

Economic Affairs Interim Committee

Draft Work Plan for SJR 35 -- The Board Study

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June 7, 2005

Summary

This Draft Work Plan for Senate Joint Resolution 35, a study of professional and licensing boards by the 2005-2006 Economic Affairs Interim Committee (EAIC), sets forth a description of topics to be addressed in the study, a proposed schedule, and proposed deliverables.

I. Study Scope

The Legislative Council on May 16, 2005, assigned Senate Joint Resolution No. 35, a study of professional and licensing boards, to the Economic Affairs Interim Committee.

Senate Joint Resolution 35 included the following issues in brief (these are explored in more detail below):

- whether a current board or a future board is needed to protect public health and safety or whether a board's existence is for other reasons, such as the ability of a licensee to bill insurance;
- whether different organizational structures would better address jurisdictional issues between department(s) and boards and between various boards;
- whether a policy template is needed for creating new boards or providing budgeting and organizational efficiency for existing boards;
- whether oversight can be improved from a legislative and an executive branch (a department) standpoint, particularly regarding whether boards are implementing legislative intent;
- whether all boards appropriately use rulemaking or need rulemaking to implement legislative intent.

Some of the specific policy issues suggested by members of the Senate Business, Labor, and Economic Affairs Committee, which requested SJR 35, and other interested persons are reflected in the following:

Role of Boards in Public Protection

- Is a board necessary for providing public protection? Who is protected? What is the type of protection: health, safety, or consumer protection?
- By what process does the board best provide public protection -- licensure, regulation, rulemaking, or other?
- Can a license be issued without the need for a licensure board? If so, what criteria would be used to determine the need for licensing vs. a licensure board?
- Does a licensing board need quasi-judicial authority or is departmental authority sufficient?
- Can a standardized format or decision tree be developed for drafting legislation to address new boards of various types?
- What membership criteria or board makeup best reflects legislative intent, including the intent of a board to protect the public?
- Should all members of a board vote? What criteria should be used to determine voting membership?

Administrative Attachment

- Administrative attachment is defined in 2-15-121. Is this approach appropriate for all boards that have this definition? Should boards currently without the criteria be given this type of attachment?
- Does the EAIC consider board autonomy important for all boards? If not, should there be different levels of autonomy?
- What criteria should be applied to boards allowed to operate autonomously?
- Should the criteria be generally applied to board functions or be specific to components of the licensure, policymaking, or disciplinary processes?
- Now that HB 182 has addressed issues of board vs. department functions, what refinements might be necessary regarding:
 - licensure requirements;
 - disciplinary actions;
 - rulemaking, including the role of staff attorneys and compliance with legislative intent;
 - activities that entail large budgetary expenditures;
 - board representation, including at the legislature and before the governor;
 - identifying staffing qualifications and needs;
 - gathering data and information for presentation to the governor and the legislature?
- Are more precise definitions needed for the relationships between board members, board staff, and the department?

Organization Based on Professional Functions and Scope of Practice

- Is there a process in place for boards to address common, overlapping professional or occupational functions? Is such a process needed? If so, and if none is in place, what process would be both flexible and appropriate?
- Are there different organizational configurations that better address legislative intent in relation to public protection?
 - If so, should boards in similar fields be combined?
 - What criteria would be used?
 - What costs and benefits are provided by consolidation? (For example, lower fees may be possible if spread over a larger pool of licensees but a consolidated board may have less ability to address specifics of a profession or occupation.)
- Should dual licenses be encouraged or discouraged?
- If a scope of practice encompasses another field, should a dual license be automatic?
- Would a combined board be a better approach if this addressed dual licensure?
- Do exemptions to licensure in the statutes of each board adequately address overlapping functions?
- Should the legislature adopt a scope of practice for every board?

Oversight and Systemic Support

- Is the separation of powers working as intended, with the legislature setting policy and the executive branch implementing that policy?
- Who provides oversight and how does the legislature determine if a board or the attached department is not following the legislative mandate to protect the public?
- Would revisions to the rulemaking process improve notification and oversight?
- Is the process in place for legislative review in Title 2, chapter 8, sufficient or necessary?
- What recourse does a board or a licensee have if either feels the attached

- department is not adequately carrying out its legislative mandates?
- What recourse does a department have if a board is not adequately carrying out its legislative mandates?
- Would an ombudsman or similar position facilitate improved relationships between boards, the attached department, outside agencies or organizations, licensees, and the public?
- Are legislative policies clearly spelled out for each board?

