

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: McReynolds, Peña

H.B. No. 3961

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of nursing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 301.160(a)(2), Occupations Code, is amended to read as follows:

(2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of ~~[registered]~~ nurses in a particular practice area.

SECTION 2. Sections 301.160(b) and (j) are amended to read as follows:

(b) The board may develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a ~~[registered]~~ nurse in the nurse's area of practice and the understanding by ~~[registered]~~ nurses of the laws, including regulations, governing the practice of ~~[professional]~~ nursing.

(j) The board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The board shall mail the report to statewide associations of ~~[registered]~~ nurses and ~~[, registered nurse]~~ educators~~[,]~~ and employers of ~~[registered]~~ nurses that request a

1 copy. [~~The board shall issue a final report not later than~~  
2 ~~September 1, 2000.~~]

3 SECTION 3. Sections 301.1605(a) and (c), Occupations Code,  
4 are amended to read as follows:

5 (a) The board may approve and adopt rules regarding pilot  
6 programs for innovative applications in the practice and regulation  
7 of [~~professional~~] nursing.

8 (c) In approving a pilot program, the board may grant the  
9 program an exception to the mandatory reporting requirements of  
10 Sections 301.401-301.409 or to a rule adopted under this chapter or  
11 Chapter 303 that relates to the practice of [~~professional~~] nursing,  
12 including education and reporting requirements for [~~registered~~]  
13 nurses. The board may not grant an exception to:

14 (1) the education requirements of this chapter unless  
15 the program includes alternate but substantially equivalent  
16 requirements; or

17 (2) the mandatory reporting requirements unless the  
18 program:

19 (A) is designed to evaluate the efficiency of  
20 alternative reporting methods; and

21 (B) provides consumers adequate protection from  
22 [~~registered~~] nurses whose continued practice is a threat to public  
23 safety.

24 SECTION 4. Sections 301.1606(a) and (b), Occupations Code,  
25 are amended to read as follows:

26 (a) The [~~Before January 1, 2004, the~~] board may [~~shall~~]  
27 solicit proposals for pilot programs designed to evaluate the

1 efficacy and effect on protection of the public of reporting  
2 systems designed to encourage identification of system errors.

3 (b) The board may grant a pilot program approved under this  
4 section an exception to the mandatory reporting requirements of  
5 Sections 301.401-301.409 or to a rule adopted under this chapter or  
6 Chapter 303 that relates to the practice of [~~professional~~] nursing,  
7 including education and reporting requirements for [~~registered~~]  
8 nurses. If the board grants an exception, the board may require  
9 that the program:

10 (1) provide for the remediation of the deficiencies of  
11 a [~~registered~~] nurse who has knowledge or skill deficiencies that  
12 unless corrected may result in an unreasonable risk to public  
13 safety;

14 (2) provide for supervision of the nurse during  
15 remediation of deficiencies under Subdivision (1);

16 (3) require reporting to the board of a [~~registered~~]  
17 nurse:

18 (A) who fails to satisfactorily complete  
19 remediation, or who does not make satisfactory progress in  
20 remediation, under Subdivision (1);

21 (B) whose incompetence in the practice of  
22 [~~professional~~] nursing would pose a continued risk of harm to the  
23 public; or

24 (C) whose error contributed to a patient death or  
25 serious patient injury; or

26 (4) provide for a nursing peer review committee to  
27 review whether a [~~registered~~] nurse is appropriate for remediation

1 under Subdivision (1).

2 SECTION 5. Subchapter E, Chapter 301, Occupations Code, is  
3 amended by adding Sections 301.206 and 301.207 to read as follows:

4 Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR  
5 EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief  
6 program" means a program operated or sponsored by the federal  
7 government, the state, or a nonprofit organization to provide  
8 nurses to assist in providing health care to victims or potential  
9 victims of a disaster or state or local emergency.

10 (b) A nurse's personal contact information, including  
11 e-mail addresses, telephone numbers, and fax numbers, collected by  
12 the board for use by an emergency relief program is:

13 (1) confidential and not subject to disclosure under  
14 Chapter 552, Government Code; and

15 (2) not subject to disclosure, discovery, subpoena, or  
16 other means of legal compulsion for release to anyone other than for  
17 the purpose of contacting the nurse to assist in an emergency relief  
18 program.

19 Sec. 301.207. CONFIDENTIALITY OF HEALTH INFORMATION  
20 PROVIDED FOR LICENSURE. Information regarding a person's diagnosis  
21 or treatment for a physical condition, mental condition, or  
22 chemical dependency that the person submits to the board for a  
23 petition for a declaratory order of eligibility for a license or for  
24 an application for an initial license or a license renewal under  
25 this chapter is confidential to the same extent information  
26 collected on a nurse as part of an investigation of a complaint is  
27 confidential under Section 301.466.

