

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 4, 2009

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

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

IN RE: SB2336 by Patrick, Dan (Relating to the powers and duties of the Texas Medical Board and the creation of a commission to advise the board.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB2336, 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	(\$9,499,925)	\$9,499,925	26.0
2011	(\$9,278,396)	\$9,278,396	26.0
2012	(\$9,278,396)	\$9,278,396	26.0
2013	(\$9,278,396)	\$9,278,396	26.0
2014	(\$9,278,396)	\$9,278,396	26.0

Fiscal Analysis

This bill would amend the Labor Code relating to the powers and duties of the Texas Medical Board (TMB). The bill would establish a six-member advisory committee to oversee the board. The bill would require respondents to be notified of complaints by personal delivery or certified mail. The expert panel reviewers would not be allowed to communicate concerning the review of the case, requiring that each panelist conduct a full, independent review and write a full report, instead of the current brief review.

The bill would require the TMB to release the identity of the expert panel to the licensee being investigated. The bill would also require that the initial review of complaints would have to be done by a Board employee with the same practice field as the investigated physician that actively practiced

within the past year.

The bill would take effect September 1, 2009.

Methodology

For the purposes of this analysis the TMB estimates the advisory committee would meet 4 times a year totaling \$16,000. The agency estimates it would require a Program Special I at \$44,810 a year to provide administrative support during the committee hearings.

Based on the analysis of the TMB, the agency assumes the bill would require it to meet a standard of clear and convincing evidence in all cases, which is a higher standard than the preponderance of evidence standard currently required for the board and in virtually every civil proceeding and governmental action. Under the bill, complaints would have no immunity from suit for a complaint filed for anticompetitive purposes, a provision that could require the board to investigate the motivation for complaints. Based on information provided by the TMB, it is estimated that there would be at least 100 such complaint investigations each year and that 1 Investigator V at \$49,295 and 1 Attorney IV at \$74,164 would be needed to review complaints for anticompetitive purposes. It is assumed that both positions would require travel costs of \$600 each per month per employee.

The bill would require the initial review of complaints to be done by a Board employee with the same practice field as the investigated physician that actively practiced within the past year. This would require that the board to hire physicians in each of the 24 major fields of medical specialty to perform the initial complaint review. Therefore the program will require 12 Full-Time -Physician I at \$107,590 each and 12 Part-time Physician I at \$53,795 each. This analysis assumes lease space costs of approximately 200sq/ft needed per employee totaling \$130,000 would be needed for the additional FTEs.

The bill would require full independent review by all expert panelists. Based on information from the TMB, it is assume that costs would increase as the 2nd and possible 3rd expert would be required to do a full review and write a full report. TMB also assumes pay for panelist would increase when anonymity is eliminated. The rate that the board pays for testifying experts is at least twice the fee charged by the panel reviewers who are not identified, so it is anticipated that expert panel costs will double. Based on current pay for experts whose identity is revealed in contested cases, it is assumed that the cost per hour would increase from \$100 per hour to at least \$200 per hour doubling total panel cost to approximately \$6 million.

The expert panelists would be required to swear to an affidavit on their reports, incurring notary costs for each of the approximately 3000 panel reports per year. This analysis assumes that additional costs for notary fees of \$60,000 (\$20 x 3000 number of panel report) would be realized each year.

Personal delivery or certified mail is required for complaint notification and the cost for certified mail is \$5.25. Based on information from the TMB, there are approximately 4,585 complaints totaling \$24,071 for delivery costs anticipated.

For the purposes of this analysis, it is assumed that the agency would adjust license fees as necessary to cover any additional costs associated with the implementation of the bill.

Based on the analysis of the State Office of Administrative Hearings, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 503 Texas Medical Board

LBB Staff: JOB, NV, CL, MW