



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 617 of the 131st G.A. (LSC 131 2909-1) **Date:** November 30, 2016
Status: In House Government Accountability and Oversight **Sponsor:** Rep. LaTourette

Local Impact Statement Procedure Required: No

Contents: To review referred actions to determine consistency with antitrust law and to consolidate multiple licensing boards

State Fiscal Highlights

- The bill requires the Director of Administrative Services to review actions taken by an occupational licensing board or commission that could be subject to state or federal antitrust law if the action were undertaken by a private person or persons. The Department of Administrative Services (DAS) might incur new costs, depending upon the number and complexity of actions referred to the Director for review.
- The bill consolidates several existing medical licensing boards into three new boards: the State Behavioral Health and Social Work Board (BHP), the State Physical Health Services Board (PHS), and the State Vision and Hearing Professionals Board (VHP). There would be a cost to perform the licensing board consolidations. The bill appropriates \$200,000 in FY 2017 per board for transition costs. The funds come from the Occupational Licensing and Regulatory Fund (Fund 4K90). The new boards will be operational July 1, 2017. Operating costs for FY 2018-FY 2019 will be made in the biennial budget for these years.
- The bill transfers the duties of the Ohio Board of Dietetics and the licensing of respiratory care therapists into the State Medical Board. In addition, the bill transfers the licensing and certification of home medical equipment duties of the Ohio Respiratory Care Board to the State Board of Pharmacy. There would be a cost to perform these licensing board transfers. The transfer will take place on July 1, 2017. Operating costs for FY 2018-FY 2019 associated with the transfer will be made in the biennial budget for these years.
- The bill creates three advisory councils and specifies that council members may receive compensation for performing official duties and be reimbursed for actual and necessary expenses incurred. As a result, costs for the State Medical Board and State Board of Pharmacy could increase.

- The bill removes the requirement that each licensing board mail a notice and application for renewal to every licensee for whom a license was issued or renewed during the current license year. As a result, there could be a decrease in administrative and mailing costs for licensing boards.
- The bill requires the submission of a background check with an initial license application for hearing aid fitters and dealers, speech-language audiologists and pathologists, and chemical dependency counselors and prevention specialists. There would be a cost to the Bureau of Criminal Investigation (BCI) to perform a background check. However, there would also be a gain in background check fee revenue. Any revenues collected by BCI would be deposited into the Attorney General's General Reimbursement Fund (Fund 1060). However, it appears that some of these boards already require a check as part of the application process.

Local Fiscal Highlights

- The bill requires the submission of a background check with an initial license application for hearing aid fitters and dealers, speech-language audiologists and pathologists, and chemical dependency counselors and prevention specialists. There would be a cost to a sheriff's office to perform a background check. However, there would also be a gain in background check fee revenue. However, it appears that some of these boards already require a check as part of the application process.
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Detailed Fiscal Analysis

Antitrust review of board and commission actions

The bill requires the Director of Administrative Services to review actions taken by an occupational licensing board or commission that could be subject to state or federal antitrust law if the action were undertaken by a private person or persons. Under the bill, the Director's review would be initiated only if the action were referred to the Director by the board or commission proposing the action, a person who is affected or likely to be affected by the proposed action, or any other person having standing to commence and prosecute a state or federal antitrust action against a board or commission that has requested and granted a stay of the action in pending litigation alleging anticompetitive conduct. The bill does not authorize the Director to conduct reviews under the Director's own discretion. A reviewed action can be voided if it is not supported by, and consistent with, a clearly articulated state policy as expressed in the statutes creating the board or commission or statutes and rules dealing with board or commission operations. The Director may also void a board or commission's action if the Director finds that a clearly articulated state policy is merely a pretext by which the board or commission enables the members of an occupation or industry to engage in anticompetitive conduct.

Fiscal effect

To conduct the reviews, the Department of Administrative Services (DAS) might need to hire or contract with experts in antitrust matters, most likely attorneys that specialize in antitrust law. As a result, DAS could incur new costs, potentially quite significant, depending upon the number of actions referred to the Director for review. It is unclear what state fund would be used to pay any costs that DAS incurs for its review or if those costs would be billed to the boards or commissions proposing to take the reviewed actions. Licensing boards could also realize an increase in costs if there were any additional administrative duties associated with the review.

Board consolidations and transfers

The bill consolidates several existing licensing boards into three new licensing boards: the State Behavioral Health and Social Work Board (BHP), the State Physical Health Services Board (PHS), and the State Vision and Hearing Professionals Board (VHP). The new licensing boards are created 90 days after the bill's effective date, while the boards being consolidated are abolished on July 1, 2017. The boards being consolidated are as follows: the Chemical Dependency Professionals Board; the Counselor, Social Worker, and Marriage and Family Therapist Board; the Hearing Aid Dealers and Fitters Licensing Board, which is currently under the Ohio Department of Health; the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the Ohio Optical Dispensers Board; the State Board of Optometry; the State Board of Orthotics, Prosthetics, and Pedorthics; the State Board of Psychology; and the Board of Speech-Language Pathology and Audiology. Table 1 below shows which boards are being consolidated into each of the new boards.