1 SECTION 6. Section 301.257(a), Occupations Code, is amended  
2 to read as follows:

3 (a) A person may petition the board for a declaratory order  
4 as to the person's eligibility for a license under this chapter if  
5 the person has reason to believe that the person is ineligible for  
6 the license and:

7 (1) is enrolled or planning to enroll in an  
8 educational program that prepares a person for an initial license  
9 as a registered nurse or vocational nurse; or ~~and~~

10 (2) is an applicant for a ~~[has reason to believe that~~  
11 ~~the person is ineligible for the]~~ license.

12 SECTION 7. Section 301.401(2), Occupations Code, is amended  
13 to read as follows:

14 (2) "Minor incident" means conduct by a nurse that  
15 does not indicate that the nurse's continued practice poses a risk  
16 of harm to a patient or another person. This term is synonymous  
17 with "minor error" or "minor violation of this chapter or board  
18 rule."

19 SECTION 8. Subchapter J, Chapter 301, Occupations Code, is  
20 amended by adding Section 301.4521 to read as follows:

21 Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a)  
22 In this section:

23 (1) "Applicant" means:

24 (A) a petitioner for a declaratory order of  
25 eligibility for a license; or

26 (B) an applicant for an initial license or  
27 renewal of a license.

1           (2) "Evaluation" means a physical or psychological  
2 evaluation conducted to determine a person's fitness to practice  
3 nursing.

4           (b) The board may require a nurse or applicant to submit to  
5 an evaluation only if the board has probable cause to believe that  
6 the nurse or applicant is unable to practice nursing with  
7 reasonable skill and safety to patients because of:

8                   (1) physical impairment;

9                   (2) mental impairment; or

10                   (3) chemical dependency or abuse of drugs or alcohol.

11           (c) A demand for an evaluation under Subsection (b) must be  
12 in writing and state:

13                   (1) the reasons probable cause exists to require the  
14 evaluation; and

15                   (2) that refusal by the nurse or applicant to submit to  
16 the evaluation will result in an administrative hearing to be held  
17 to make a final determination of whether probable cause for the  
18 evaluation exists.

19           (d) If the nurse or applicant refuses to submit to the  
20 evaluation, the board shall schedule a hearing on the issue of  
21 probable cause to be conducted by the State Office of  
22 Administrative Hearings. The nurse or applicant must be notified  
23 of the hearing by personal service or certified mail. The hearing  
24 is limited to the issue of whether the board had probable cause to  
25 require an evaluation. The nurse or applicant may present testimony  
26 and other evidence at the hearing to show why the nurse or applicant  
27 should not be required to submit to the evaluation. The board has

1 the burden of proving that probable cause exists. At the conclusion  
2 of the hearing, the hearing officer shall enter an order requiring  
3 the nurse or applicant to submit to the evaluation or an order  
4 rescinding the board's demand for an evaluation. The order may not  
5 be vacated or modified under Section 2001.058, Government Code.

6 (e) If a nurse or applicant refuses to submit to an  
7 evaluation after an order requiring the evaluation is entered under  
8 Subsection (d), the board may:

9 (1) refuse to issue or renew a license;

10 (2) suspend a license; or

11 (3) issue an order limiting the license.

12 (f) The board may request a nurse or applicant to consent to  
13 an evaluation by a practitioner approved by the board for a reason  
14 other than a reason listed in Subsection (b). A request for an  
15 evaluation under this subsection must be in writing and state:

16 (1) the reasons for the request;

17 (2) the type of evaluation requested;

18 (3) how the board may use the evaluation;

19 (4) that the nurse or applicant may refuse to submit to  
20 an evaluation; and

21 (5) the procedures for submitting an evaluation as  
22 evidence in any hearing regarding the issuance or renewal of the  
23 nurse's or applicant's license.

24 (g) If a nurse or applicant refuses to consent to an  
25 evaluation under Subsection (f), the nurse or applicant may not  
26 introduce an evaluation into evidence at a hearing to determine the  
27 nurse's or applicant's right to be issued or retain a nursing

1 license unless the nurse or applicant:

2 (1) not later than the 30th day before the date of the  
3 hearing, notifies the board that an evaluation will be introduced  
4 into evidence at the hearing;

5 (2) provides the board the results of that evaluation;

6 (3) informs the board of any other evaluations by any  
7 other practitioners; and

8 (4) consents to an evaluation by a practitioner that  
9 meets board standards established under Subsection (h).

10 (h) The board shall establish by rule the qualifications for  
11 a licensed practitioner to conduct an evaluation under this  
12 section. The board shall maintain a list of qualified  
13 practitioners. The board may solicit qualified practitioners  
14 located throughout the state to be on the list.

