

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 24, 2005**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB410** by Whitmire (Relating to the continuation and functions of the Texas State Board of Pharmacy; providing administrative penalties. ), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB410, As Passed 2nd House: a positive impact of \$4,880,640 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$4,847,320
2007	\$33,320
2008	\$33,320
2009	\$33,320
2010	\$33,320

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue (Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue (Loss) from <i>PHARMACY BD</i> <i>OPERATING ACC</i> 523
2006	(\$240,093)	(\$8,680)	\$5,096,093	(\$4,814,000)
2007	(\$191,446)	(\$8,680)	\$233,446	\$0
2008	(\$191,446)	(\$8,680)	\$233,446	\$0
2009	(\$191,446)	(\$8,680)	\$233,446	\$0
2010	(\$197,119)	(\$8,680)	\$239,119	\$0

Fiscal Year	Change in Number of State Employees from FY 2005
2006	3.0
2007	3.0
2008	3.0
2009	3.0
2010	3.0

**Fiscal Analysis**

The bill would amend the Occupations Code to implement certain recommendations of the Sunset

Advisory Commission and continue the Board of Pharmacy (board) in existence until 2017. The board operates as a state agency funded primarily to ensure that Texans receive quality pharmaceutical care through the regulation of the practice of pharmacy.

The bill would provide a new way to calculate renewal fees for a person and pharmacy whose license has been expired for 90 days or less, and for a person and pharmacy whose license has been expired for more than 90 days but less than one year. The bill would change the basis of the board's late license renewal fee from the cost of an exam taken for licensure to the standard renewal fee, and would require the board to assess a fee of one and a half times the standard renewal rate for the renewal of a license that has been expired for 90 days or less and twice the standard renewal rate to renew a license that would be expired for more than 90 days.

The bill would expand the board's range of disciplinary sanctions for pharmacy technicians by restricting, reprimanding, or retiring a pharmacy technician's license. It would also impose an administrative penalty against a pharmacy technician or place the technician on probation.

The bill would require the board to establish a program for registering and enforcing pharmacy technicians-in-training. The bill states that a person must register with the board before beginning work in a pharmacy in this state as a pharmacy technician-in-training.

The bill would require the board to license pharmacies located and licensed in Canada to ship, mail, or deliver certain prescription drugs under a prescription drug order to a resident of Texas. The bill also requires the board to inspect at least one and not more than ten Canadian pharmacies prior to and after licensing on an annual basis to determine compliance with board rules. The bill would require the board to establish and maintain a website that provides information about the Canadian pharmacies and provides a convenient mechanism for Texas residents to order prescription drugs from those pharmacies.

The bill would repeal Section 565.060 of the Occupations Code. Repealing the section would abolish the GR-Dedicated Pharmacy Board Operating Account No. 523 and remove the provision for revenue to be deposited to the account and for expenses to be paid from the account. Revenue would instead be deposited to the General Revenue Fund.

The bill would take effect September 1, 2005.

## **Methodology**

The Comptroller of Public Accounts estimates that by the end of fiscal year 2005, the balance in the GR-Dedicated Pharmacy Board Operating Account No. 523 will be approximately \$4,814,000, which would be transferred to the General Revenue Fund and be available for spending on the first day of fiscal year 2006.

Based on collections received in fiscal year 2004 and the analysis of the Sunset staff and the board, it is assumed that changing the late license renewal fee from the cost of an exam taken for licensure to the standard renewal fee would result in an estimated loss of revenue in the amount of \$8,680 to the GR-Dedicated Pharmacy Board Operating Account No. 523 each year. Overall, it is estimated that the board would collect \$53,265 in late fees each fiscal year instead of \$61,945.

Based on fiscal year 2004 late renewal data for pharmacists, the estimated fee collections for fiscal year 2006 would be \$42,863 instead of \$48,075 each year. A fee of one and a half times the standard renewal rate of \$225 for the renewal of a pharmacist license that has been expired for 90 days or less would be \$338. Twice the standard renewal rate to renew a license that would expire for more than 90 days would be \$450. Based on 2004 data, estimated renewals for licenses expired 90 days or less would be \$34,763 instead of \$38,625 and estimated renewals for licenses expired after more than 90 days would be \$8,100 instead of \$9,450.

Based on fiscal year 2004 late renewal data for pharmacies, the estimated fee collections for fiscal year 2006 would be \$10,403 instead of \$13,870 each year. A fee of one and a half times the standard renewal rate of \$365 for the renewal of a pharmacy license that has been expired for 90 days or less

would be \$548. Twice the standard renewal rate to renew a license that would expire for more than 90 days would be \$730.

In 2004, renewals for pharmacist licenses expired 90 days or less (103 in all) totaled \$38,625, while renewals for licenses expired 90 or more days (18 in all) totaled \$9,450. Renewals for pharmacies licenses expired (19 in all) totaled \$13,870. Under current law, licensees who renew an expired license must pay the standard renewal rate, which is the cost of the exam (\$300) plus a late fee of \$225. The fee for an expired license of more than 90 days is the standard renewal rate (\$300) plus a fee of \$225. The late license renewal fee for pharmacies is set at \$730 for all late renewals. As a result, the board collected approximately \$61,945 in late fees in fiscal year 2004.

According to the board and Sunset staff, expanding the board's range of disciplinary sanctions would increase enforcement orders, requiring a Program Specialist III to ensure compliance. This analysis assumes the salary for one Program Specialist III would be \$37,332 each fiscal year. The board expects an additional 360 complaints each year, which would result in an additional 36 disciplinary orders (\$500 per order) each year and additional revenue of \$18,000. Due to the authorization of a probation fee (\$100 per month for each licensee), the board expects approximately 20 technicians to be under probation, resulting in additional revenue of \$24,000.

According to Sunset staff, establishing a registration program for pharmacy technicians-in-training would increase in the board's enforcement cases against trainees who violate the law. Current law provides for the regulation of pharmacy technicians. Sunset and the board estimate that the agency will register approximately 8,000 trainees annually and that regulatory efforts related to trainees will complement the regulatory efforts related to pharmacy technicians and mitigate some of the unexpected impacts of the pharmacy technician regulations. According to the board, it expects an additional 500 complaints resulting in an additional 50 disciplinary orders each year. Based on the analysis of Sunset staff, the requirements of the bill would require one Investigator III and one Attorney IV. The salaries for an Investigator III and an Attorney IV, would be \$31,068 and \$47,820 each fiscal year, respectively.

According to the board, it is estimated that it will take four working days to complete inspections of one and not more than ten Canadian pharmacies. The board estimates investigator travel costs to be \$25,040 each fiscal year. The board anticipates that complaints will be received on 20 percent of these pharmacies and that each complaint will take one week to investigate. According to the board, it is assumed that board rule will require pharmacies to have a website that provides information about these Canadian pharmacies and convenient order procedures and that these websites be linked to the board's main website. It is assumed that the board would increase licensing fees as necessary to cover costs associated with implementing the provisions of the bill.

## **Technology**

The board anticipates technological costs of \$29,754 in fiscal year 2006 and \$6,100 for fiscal years 2007 through 2010 for programming and database changes. It is also estimated that \$5,673 would be required in computer equipment for the three FTEs, and replacement costs would be \$3,309 in fiscal year 2010. These costs are reflected in the tables above. In addition, the board estimates \$12,000 will be required in fiscal year 2006 to update their web server to establish and maintain an internet website providing information necessary to enable residents of Texas to order prescription drugs from designated Canadian pharmacies.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 515 Board of Pharmacy, 304 Comptroller of Public Accounts

**LBB Staff:** JOB, RR, CL, LB, MW