Table 1. Board Consolidation Structure		
State Vision and Hearing Professionals Board	State Behavioral Health and Social Work Board	State Physical Health Services Board
State Board of Optometry	Chemical Dependency Professionals Board	Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board
Ohio Optical Dispensers Board	Counselor, Social Worker, and Marriage and Family Therapist Board	State Board of Orthotics, Prosthetics, and Pedorthics
Hearing Aid Dealers and Fitters Licensing Board	State Board of Psychology	
Board of Speech-Language Pathology and Audiology		

In addition to these consolidations, the bill transfers the duties of the Ohio Board of Dietetics and the licensing of respiratory care therapists (currently under the Ohio Respiratory Care Board) to the State Medical Board. The bill also transfers the licensing and certification of home medical equipment duties (also currently under the Ohio Respiratory Care Board) to the State Board of Pharmacy. The Ohio Board of Dietetics and the Ohio Respiratory Care Board are abolished on July 1, 2017. Table 2 below shows which boards/duties are being transferred.

Table 2. Transfers of Boards or Duties	
State Medical Board	State Board of Pharmacy
Regulation of respiratory care therapists	Regulation of home medical equipment
Ohio Board of Dietetics	

The bill also creates three advisory councils. The Home Medical Equipment Services Advisory Council is created within the State Board of Pharmacy. The Dietetics Advisory Council and the Respiratory Care Advisory Council are both created within the State Medical Board. Each council has a maximum of seven members in their specified field.

The bill transfers employees of the pre-consolidation and pre-transfer boards to the assigned board and specifies that the employees will retain their positions and benefits. In addition, during the period from July 1, 2017 to June 30, 2019, the executive directors of the three new boards and the executive directors of the Medical and Pharmacy boards may establish, change, and abolish positions and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all transferred employees not subject to collective bargaining. The bill also permits, upon approval from the Office of Budget and Management, each of the pre-consolidation and pre-transfer boards' executive directors to establish a retirement incentive plan for eligible employees. Any retirement incentive plan established must remain in effect until June 30, 2017.

Fiscal effect

Transition and operating costs

The bill appropriates \$200,000 in FY 2017 to each of the three new boards to facilitate in the transition of power and duties. The bill creates three new line items for each board – each line item is part of the existing Occupational Licensing and Regulatory Fund (Fund 4K90).¹ The bill also requires the Director of Budget and Management to make any budget and accounting changes made necessary by the transfer and consolidation of boards.

There would be costs to perform the board consolidations. These could include costs associated with selecting executive directors of the three new boards, board member compensation, and developing a board website. The three new boards will be operational on July 1, 2017. Thus, operating expenses for these boards will be made in the FY 2018-FY 2019 biennial budget bill. The State Medical Board and State Board of Pharmacy would experience an increase in costs related to the transfer of duties from the Ohio Board of Dietetics and the Ohio Respiratory Care Board. The transfers will be

¹ Fund 4K90 serves as the operating fund for many boards and commissions. As such, revenues from these boards and commissions are deposited into the fund and expenditures come from a corresponding line item under the fund.

effective on July 1, 2017; thus, appropriations relating to these transfers will be made in the FY 2018-FY 2019 biennial budget bill.

In addition, the bill will impact the number of board members. The bill specifies each of the new consolidated boards will have nine members. Board members typically receive a fixed amount of pay for each day spent performing duties and also receive reimbursements for actual and necessary expenses. Currently, there are 108 board members for the 11 boards that are to be consolidated or transferred. Under the bill, there will be 27 board members for the three new boards, while the State Medical Board will have 12 board members and the State Board of Pharmacy will have nine board members.² As a result, the number of board members will decrease, and thus the associated costs. However, the bill would add up to 21 members in total for the three new advisory councils created within the State Medical Board and State Board of Pharmacy. Under the bill, council members may receive, with approval from the Director of Administrative Services, a fixed amount of compensation for each day the member is performing the member's official duties and be reimbursed for actual and necessary expenses incurred in performing those duties. As a result, costs would increase.

According to DAS, the staffing needs of the new boards and the roles of current board employees are expected to remain largely unchanged³ as a result of consolidation or transfer. DAS states that this is largely due to the fact that the number of licensees monitored will remain unchanged.

The table below lists the total number of board members, employees, and number of active licenses for each licensing board proposed to be consolidated or transferred.

² The number of board members for the State Medical Board and the State Board of Pharmacy remains unchanged by the bill.

³ From a memorandum DAS' Central Services Agency issued to board employees: http://das.ohio.gov/Portals/0/DASDivisions/CentralServices/pdf/Board%20Employee%20Memo%2011_15_16.pdf. The Central Services Agency provides payroll, administrative, and financial services to certain state professional licensing boards and other boards and commissions.

