinct occupations, but both cut and style hair and do waxing. The Texas Department of Licensing and Regulation, which regulates both, led an initiative to create similar rules for overlapping functions such as service delivery, sanitation, and inspections. Other states require uniformity in standards for both audiologists and hearing instrument fitters, even when the two professions are regulated separately. For example, both groups in California, Florida, and New York are subject to common rules.

Criminal background checks. Both SLPs and audiologists practice with vulnerable populations such as infants, schoolchildren, and the elderly, and they should undergo criminal history background checks. The public should also be protected against potential fraud.

SB 662 would require the more accurate fingerprint system operated by DPS rather than the name-based system that had been used. Fingerprint-based criminal background checks provide real-time information from other states and the Federal Bureau of Investigation. Instead of renewal checks, the board would receive automatic notice of subsequent arrests. License holders who submitted to fingerprint-based criminal background checks would not have to pay for additional criminal background checks for future renewals.

Other provisions. Standard sunset recommendations in SB 662 would help streamline and modernize the board's operations. The bill also would eliminate an archaic provision allowing the board to select its own presiding officer. The governor's appointees require the advice and consent of the Senate, which provides for a degree of public accountability. While it occurs rarely, the Senate has refused to confirm board and commission chairmen who have not acted in the public interest.

Changes in licensing regulations for audiologists, including requiring additional academic credentials, "grandfathering" existing license holders, and reciprocity with other states, should be left for other legislation or for further review by the board.

OPPONENTS
SAY:

SB 662 should not include inflexible provisions specifying the role of DSHS in creating conforming rules for audiologists and hearing instrument fitters. That process should be done by the board and not placed in statute. The bill also would define the aspects of the contracts too specifically, especially regarding the 30-day trial period and product returns.

OTHER
OPPONENTS
SAY:

Nationally, the entry-level degree for audiologists is now a doctoral degree. SB 622 should update the educational requirements in Texas to address this, but should "grandfather" those current licensees with only master's degrees so they could continue to practice audiology. The board also should be able to grant licenses to out-of-state audiologists whose states have requirements equivalent to those of Texas.

NOTES:

The fiscal note estimates that SB 622 would have a positive fiscal impact of \$295,120 for fiscal 2012-13 based on fees for the criminal history background checks.

The House companion bill, HB 2272 by Anchia, was considered in a public hearing by the House Public Health Committee on April 6 and left pending.