



OHIO LEGISLATIVE SERVICE COMMISSION

Edward M. Millane

Fiscal Note & Local Impact Statement

Bill: S.B. 255 of the 132nd G.A.

Status: As Reported by House Government Accountability and Oversight

Sponsor: Sen. McColley

Local Impact Statement Procedure Required: No

Subject: Occupational licensing entity review and regulation, home inspector licensure, makes changes to a variety of other state laws

State & Local Fiscal Highlights

- The bill requires the Legislative Service Commission (LSC) to issue certain additional reports on (1) each bill introduced in the General Assembly that proposes to substantially change or enact occupational regulations and (2) the regulatory schemes of 33% of the occupations regulated by the state each biennium, beginning in CY 2019. As a result of these additional duties, the agency will likely need to hire one staff person. The annual salary and benefits for an entry-level staff person range from \$70,490 to \$73,150.
- The bill requires all state occupational licensing entities, including the licensing divisions of state agencies, to produce reports containing specified information to certain standing committees of the General Assembly at least once every six years as part of the bill's systematic review of occupational regulation. As a result, the workload of state occupational licensing entities may increase to meet the bill's reporting requirements.
- The bill creates the Ohio Home Inspector Board within the Department of Commerce. A license issued under the bill is valid for three years. Application and renewal fees are limited to \$250. This revenue would be deposited into the newly created Home Inspectors Fund. These fees would be used to offset the additional expected staffing and other related costs.
- The bill makes assorted changes to the laws governing various occupational licensing boards, primarily those that regulate health professions. These changes may affect the boards' operating costs or fee revenues. The applicable boards all use the Occupational Licensing and Regulatory Fund (Fund 4K90) as a shared pool to pay operating expenses and deposit fee revenues.

Detailed Fiscal Analysis

Occupational licensing entity review and regulation

Overview

The bill establishes a statewide policy on occupational regulation of individuals, requires all state occupational licensing entities, including boards, commissions, and the licensing divisions of state agencies, to be renewed at least once every six years by the General Assembly, requires the Legislative Service Commission (LSC) to issue certain reports on all bills introduced in the General Assembly that propose to substantially change or enact occupational regulations and 33% of the occupations regulated by the state each biennium, beginning in CY 2019, and requires the Common Sense Initiative Office (CSIO) to provide public testimony on certain matters relating to the occupational licensing entities under review, including any commentary received through CSIO's process for adverse impact review and any other information addressing the entity's effectiveness, efficiency, and quality of customer service. Those provisions of the bill with fiscal effects are discussed below in more detail.

LSC reports

The bill requires LSC to issue two types of reports. First, it requires LSC to issue a report for each bill introduced in the General Assembly that proposes to substantially change or enact occupational regulations, with the purpose of comparing the regulatory scheme proposed in the legislation with the proposed statewide policy on occupational regulation of individuals. To the extent that information can be obtained or is readily available, each report must discuss the potential consequences of the legislation with respect to the following: (1) opportunities for employment within the occupation, (2) consumer choices and costs, (3) market competition, and (4) cost to government. The bill requires LSC to complete this assessment in a timely manner and specifies that a proposed bill substantially changing or enacting an occupational regulation cannot be reported out of committee until the assessment has been received and considered, unless two-thirds of the committee members vote to favorably report the bill without the assessment.

Second, the bill requires LSC to issue a report each biennium, starting with odd-numbered years beginning in 2019, on 33% of the occupations regulated by the state. All occupations must be assessed at least once before 2024, and at least once every six years thereafter. Similar to the above reports on introduced legislation, this report must compare the current regulatory scheme with the proposed statewide policy on occupational regulation of individuals. Under the bill, LSC must issue all reports completed during a biennium by December 1 of the even-numbered year of that biennium to the General Assembly and the Attorney General.

LSC will likely need to hire one additional staff person to further review applicable legislation, review occupational licensing regulatory schemes, and prepare the reports. An entry-level staff person receives a salary of approximately \$53,000 to \$55,000 per year. Assuming benefit costs of 33%, the total cost is between \$70,490 ($\$53,000 \times 1.33$) and \$73,150 ($\$55,000 \times 1.33$).

Expiration of occupational licensing entities; General Assembly review

The bill requires the state's occupational licensing entities to be renewed at least once every six years by the General Assembly, and triggers the termination of the entity if it is not renewed within a six-year period from its creation or last renewal. If the entity is not renewed within that six-year period, it expires at the end of June of the following year.