Table 3. Licensing Board Information			
Board name	Number of board members⁴	Number of employees	Total number of active licenses⁵
Chemical Dependency Professionals Board	13	4.5	9,705
Counselor, Social Worker, and Marriage and Family Therapist Board	15	13	33,473
Hearing Aid Dealers and Fitters Licensing Board	7	1	708
Ohio Board of Dietetics	5	2	4,199
Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board	20	9	30,552
Ohio Optical Dispensers Board	9	3	4,134
Ohio Respiratory Care Board	9	5	9,819
State Board of Optometry	6	3	2,264
State Board of Orthotics, Prosthetics, and Pedorthics	7	1.5	352
State Board of Psychology	9	5	4,059
Board of Speech-Language Pathology and Audiology	8	4	8,669
Total	108	51	107,934

Funds impacted

All impacted boards with the exception of the Hearing Aid Dealers and Licensing Board and the State Medical Board are part of Fund 4K90. Currently, the Hearing Aid Dealers and Licensing Board's revenues are deposited into the General Operations Fund (Fund 4700) and expenditures come from the line item associated with Fund 4700. As a result of the consolidation of the Board into the new VHP Board, revenues and expenditures will instead be deposited into and expenditures will be made from Fund 4K90. The State Medical Board's revenues are deposited into the State Medical Board Operating Fund (Fund 5C60) and expenditures are made from a line item associated with the fund. However, revenues from the regulation of respiratory care professionals are currently deposited into Fund 4K90 and expenditures come from the associated Fund 4K90 line item. As a result of the transfer, revenues and expenditures related to this regulation will instead be deposited into Fund 5C60 and expenditures will come from the association line item.

⁴ Total number of board members specified in the Ohio Revised Code. The number of active board members could differ if there are any vacancies.

⁵ Total number of active licensees as of June 30, 2016. These numbers were reported by the boards for LSC's "FY 2016 Occupational Licensing and Regulatory Board Report."

Additional changes

The bill makes changes to some license types in order to be uniformly consistent between licenses in the post-consolidated and post-transferred boards. Some of these changes are discussed below.

Criminal background checks

The bill requires the submission of a background check with an initial license application for hearing aid fitters and dealers, speech-language audiologists and pathologists, and chemical dependency counselors and prevention specialists.

Fiscal effect

Some of the boards affected by this provision may already require background checks for these license applications. If they do not, then licensees would be responsible for obtaining a background check. Background checks can be obtained from a county sheriff's office or at one of the Ohio Attorney General's Bureau of Criminal Investigation (BCI) offices for a fee. There would be a cost to a sheriff's office or BCI to perform a background check. However, there would also be a corresponding gain in background check fee revenue that would at least partially offset these costs. Any fees collected by BCI for background checks would be deposited into the Attorney General's General Reimbursement Fund (Fund 1060).

Other changes

The bill also removes the requirement that an application must be submitted in writing for chemical dependency professionals licenses; counselor, social worker, and marriage and family therapist licenses; and psychologists and school psychologists. The bill also removes the requirement an application must be notarized for physical therapists and physical therapist assistants. This would allow the board to process applications through the eLicensing system⁶ maintained by DAS. Finally, the bill removes the requirement that each licensing board mail a notice and application for renewal to every licensee for whom a license was issued or renewed during the current license year. This would include boards not specified in the bill.

Fiscal effect

There could be a decrease in administrative and mailing costs for licensing boards as a result of these changes.

Fee increase

The bill permits VHP to establish examination fees in excess of the amount established by rule for dispensing opticians. Any increase will be subject to Controlling Board approval and cannot exceed the amounts established in rule by 50%.

⁶ The eLicensing system allows licensing boards to receive payment for and issue licenses through a centralized system.

Fiscal effect

There could be a gain in revenue for VHP if the fee is increased. Any revenue collected would be deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90). It appears that the other boards impacted by the consolidation are currently allowed to do this.

Synopsis of Fiscal Effect Changes

In the As Introduced version of the bill, the three new consolidated boards were to have 23 members in total (BHP and PHS each had seven members and VHP had nine members), while the State Medical Board would have 12 board members and the State Board of Pharmacy would have nine board members. Currently, there are 108 board members for the 11 boards that are to be consolidated or transferred. As a result, the number of board members was anticipated to decrease, as were the associated costs. The substitute bill (LSC 131 2909-1) adds two board members to both the State Behavioral Health and Social Work Board and the State Physical Health Services Board. Thus, under the substitute bill, board member expenses are still estimated to decrease overall. However, with the addition of these members, the reduction would be less.

The substitute bill also creates three advisory councils: the Home Medical Equipment Services Advisory Council under the State Board of Pharmacy; the Dietetics Advisory Council under the State Medical Board; and the Respiratory Care Advisory Council also under the State Medical Board. Each council will have a maximum of seven members in their specified field. Under the substitute bill, advisory council members may receive, with approval from the Director of Administrative Services, a fixed amount of compensation for each day the member is performing the member's official duties and be reimbursed for actual and necessary expenses incurred in performing those duties. Thus, there would be an increase in costs to the State Medical Board and the State Board of Pharmacy.