15 (i) A nurse or applicant shall pay the costs of an  
16 evaluation conducted under this section.

17 (j) The results of an evaluation under this section are:

18 (1) confidential and not subject to disclosure under  
19 Chapter 552, Government Code; and

20 (2) not subject to disclosure by discovery, subpoena,  
21 or other means of legal compulsion for release to anyone, except  
22 that the results may be:

23 (A) introduced as evidence in a proceeding before  
24 the board or a hearing conducted by the State Office of  
25 Administrative Hearings under this chapter; or

26 (B) included in the findings of fact and  
27 conclusions of law in a final board order.



1        (k) If the board determines there is insufficient evidence  
2 to bring action against a person based on the results of any  
3 evaluation under this section, the evaluation must be expunged from  
4 the board's records.

5        (l) The board shall adopt guidelines for requiring or  
6 requesting a nurse or applicant to submit to an evaluation under  
7 this section.

8        (m) The authority granted to the board under this section is  
9 in addition to the board's authority to make licensing decisions  
10 under this chapter.

11        SECTION 9. Sections 301.453(a) and (b), Occupations Code,  
12 are amended to read as follows:

13        (a) If the board determines that a person has committed an  
14 act listed in Section 301.452(b), the board shall enter an order  
15 imposing one or more of the following:

16                (1) denial of the person's application for a license,  
17 license renewal, or temporary permit;

18                (2) issuance of a written warning;

19                (3) administration of a public reprimand;

20                (4) limitation or restriction of the person's license,  
21 including:

22                        (A) limiting to or excluding from the person's  
23 practice one or more specified activities of nursing; or

24                        (B) stipulating periodic board review;

25                (5) suspension of the person's license [~~for a period~~  
26 ~~not to exceed five years~~];

27                (6) revocation of the person's license; or

1 (7) assessment of a fine.

2 (b) In addition to or instead of an action under Subsection  
3 (a), the board, by order, may require the person to:

4 (1) submit to care, counseling, or treatment by a  
5 health provider designated by the board as a condition for the  
6 issuance or renewal of a license;

7 (2) participate in a program of education or  
8 counseling prescribed by the board, including a program of remedial  
9 education;

10 (3) practice for a specified period under the  
11 direction of a registered nurse or vocational nurse designated by  
12 the board; or

13 (4) perform public service the board considers  
14 appropriate.

15 SECTION 10. Section 301.4535, Occupations Code, is amended  
16 by adding Subsection (a-1) and amending Subsection (b) to read as  
17 follows:

18 (a-1) An applicant or nurse who is refused an initial  
19 license or renewal of a license or whose license is suspended under  
20 Subsection (a) is not eligible for a probationary, stipulated, or  
21 otherwise encumbered license unless the board establishes by rule  
22 criteria that would permit the issuance or renewal of the license.

23 (b) On final conviction or a plea of guilty or nolo  
24 contendere for an offense listed in Subsection (a), the board, as  
25 appropriate, may not issue a license to an applicant, shall refuse  
26 to renew a license, or shall revoke a license [~~if the applicant or~~  
27 ~~license holder did not previously disclose the conviction or plea~~

1 ~~and the fifth anniversary of the date the person successfully~~  
2 ~~completed community supervision or parole has not occurred].~~

3 SECTION 11. Subchapter J, Chapter 301, Occupations Code, is  
4 amended by adding Section 301.4551 to read as follows:

5 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR  
6 ALCOHOL USE. The board shall temporarily suspend the license of a  
7 nurse as provided by Section 301.455 if the nurse is under a board  
8 order prohibiting the use of alcohol or a drug or requiring the  
9 nurse to participate in a peer assistance program, and the nurse:

- 10 (1) tests positive for alcohol or a prohibited drug;  
11 (2) refuses to comply with a board order to submit to a  
12 drug or alcohol test; or  
13 (3) fails to participate in the peer assistance  
14 program and the program issues a letter of dismissal and referral to  
15 the board for noncompliance.

16 SECTION 12. Section 301.468, Occupations Code, is amended  
17 by amending Subsection (a) and adding Subsections (e) and (f) to  
18 read as follows:

19 (a) The board may determine that an order denying a license  
20 application or suspending a license be probated. A person subject  
21 to a probation order shall conform to each condition the board sets  
22 as the terms of probation, including a condition:

23 (1) limiting the practice of the person to, or  
24 excluding, one or more specified activities of professional nursing  
25 or vocational nursing; [~~or~~]

26 (2) requiring the person to submit to supervision,  
27 care, counseling, or treatment by a practitioner designated by the

1 board; or

2 (3) requiring the person to submit to random drug or  
3 alcohol tests in the manner prescribed by the board.