In order for these renewals to occur, the bill establishes a process by which the Speaker of the House of Representatives and the President of the Senate each will direct certain standing committees of each respective chamber to hold hearings in alternating years¹ to review those entities that are scheduled to expire in that calendar year, such that approximately 33% of the entities are reviewed each biennium and all such entities are reviewed at least once every six years. The bill requires the respective standing committees to issue reports of their findings and recommendations by November 15 of each year. The reports must be posted online. The Speaker of the House and the Senate President also may direct the standing committees to review an entity that does not expire in that year but for which LSC has performed a review. LSC must provide staff services to a standing committee performing its duties under the bill. Note also that the bill intends for the LSC and General Assembly occupational licensing entity reviews to be staggered so that a licensing entity is not reviewed by both in the same biennium. Ultimately, the House of Representatives and the Senate, in their respective year of the biennium, must consider any bill offered by a standing committee regarding the expiration of any entities by December 31 of that year.

The entities under review must submit a report to the appropriate standing committee that contains the following information: (1) the entity's primary purpose, (2) its past and anticipated workload, the number of staff required to complete that workload, and the total number of current staff, (3) its past and anticipated budgets and its sources of funding, and (4) the number of members of its governing board and their compensation. The entity must also demonstrate to the standing committee "a public need for its continued existence." To meet this determination, the bill requires the standing committee to consider a series of 27 different criteria. Overall, the workload of occupational licensing entities may increase to meet these reporting requirements.

The bill creates a process for winding up the affairs of an expired entity. An entity may operate after its expiration has been triggered, but no longer than June 30 of

¹ The House of Representatives will review occupational licensing entities in odd-numbered years while the Senate will review them in even-numbered years.

the following year, to provide for the orderly and efficient conclusion of the entity's operations. The General Assembly also may enact laws to transfer some or all of the functions of an expired entity to a successor agency. If an occupational licensing entity expires, any person may engage in the profession or activity that was formerly licensed by the entity without a license, notwithstanding any other state law to the contrary.

Common Sense Initiative Office testimony

The bill also requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when an occupational licensing entity is identified to be reviewed by a standing committee. CSIO must appear before the committee and testify, with respect to the entity, about at least all of the following: (1) whether CSIO has, within the past six years, received commentary related to the entity under CSIO's process for adverse impact review, (2) whether CSIO has, within the past six years, received advice from the Small Business Advisory Council related to the entity, and (3) any other information the Chief believes will address the entity's effectiveness and efficiency, and in particular, the quality of customer service the entity provides. Compiling the information required by this provision may increase CSIO's workload.

Other provisions

The bill includes various other provisions related to occupational licensing and regulation, including the establishment of state licensing requirements for home inspectors, which will be administered by a new Ohio Home Inspector Board within the Department of Commerce, and assorted changes to the laws governing six existing occupational licensing boards, primarily those that regulate health professions. The latter changes may affect the six existing boards' operating costs or fee revenues. All six boards use the Occupational Licensing and Regulatory Fund (Fund 4K90) as a shared pool to pay operating expenses and deposit fee revenues. Additional details on the bill's other provisions are provided below.

Ohio Home Inspector Board

The bill establishes the Home Inspector Law and requires individuals wishing to perform home inspections to obtain a license, establishes criminal penalties, and creates the Ohio Home Inspector Board within the Department of Commerce. While we know there are approximately 450 home inspectors statewide who are certified by the International Association of Certified Home Inspectors, there are likely far more than that conducting business in the state. As a comparison, Kentucky has approximately 490 active licensed home inspectors, and Indiana approximately 690 active licensees.

The Home Inspector Board would be supported by the Division of Real Estate and Professional Licensing within the Department of Commerce. The costs to oversee the licensure of home inspectors will depend on a number of different factors, but primarily on how many new staff the Division hires to carry out the licensure and oversight of home inspectors. Currently, the Division oversees approximately 42,000

active licenses and employs approximately 39 full-time equivalent (FTE) employees. The table below shows the possible extent of the additional operating costs if the Department of Commerce were to hire five new staff to administer this program as the agency estimates could be necessary under the bill. The estimated annual costs are rounded to the nearest thousand, and include the cost of benefits. Additionally, there could be other costs associated with office space and equipment that are necessary. Finally, note that it may be possible that current staff handling other Division of Real Estate and Professional Licensing functions could also be assigned some of the home inspection oversight responsibilities outlined in the bill. If so, this would reduce the additional staffing costs shown in the table below.

