



HOUSE BILL 142: Increase Oversight of OLBs.

2017-2018 General Assembly

Committee:	House Judiciary III	Date:	March 1, 2017
Introduced by:	Reps. Stevens, Jordan	Prepared by:	Jeffrey Hudson
Analysis of:	PCS to First Edition H142-CSSB-3		Legislative Analyst

OVERVIEW: *The Proposed Committee Substitute for House Bill 142 (PCS) would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs.*

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity because the Board was controlled by active market participants and was not subject to active supervision by the State.

House Bill 142, as introduced, is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee (APO) designed to respond to the supervision concerns raised in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

With the exception of a provision requiring OLBs to update their contact information, the PCS is identical to the 3rd Edition of House Bill 1007, which was passed by the House of Representatives during the 2016 Regular Session.

CURRENT LAW AND BILL ANALYSIS:

Section 1 of the PCS would amend the definition of "occupational licensing board" and create an exclusive list of all OLBs in the State. This section would also provide that no board or commission could be added to the list without the approval of APO.

Section 2 of the PCS would delete the Secretary of State and the Attorney General and add the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller as recipients of the annual report that OLBs are required to submit. This section would also expand the information the annual report is required to include and require OLBs to update their contact information.

Section 3 of the PCS would make a conforming change.

Section 4 of the PCS would increase the per diem authorization for OLB members from \$100 to \$200 per day and would require OLB members to receive training in antitrust law and State action immunity.

Section 5 of the PCS would add several new sections to Chapter 93B as follows:

- G.S. 93B-17 would require OLBs to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 142

Page 2

against persons not licensed by the board. This new statute would also require that any interpretation, clarification, or other delineation of the scope of practice of an OLB be adopted as a rule.

- G.S. 93B-18 would clarify OLBs' authority to investigate unlicensed activity and to notify unlicensed person of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the OLB has made a finding of a violation, but may indicate the OLB's belief or opinion that an unlicensed activity may violate the OLB's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the OLB's intent to pursue administrative remedies or court proceedings.
- G.S. 93B-19 would provide that the venue for injunctive relief sought by an OLB is the superior court of the county where the defendant resides or in the county where the OLB has its principal place of business.
- G.S. 93B-20 would authorize an OLB to appear in its own name in actions for injunctive relief and authorize the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been instituted. No OLB shall issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among OLBs by informal procedures and would authorize the use of the administrative hearing process if informal procedures fail.
- G.S. 93B-22 would require each OLB to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2018.

Sections 6, 7, and 8 of the PCS would amend other statutes requiring certain information be reported by OLBs by providing that the report required by G.S. 93B-2 will satisfy these reporting requirements.

Section 9 would add a clarifying cross-reference to the statute governing the scope of agencies that may hear their own contested cases and would add the Securities Division of the Department of the Secretary of State to the list of such agencies.

Section 10 of the PCS would clarify venue for superior court review of administrative final decisions.

Section 11 of the PCS would provide that APO shall continue to monitor and study the effects of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of OLBs.

Section 12 of the PCS would add to the requirements for barber certification that an applicant for certification must have a high school diploma or its equivalent. This section would also add to the approval requirements for barber schools and colleges that each student must have received a high school diploma or its equivalent.

Section 13 of the PCS would amend the membership of the Public Librarian Certification Commission by eliminating the chairman of the North Carolina Association of Library Trustees and giving the Governor an additional appointment upon nomination by the North Carolina Library Association.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.