4 (e) A hearing under this section is limited to a  
5 determination of whether the person violated the terms of the  
6 probation order under Subsection (a) and whether the board should:

7 (1) continue, rescind, or modify the terms of  
8 probation, including imposing an administrative penalty; or

9 (2) enter an order denying, suspending, or revoking  
10 the person's license.

11 (f) If one of the conditions of probation is the  
12 prohibition of using alcohol or a drug or participation in a peer  
13 assistance program, violation of that condition is established by:

14 (1) a positive drug or alcohol test result;

15 (2) refusal to submit to a drug or alcohol test as  
16 required by the board; or

17 (3) a letter of noncompliance from the peer assistance  
18 program.

19 SECTION 13. Section 301.202(b), Occupations Code, is  
20 repealed.

21 SECTION 14. (a) The change in law made by Section 301.4521,  
22 Occupations Code, as added by this Act, applies only to an  
23 application filed with the Texas Board of Nursing on or after the  
24 effective date of this Act. An application filed before the  
25 effective date of this Act is covered by the law in effect when the  
26 application was filed, and the former law is continued in effect for  
27 that purpose.

1           (b) The changes in law made by Section 301.4551, Occupations  
2 Code, as added by this Act, and Section 301.468, Occupations Code,  
3 as amended by this Act, apply only to a violation of an order issued  
4 by the Texas Board of Nursing on or after the effective date of this  
5 Act. A violation of an order issued by the Texas Board of Nursing  
6 before the effective date of this Act is covered by the law in  
7 effect when the order was issued, and the former law is continued in  
8 effect for that purpose.

9           SECTION 15. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2009.

# ADOPTED

MAY 21 2009

*Atty Gen*  
Secretary of the Senate

By: McReynolds/Nelson

H.B. No. 3961

Substitute the following for H.B. No. 3961 :

By: Nelson

C.S. H.B. No. 3961

## A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of nursing.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 301.155(c), Occupations Code, is amended  
5 to read as follows:

6 (c) The board shall assess a [~~\$3~~] surcharge of not less than  
7 \$3 or more than \$5 for a registered nurse and a [~~\$2~~] surcharge of not  
8 less than \$2 or more than \$3 for a vocational nurse to the fee  
9 established by the board under Subsection (a) for a license holder  
10 to renew a license under this chapter. The board may use nine cents  
11 of the registered nurse surcharge and six cents of the vocational  
12 nurse surcharge to cover the administrative costs of collecting and  
13 depositing the surcharge. The board quarterly shall transmit the  
14 remainder of each surcharge to the Department of State Health  
15 Services to be used only to implement the nursing resource section  
16 under Section 105.002, Health and Safety Code. The board is not  
17 required to collect the surcharge if the board determines the funds  
18 collected are not appropriated for the purpose of funding the  
19 nursing resource section.

20 SECTION 2. Section 301.157, Occupations Code, is amended by  
21 amending Subsection (d-4) and adding Subsections (d-8), (d-9),  
22 (d-10), and (d-11) to read as follows:

23 (d-4) The board may recognize and accept as approved under  
24 this section a school of nursing or educational program operated in

1 another state and approved by a state board of nursing or other  
2 regulatory body of that [~~another~~] state. The board shall develop  
3 policies to ensure that the other state's [~~state board's~~] standards  
4 are substantially equivalent to the board's standards.

5 (d-8) For purposes of Subsection (d-4), a nursing program  
6 is considered to meet standards substantially equivalent to the  
7 board's standards if the program:

8 (1) is part of an institution of higher education  
9 located outside this state that is approved by the appropriate  
10 regulatory authorities of that state;

11 (2) holds regional accreditation by an accrediting  
12 body recognized by the United States secretary of education and the  
13 Council for Higher Education Accreditation;

14 (3) holds specialty accreditation by an accrediting  
15 body recognized by the United States secretary of education and the  
16 Council for Higher Education Accreditation, including the National  
17 League for Nursing Accrediting Commission;

18 (4) requires program applicants to be a licensed  
19 practical or vocational nurse, a military service corpsman, or a  
20 paramedic, or to hold a college degree in a clinically oriented  
21 health care field with demonstrated experience providing direct  
22 patient care; and

23 (5) graduates students who:

24 (A) achieve faculty-determined program outcomes,  
25 including passing criterion-referenced examinations of nursing  
26 knowledge essential to beginning a registered nursing practice and  
27 transitioning to the role of registered nurse;

1                   (B) pass a criterion-referenced summative  
2 performance examination developed by faculty subject matter  
3 experts that measures clinical competencies essential to beginning  
4 a registered nursing practice and that meets nationally recognized  
5 standards for educational testing, including the educational  
6 testing standards of the American Educational Research  
7 Association, the American Psychological Association, and the  
8 National Council on Measurement in Education; and

9                   (C) pass the National Council Licensure  
10 Examination for Registered Nurses at a rate equivalent to the  
11 passage rate for students of approved in-state programs.