Potential Home Inspector Certification Program Staffing Expenses	
Program Requirement (Position)	Estimated Annual Cost Range
Home Inspection Certification Program Manager (Program Administrator 1)	\$58,013-\$71,829
Licensing/Continuing Education (Certification/Licensing Examiner 2)	\$49,449-\$60,119
Complaint Investigation/Record Auditing (Investigator)	\$44,533-\$79,466
Program Support Staff (Admin. Assistant 1)	\$47,230-\$55,514
Legal Counsel (Attorney 3)	\$72,194-\$105,890
Possible Annual Staffing Costs	\$271,419-\$372,818

The bill further requires the Superintendent of Real Estate and Professional Licensing to appoint an administrative hearing officer for cases involving Child Support Order Law determinations, unlicensed inspector violations, and disciplinary measures against licensees. This could also result in additional staffing costs for hearing officers should any such cases arise.

Finally, the bill creates the Home Inspection Recovery Fund, which consists of a special annual assessment between \$3 and \$5 per year depending on prior year fund balances, to each licensee applying for an initial license or a renewal of a home inspector license. Up to \$5 per year per license may be assessed if the July 1 fund balance is below \$250,000. The maximum that may be assessed drops to a maximum of \$3 per year when the fund balance is between \$500,000 and \$1.0 million as of July 1. No assessment may be imposed if the fund balance exceeds \$1.0 million. The fund is to be used to pay judgements against home inspectors when a final judgement is granted by the Franklin County Court of Common Pleas. In such instances, a home inspector's license is suspended until that individual repays the amount of the judgement, plus any applicable interest, to the fund. The bill limits the judgement amounts to \$40,000, but sets out special procedures if \$40,000 is not sufficient to cover all claims.

State Speech and Hearing Professionals Board

The bill requires a hearing aid dealer's or fitter's license to be renewed biennially rather than annually as required under current law. The bill also changes the continuing professional education requirement for license renewal from ten hours per one-year

renewal period to 20 hours per two-year renewal period. There could be one-time administrative and information technology costs associated with adjusting the renewal schedule. In addition, the change in the renewal schedule would impact the timing of licensing revenue deposits, as well as the administrative costs associated with processing licenses. However, this impact would only be temporary and would resolve once the first biennial cycle was complete.

Under the bill, the Board is required to adopt rules establishing the amount of any fee required under the Hearing Aid Dealers Law and eliminates the statutorily specified fees. In addition, the bill requires the Board to adopt rules establishing the information that must be included in a hearing aid receipt. The bill also requires the Board to adopt rules governing notification of licensees' address change. The bill eliminates a requirement that any notice required to be given to a licensee by the Board be mailed by certified mail to the most recent or current place of business. The Board may experience an increase in administrative costs to adopt such rules. Any increase or decrease in fee revenue or certified mail expenses will depend on the rules adopted.

The bill also expands the Board's investigatory duties from investigating specific complaints to investigating all alleged irregularities in the sale or practice of dealing in or fitting hearing aids by any licensee or permit holder, as well as any violations of the Hearing Aid Dealers Law or the Board's rules. The bill also revises the list of reasons for which the Board may discipline a licensee or permit holder. Additionally, the Board is required to act in accordance with the Administrative Procedure Act before disciplining a licensee or permit holder and expands the types of disciplinary actions the Board may take after finding a licensee or permit holder has violated the Hearing Aid Dealers Law or a rule adopted by the Board. The Board will experience an increase in administrative and investigative costs related to these provisions, which may result in additional investigations, hearings, and disciplinary action taken by the Board. The total cost will depend on the number of complaints and/or disciplinary hearings, as well as the scope of each.

Counselor, Social Worker, and Marriage and Family Therapist Board

The bill allows the Counselor, Social Worker, and Marriage and Family Therapist Board to temporarily approve a counseling education program created after January 1, 2018, that has not been accredited by the Council for Accreditation of Counseling and Related Educational Programs. Additionally, the bill specifies that a degree from a Board-approved counseling education program satisfies the degree and training requirements to receive a professional clinical counselor's license or a professional counselor's license for the time period approved by the Board. Furthermore, the bill requires the Board, if it elects to approve unaccredited programs, to adopt rules regarding the approval process, educational requirements, and time period during which completion of the program will satisfy licensure requirements.

As a result of these provisions, additional individuals might seek licensure. If this occurs, the Board would realize a gain in fee revenue and a subsequent increase in

administrative costs to process any additional licenses. Any impact is likely to be minimal, but will depend on the number of additional licenses sought. The Board could also experience an increase in administrative costs for rule promulgation.

