

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 4, 2009

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

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

IN RE: HB3964 by Dunnam (Relating to a requirement that physicians file certain advertising with the Texas Medical Board.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3964, As Introduced: an impact of \$0 through the biennium ending August 31, 2011.

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
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$528,751)	\$528,751	8.0
2011	(\$490,673)	\$490,673	8.0
2012	(\$490,673)	\$490,673	8.0
2013	(\$490,673)	\$490,673	8.0
2014	(\$490,673)	\$490,673	8.0

Fiscal Analysis

The bill would amend the Occupations Code relating to a requirement that physicians file certain advertising with the Texas Medical Board. The bill would require the Texas Medical Board (TMB) to establish an Advertising Review Committee to review physician advertising, except as exempted by the bill. Provisions of the bill state advertisements found by the committee to be in violation of statutes would be subject to investigation and possible disciplinary action by the TMB. Under the provisions of the bill, physicians would be required to submit all advertising at the time of publication. The bill also requires that the committee, upon request, provide advance advisory opinions regarding compliance with the statutes and rules of the board related to advertising. The Advertising Review Committee will be required to meet monthly in order to provide the pre-determinations as required. The bill allows the board to charge fees to recover costs.

This bill would take effect September 1, 2009.

Methodology

The bill does not state a required number of members for the advertising review committee. For the purposes of this analysis the TMB estimates a five member committee that would meet monthly. The agency estimates the cost of travel for one-day board meeting averages \$450 per member. The estimated cost for 12 meetings is approximately \$38,078 each fiscal year.

The agency estimates that approximately 12 percent of Texas licensed physicians practicing in-state would submit advertising for review under the requirement that all advertising be submitted at the time of publication. The number of advertisements submitted would total approximately 5,500 advertisements to be reviewed annually. The agency estimates that there would be 10 percent more submissions during the first year or a total of 605,000 for FY 2010. It is assumed that the submitted advertisements would be reviewed for compliance with statutes and that those that did not comply would be referred for investigation and possible litigation. It is estimated that approximately 10 percent of submitted advertisements would be referred for investigation as the bill exempts many of the least complicated types of advertising that would have a higher compliance rate. The bill also allows physicians to submit advertising 30 days in advance to request a pre-determination of compliance and the agency would be required to provide letters stating whether the subject advertising would comply with statutes. It is estimated that approximately one-half of the 12 percent of the total advertisements required to be submitted would be submitted for pre-determinations.

Based on information provided by the TMB, it is assumed that the following additional staff would be needed to implement the provisions of the bill: One Program Specialist 1 (\$40,000 each year) to coordinate the work of the committee. Two Attorney IIs (63,097 each year) would be needed to review submissions for compliance and handle legal correspondence and reporting. Two additional Administrative Assistant IIs would be needed to support the investigations process to support the work of the attorneys (\$29,000 each year). Three Investigator IIIs (\$39,000 each year) would be needed to investigate those found to be in possible violation of statutes. Total salaries are estimated at \$341,194 per year, in addition to benefit costs. The agency's analysis also assumes costs for leased office space and other operating expenses, totaling \$41,000 would be required for the other additional 5 FTEs. The agency also assumes that many of the cases could be resolved through the agency's fast track process and that few would incur litigation costs.

Since the agency is statutorily required to cover its cost of operation with fee generated revenue, it is assumed that the Board would adjust license fees to cover any additional costs associated with the implementation of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: JOB, CL, MW, NV