12           (d-9) A graduate of a clinical competency assessment  
13 program operated in another state and approved by a state board of  
14 nursing or other regulatory body of another state is eligible to  
15 apply for an initial license under this chapter if:

16                   (1) the board allowed graduates of the program to  
17 apply for an initial license under this chapter continuously during  
18 the 10-year period preceding January 1, 2007;

19                   (2) the program does not make any substantial changes  
20 in the length or content of its clinical competency assessment  
21 without the board's approval;

22                   (3) the program remains in good standing with the  
23 state board of nursing or other regulatory body in the other state;  
24 and

25                   (4) the program participates in the research study  
26 under Section 105.008, Health and Safety Code.

27           (d-10) In this section, the terms "clinical competency



1 assessment program" and "supervised clinical learning experiences  
2 program" have the meanings assigned by Section 105.008, Health and  
3 Safety Code.

4 (d-11) Subsections (d-8), (d-9), (d-10), and (d-11) expire  
5 December 31, 2017. As part of the first review conducted under  
6 Section 301.003 after September 1, 2009, the Sunset Advisory  
7 Commission shall:

8 (1) recommend whether Subsections (d-8) and (d-9)  
9 should be extended; and

10 (2) recommend any changes to Subsections (d-8) and  
11 (d-9) relating to the eligibility for a license of graduates of a  
12 clinical competency assessment program operated in another state.

13 SECTION 3. Section 301.160(a)(2), Occupations Code, is  
14 amended to read as follows:

15 (2) "Targeted continuing nursing education" means  
16 continuing education focusing on a skill that would likely benefit  
17 a significant proportion of [~~registered~~] nurses in a particular  
18 practice area.

19 SECTION 4. Sections 301.160(b) and (j) are amended to read  
20 as follows:

21 (b) The board may develop pilot programs to evaluate the  
22 effectiveness of mechanisms, including proactive nursing peer  
23 review and targeted continuing nursing education, for maintenance  
24 of the clinical competency of a [~~registered~~] nurse in the nurse's  
25 area of practice and the understanding by [~~registered~~] nurses of  
26 the laws, including regulations, governing the practice of  
27 [~~professional~~] nursing.

1 (j) The board shall issue an annual report regarding any  
2 pilot programs developed or approved and a status report on those  
3 programs, including preliminary or final findings concerning their  
4 effectiveness. The board shall mail the report to statewide  
5 associations of [~~registered~~] nurses and [~~, registered nurse~~]  
6 educators[~~,~~] and employers of [~~registered~~] nurses that request a  
7 copy. [~~The board shall issue a final report not later than~~  
8 ~~September 1, 2000.~~]

9 SECTION 5. Sections 301.1605(a) and (c), Occupations Code,  
10 are amended to read as follows:

11 (a) The board may approve and adopt rules regarding pilot  
12 programs for innovative applications in the practice and regulation  
13 of [~~professional~~] nursing.

14 (c) In approving a pilot program, the board may grant the  
15 program an exception to the mandatory reporting requirements of  
16 Sections 301.401-301.409 or to a rule adopted under this chapter or  
17 Chapter 303 that relates to the practice of [~~professional~~] nursing,  
18 including education and reporting requirements for [~~registered~~]  
19 nurses. The board may not grant an exception to:

20 (1) the education requirements of this chapter unless  
21 the program includes alternate but substantially equivalent  
22 requirements; or

23 (2) the mandatory reporting requirements unless the  
24 program:

25 (A) is designed to evaluate the efficiency of  
26 alternative reporting methods; and

27 (B) provides consumers adequate protection from

1 [~~registered~~] nurses whose continued practice is a threat to public  
2 safety.

3 SECTION 6. Sections 301.1606(a) and (b), Occupations Code,  
4 are amended to read as follows:

5 (a) The [~~Before January 1, 2004, the~~] board may [~~shall~~]  
6 solicit proposals for pilot programs designed to evaluate the  
7 efficacy and effect on protection of the public of reporting  
8 systems designed to encourage identification of system errors.

9 (b) The board may grant a pilot program approved under this  
10 section an exception to the mandatory reporting requirements of  
11 Sections 301.401-301.409 or to a rule adopted under this chapter or  
12 Chapter 303 that relates to the practice of [~~professional~~] nursing,  
13 including education and reporting requirements for [~~registered~~]  
14 nurses. If the board grants an exception, the board may require  
15 that the program:

16 (1) provide for the remediation of the deficiencies of  
17 a [~~registered~~] nurse who has knowledge or skill deficiencies that  
18 unless corrected may result in an unreasonable risk to public  
19 safety;

20 (2) provide for supervision of the nurse during  
21 remediation of deficiencies under Subdivision (1);

22 (3) require reporting to the board of a [~~registered~~]  
23 nurse:

24 (A) who fails to satisfactorily complete  
25 remediation, or who does not make satisfactory progress in  
26 remediation, under Subdivision (1);

27 (B) whose incompetence in the practice of

1 [~~professional~~] nursing would pose a continued risk of harm to the  
2 public; or

3 (C) whose error contributed to a patient death or  
4 serious patient injury; or

5 (4) provide for a nursing peer review committee to  
6 review whether a [~~registered~~] nurse is appropriate for remediation  
7 under Subdivision (1).