II. Study Schedule

The study would include the following stages:

1st Stage -- Backgrounding

This stage involves:

- a) a survey of boards, licensees, department staff, and interested persons; and
- b) a staff-developed interested persons stakeholder list along with a report on the history and past audits of boards.

The Survey

The EAIC will review the survey draft at its first meeting, after which the survey will be posted on the committee website for electronic responses. Paper copies also will be available. The survey will request names. Asking for names typically diminishes responses. However, an on-line survey either can request names for verification or provide passwords. Either approach can limit responses. Given the interest in developing a stakeholder list from the survey, names and addresses or phone numbers are important.

Committee staff will seek to disseminate information about the survey by:

- working with the Department of Labor and Industry to provide a notice about the survey in department newsletters;
- informing boards as they meet about the survey; and
- writing a press release for broader dissemination through state newspapers.

Interested Persons List

This list is to be gleaned from names of those who testified on board bills plus each board's interested parties' list, board members, past board members, lobbyists, representatives of professional and occupational organizations, department personnel, and other interested individuals. These stakeholders will be notified electronically or by mail of work group meetings. The work group meetings will address the major topics listed under the study scope and develop points and counterpoints for EAIC consideration.

June 24, 2005 -- Drafts of the survey, stakeholder list, and history available.

2nd Stage -- Committee Discussions on Major Issues with Stakeholder Input

During the committee meetings the EAIC will address the following major areas, with briefing papers prepared by staff and presentations and comments, if requested, by board members, department staff or other interested persons regarding:

- (a) what is the role of boards and should boards have varying authority levels, including variations in their administrative postures;
- (b) how to address overlapping professional functions and scope of practice issues; and
- (c) how to address oversight and support systems.

September 9, 2005	Policy directives by EAIC on each of areas 2(a), 2(b), 2(c)
November 4, 2005	Briefing, stakeholder comments on 2(a)
February 10, 2006	Briefing, stakeholder comments on 2(b) and 2(c).

3rd Stage -- Committee decisions based on stakeholder input

The EAIC will consider recommendations for legislation in mid-May and request drafts at that time for review at the mid-July meeting. The early review schedule is intended to provide the committee with time to focus on each of its assigned studies separately. The separation of recommendations from draft legislation review allows time for stakeholder input and comment.

May 12, 2006	Recommendations for legislation.
July 14, 2006	Review of draft legislation.

III. Study deliverables and end products

The study is intended to produce the following:

- 1) An attitudinal survey of boards, interested parties, and department personnel involved with boards to determine whether boards representing large numbers of licensees differ in their views from boards that represent small numbers of licensees. The survey also would seek to determine approaches for creating a board if a board does not now exist.
- 2) Staff briefing papers, including a history of boards and a review of stakeholder concerns and responses to study questions.
- 3) Policies adopted by the interim committee for creating new boards, including a decision tree for creating a new board if the committee decides a decision tree would be helpful.
- 4) Decisions by the interim committee on whether to revise or standardize the current system.
- 5) Final report.
- 6) Legislation, if needed, for items 3 and 4.

IV. Summary

As stated in the overall EAIC work plan, the committee will perform a key, early role in determining the policy direction for the professional and licensing boards study. By deciding policies first, the EAIC will take a macro approach that clarifies and limits the study process. The EAIC will assign to work groups of stakeholders the responsibility of suggesting how to reflect these policy approaches in statute or refine statutes that apply to boards.

SJR 35 follows a limited scope performance audit of the professional and licensing boards in the 2003-2004 interim as well as an administrative reorganization that began with the 2001 Legislature transferring statutory authority for the boards to the Department of Labor and Industry from the Department of Commerce.

The SJR 35 study is intended to result in decisions regarding whether a standardized approach is necessary for creating new boards, whether changes are necessary for organizational and administrative reasons, and whether other revisions are needed for oversight or other reasons.

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