Chemical Dependency Professionals Board

The bill reduces the number of voting members on the Chemical Dependency Professionals Board from 12 to seven. Reducing the number of members could result in a minimal reduction in actual and necessary reimbursements. However, the bill allows the Board to appoint additional nonvoting members at its discretion. If this occurs, there could be additional actual and necessary reimbursements for any appointed members.

Board of Nursing

The bill reduces the number of members of the Board of Nursing from 13 to 11. In FY 2016, the average annual compensation for Board members was approximately \$3,500, meaning this change could result in a savings of \$7,000 annually. The bill also reduces the members of the Board's Advisory Committee on Advanced Practice Registered Nursing from eight to five. These members serve without compensation, but are reimbursed for actual and necessary expenses. Thus, there could be minimal savings associated with this.

State Vision Professionals Board

The bill requires the State Vision Professionals Board to provide each applicant for an optical dispensing license with all forms required to apply for examination, instead of permitting a testing service to provide the forms. The bill also requires an optical dispensing apprentice to register with the Board on a form provided by the Board and in the form of a statement that includes specified information, instead of allowing registration with either the form or a statement. As a result of these provisions, the Board may experience an increase in administrative costs to provide the necessary forms to applicants.

Ohio State Cosmetology and Barber Board

The bill includes "makeup artistry" in the definition of "boutique services" under the regulation authority of the Ohio State Cosmetology and Barber Board. Under current law, individuals that practice boutique services must register with the Board. Thus, individuals that practice makeup artistry would be required to register with the Board under the bill. As a result, there may be a slight increase in administrative costs for the Board to register additional boutique service providers. The number of individuals practicing makeup artistry that would be required to register is unknown.

Additional boards and commissions using Central Service Agency services

The bill adds eight state boards and commissions and one authority to the list of 16 entities that are currently required to obtain administrative help for various fiscal, accounting, human resources, and payroll functions from the Central Service Agency

(CSA) within the Department of Administrative Services (DAS). The entities receiving help from CSA are billed for these services, with the amounts being deposited into the Central Service Agency Fund (Fund 1150) used by DAS to cover operating costs. All of the nine entities listed in the provision currently obtain administrative support from CSA and pay for the specific services voluntarily according to terms of a Memorandum of Understanding each signs with DAS. Consequently, the fiscal effect of this provision, if any, will depend on what specific services they obtain from CSA in the future compared to the services they pay for now.

The new boards and agencies required to obtain support from CSA include the: (1) Ohio Air Quality Development Authority, (2) Ohio Athletic Commission, (3) State Board of Career Colleges and Schools, (4) Liquor Control Commission, (5) Commission on Minority Health, (6) Motor Vehicle Repair Board, (7) State Employment Relations Board, (8) Ohio Commission on Service and Volunteerism, and (9) Board of Tax Appeals.

Review of criminal conviction disqualifications for an occupational license

The bill may increase the administrative costs of state and local licensing authorities by permitting an individual to request, at any time, that the authority determine whether that individual's criminal conviction disqualifies the individual from obtaining a license issued by the authority. The licensing authority may charge the individual a fee of up to \$25 per request to defray its costs for making the determination, which must be made within 30 days of the request. Licensing authorities must also make available on their websites a list of all criminal offenses that would disqualify an individual from obtaining a license.

Provisions with no fiscal effect

Various provisions of the bill likely have no direct fiscal effect on the state and political subdivisions. These provisions:

- Change the authority to appoint certain members of the Historical Boilers Licensing Board from the Governor to the Director of Commerce.
- Change the authority to appoint certain members of the State Council on Educational Opportunity for Military Children from the Governor to the Superintendent of Public Instruction.
- Authorize the Governor, in certain cases where there is a vacancy, to appoint a qualified member, without nomination, to the State Board of Emergency Medical, Fire, and Transportation Services if no nomination is made within 30 days after the vacancy occurs.
- Eliminate the requirement that a consumer of services offered in a long-term services and supports setting be appointed to the Board of Executives of Long-Term Services and Supports if a family member of such a consumer or an advocate of such consumers is appointed instead.

- Abolish the following councils and committees: Co-op/Internship Program Advisory Committee, Healthier Buckeye Advisory Council, Ohio Water Advisory Council, and, Unemployment Compensation Advisory Council (UCAC). The bill specifies that certain reports or records that would have been submitted to the UCAC are to instead be submitted to the President of the Senate and Speaker of the House.