8 SECTION 7. Subchapter E, Chapter 301, Occupations Code, is  
9 amended by adding Sections 301.206 and 301.207 to read as follows:

10 Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR  
11 EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief  
12 program" means a program operated or sponsored by the federal  
13 government, the state, or a nonprofit organization to provide  
14 nurses to assist in providing health care to victims or potential  
15 victims of a disaster or state or local emergency.

16 (b) A nurse's personal contact information, including  
17 e-mail addresses, telephone numbers, and fax numbers, collected by  
18 the board for use by an emergency relief program is:

19 (1) confidential and not subject to disclosure under  
20 Chapter 552, Government Code; and

21 (2) not subject to disclosure, discovery, subpoena, or  
22 other means of legal compulsion for release to anyone other than for  
23 the purpose of contacting the nurse to assist in an emergency relief  
24 program.

25 Sec. 301.207. CONFIDENTIALITY OF HEALTH INFORMATION  
26 PROVIDED FOR LICENSURE. Information regarding a person's diagnosis  
27 or treatment for a physical condition, mental condition, or

1 chemical dependency that the person submits to the board for a  
2 petition for a declaratory order of eligibility for a license or for  
3 an application for an initial license or a license renewal under  
4 this chapter is confidential to the same extent information  
5 collected on a nurse as part of an investigation of a complaint is  
6 confidential under Section 301.466.

7 SECTION 8. Section 301.257(a), Occupations Code, is amended  
8 to read as follows:

9 (a) A person may petition the board for a declaratory order  
10 as to the person's eligibility for a license under this chapter if  
11 the person has reason to believe that the person is ineligible for  
12 the license and:

13 (1) is enrolled or planning to enroll in an  
14 educational program that prepares a person for an initial license  
15 as a registered nurse or vocational nurse; or ~~and~~

16 (2) is an applicant for a ~~[has reason to believe that~~  
17 ~~the person is ineligible for the]~~ license.

18 SECTION 9. Section 301.401(2), Occupations Code, is amended  
19 to read as follows:

20 (2) "Minor incident" means conduct by a nurse that  
21 does not indicate that the nurse's continued practice poses a risk  
22 of harm to a patient or another person. This term is synonymous  
23 with "minor error" or "minor violation of this chapter or board  
24 rule."

25 SECTION 10. Subchapter J, Chapter 301, Occupations Code, is  
26 amended by adding Section 301.4521 to read as follows:

27 Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a)

1 In this section:

2 (1) "Applicant" means:

3 (A) a petitioner for a declaratory order of  
4 eligibility for a license; or

5 (B) an applicant for an initial license or  
6 renewal of a license.

7 (2) "Evaluation" means a physical or psychological  
8 evaluation conducted to determine a person's fitness to practice  
9 nursing.

10 (b) The board may require a nurse or applicant to submit to  
11 an evaluation only if the board has probable cause to believe that  
12 the nurse or applicant is unable to practice nursing with  
13 reasonable skill and safety to patients because of:

14 (1) physical impairment;

15 (2) mental impairment; or

16 (3) chemical dependency or abuse of drugs or alcohol.

17 (c) A demand for an evaluation under Subsection (b) must be  
18 in writing and state:

19 (1) the reasons probable cause exists to require the  
20 evaluation; and

21 (2) that refusal by the nurse or applicant to submit to  
22 the evaluation will result in an administrative hearing to be held  
23 to make a final determination of whether probable cause for the  
24 evaluation exists.

25 (d) If the nurse or applicant refuses to submit to the  
26 evaluation, the board shall schedule a hearing on the issue of  
27 probable cause to be conducted by the State Office of

1 Administrative Hearings. The nurse or applicant must be notified  
2 of the hearing by personal service or certified mail. The hearing  
3 is limited to the issue of whether the board had probable cause to  
4 require an evaluation. The nurse or applicant may present testimony  
5 and other evidence at the hearing to show why the nurse or applicant  
6 should not be required to submit to the evaluation. The board has  
7 the burden of proving that probable cause exists. At the conclusion  
8 of the hearing, the hearing officer shall enter an order requiring  
9 the nurse or applicant to submit to the evaluation or an order  
10 rescinding the board's demand for an evaluation. The order may not  
11 be vacated or modified under Section 2001.058, Government Code.

12 (e) If a nurse or applicant refuses to submit to an  
13 evaluation after an order requiring the evaluation is entered under  
14 Subsection (d), the board may:

- 15 (1) refuse to issue or renew a license;  
16 (2) suspend a license; or  
17 (3) issue an order limiting the license.

18 (f) The board may request a nurse or applicant to consent to  
19 an evaluation by a practitioner approved by the board for a reason  
20 other than a reason listed in Subsection (b). A request for an  
21 evaluation under this subsection must be in writing and state:

- 22 (1) the reasons for the request;  
23 (2) the type of evaluation requested;  
24 (3) how the board may use the evaluation;  
25 (4) that the nurse or applicant may refuse to submit to  
26 an evaluation; and  
27 (5) the procedures for submitting an evaluation as

1 evidence in any hearing regarding the issuance or renewal of the  
2 nurse's or applicant's license.

3 (g) If a nurse or applicant refuses to consent to an  
4 evaluation under Subsection (f), the nurse or applicant may not  
5 introduce an evaluation into evidence at a hearing to determine the  
6 nurse's or applicant's right to be issued or retain a nursing  
7 license unless the nurse or applicant:

8 (1) not later than the 30th day before the date of the  
9 hearing, notifies the board that an evaluation will be introduced  
10 into evidence at the hearing;

11 (2) provides the board the results of that evaluation;

12 (3) informs the board of any other evaluations by any  
13 other practitioners; and

14 (4) consents to an evaluation by a practitioner that  
15 meets board standards established under Subsection (h).

16 (h) The board shall establish by rule the qualifications for  
17 a licensed practitioner to conduct an evaluation under this  
18 section. The board shall maintain a list of qualified  
19 practitioners. The board may solicit qualified practitioners  
20 located throughout the state to be on the list.

21 (i) A nurse or applicant shall pay the costs of an  
22 evaluation conducted under this section.

23 (j) The results of an evaluation under this section are:

24 (1) confidential and not subject to disclosure under  
25 Chapter 552, Government Code; and

26 (2) not subject to disclosure by discovery, subpoena,  
27 or other means of legal compulsion for release to anyone, except



1 that the results may be:

2 (A) introduced as evidence in a proceeding before  
3 the board or a hearing conducted by the State Office of  
4 Administrative Hearings under this chapter; or

5 (B) included in the findings of fact and  
6 conclusions of law in a final board order.

7 (k) If the board determines there is insufficient evidence  
8 to bring action against a person based on the results of any  
9 evaluation under this section, the evaluation must be expunged from  
10 the board's records.

11 (l) The board shall adopt guidelines for requiring or  
12 requesting a nurse or applicant to submit to an evaluation under  
13 this section.

14 (m) The authority granted to the board under this section is  
15 in addition to the board's authority to make licensing decisions  
16 under this chapter.

17 SECTION 11. Sections 301.453(a) and (b), Occupations Code,  
18 are amended to read as follows:

19 (a) If the board determines that a person has committed an  
20 act listed in Section 301.452(b), the board shall enter an order  
21 imposing one or more of the following:

22 (1) denial of the person's application for a license,  
23 license renewal, or temporary permit;

24 (2) issuance of a written warning;

25 (3) administration of a public reprimand;

26 (4) limitation or restriction of the person's license,

27 including:

1 (A) limiting to or excluding from the person's  
2 practice one or more specified activities of nursing; or

3 (B) stipulating periodic board review;

4 (5) suspension of the person's license [~~for a period~~  
5 ~~not to exceed five years~~];

6 (6) revocation of the person's license; or

7 (7) assessment of a fine.

8 (b) In addition to or instead of an action under Subsection  
9 (a), the board, by order, may require the person to:

10 (1) submit to care, counseling, or treatment by a  
11 health provider designated by the board as a condition for the  
12 issuance or renewal of a license;

13 (2) participate in a program of education or  
14 counseling prescribed by the board, including a program of remedial  
15 education;

16 (3) practice for a specified period under the  
17 direction of a registered nurse or vocational nurse designated by  
18 the board; or

19 (4) perform public service the board considers  
20 appropriate.

21 SECTION 12. Section 301.4535, Occupations Code, is amended  
22 by adding Subsection (a-1) and amending Subsection (b) to read as  
23 follows:

24 (a-1) An applicant or nurse who is refused an initial  
25 license or renewal of a license or whose license is suspended under  
26 Subsection (a) is not eligible for a probationary, stipulated, or  
27 otherwise encumbered license unless the board establishes by rule

1 criteria that would permit the issuance or renewal of the license.

2 (b) On final conviction or a plea of guilty or nolo  
3 contendere for an offense listed in Subsection (a), the board, as  
4 appropriate, may not issue a license to an applicant, shall refuse  
5 to renew a license, or shall revoke a license [~~if the applicant or~~  
6 ~~license holder did not previously disclose the conviction or plea~~  
7 ~~and the fifth anniversary of the date the person successfully~~  
8 ~~completed community supervision or parole has not occurred].~~

9 SECTION 13. Subchapter J, Chapter 301, Occupations Code, is  
10 amended by adding Section 301.4551 to read as follows:

11 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR  
12 ALCOHOL USE. The board shall temporarily suspend the license of a  
13 nurse as provided by Section 301.455 if the nurse is under a board  
14 order prohibiting the use of alcohol or a drug or requiring the  
15 nurse to participate in a peer assistance program, and the nurse:

16 (1) tests positive for alcohol or a prohibited drug;

17 (2) refuses to comply with a board order to submit to a  
18 drug or alcohol test; or

19 (3) fails to participate in the peer assistance  
20 program and the program issues a letter of dismissal and referral to  
21 the board for noncompliance.

22 SECTION 14. Section 301.468, Occupations Code, is amended  
23 by amending Subsection (a) and adding Subsections (e) and (f) to  
24 read as follows:

25 (a) The board may determine that an order denying a license  
26 application or suspending a license be probated. A person subject  
27 to a probation order shall conform to each condition the board sets

1 as the terms of probation, including a condition:

2 (1) limiting the practice of the person to, or  
3 excluding, one or more specified activities of professional nursing  
4 or vocational nursing; [~~or~~]

5 (2) requiring the person to submit to supervision,  
6 care, counseling, or treatment by a practitioner designated by the  
7 board; or

8 (3) requiring the person to submit to random drug or  
9 alcohol tests in the manner prescribed by the board.

10 (e) A hearing under this section is limited to a  
11 determination of whether the person violated the terms of the  
12 probation order under Subsection (a) and whether the board should:

13 (1) continue, rescind, or modify the terms of  
14 probation, including imposing an administrative penalty; or

15 (2) enter an order denying, suspending, or revoking  
16 the person's license.

17 (f) If one of the conditions of probation is the  
18 prohibition of using alcohol or a drug or participation in a peer  
19 assistance program, violation of that condition is established by:

20 (1) a positive drug or alcohol test result;

21 (2) refusal to submit to a drug or alcohol test as  
22 required by the board; or

23 (3) a letter of noncompliance from the peer assistance  
24 program.

25 SECTION 15. Section 63.202(f), Education Code, is amended  
26 to read as follows:

27 (f) Notwithstanding the limitation provided by Subsection

1 (b), grants awarded under Subsection (c) for the state fiscal  
2 biennium ending on August 31, 2009, and the fiscal biennium ending  
3 on August 31, 2011, by the Texas Higher Education Coordinating  
4 Board shall be awarded to programs preparing students for initial  
5 licensure as registered nurses or programs preparing qualified  
6 faculty members with a master's or doctoral degree for the program,  
7 including programs at two-year institutions of higher education,  
8 four-year general academic teaching institutions, health science  
9 centers, and independent or private institutions of higher  
10 education, or to the nursing resource section established under  
11 Section 105.002(b), Health and Safety Code. In awarding grants  
12 under this subsection, the coordinating board may:

13 (1) give priority to institutions proposing to address  
14 the shortage of registered nurses by promoting innovation in  
15 education, recruitment, and retention of nursing students and  
16 qualified faculty;

17 (2) award grants on a competitive basis; ~~and~~

18 (3) consider the availability of matching funds; and

19 (4) fund a study by the nursing resource section to  
20 evaluate the competencies of clinical judgment and behaviors that  
21 professional nursing students should possess at the time of  
22 graduation.

23 SECTION 16. Chapter 105, Health and Safety Code, is amended  
24 by adding Section 105.008 to read as follows:

25 Sec. 105.008. STUDY OF ALTERNATE WAYS TO ASSURE CLINICAL  
26 COMPETENCY OF GRADUATES OF NURSING EDUCATIONAL PROGRAMS. (a) In  
27 this section:

1           (1) "Clinical competency assessment program" means a  
2 professional nursing prelicensure program that employs a  
3 criterion-referenced summative performance examination, developed  
4 by subject matter experts, to verify its graduates' attainment of  
5 the clinical competency necessary for initial licensure as a  
6 registered nurse.

7           (2) "Professional nursing prelicensure program" means  
8 a professional nursing educational program that prepares students  
9 to obtain an initial license as a registered nurse.

10           (3) "Research study" means the study described by  
11 Subsection (b).

12           (4) "Supervised clinical learning experiences  
13 program" means a professional nursing prelicensure program that  
14 requires students to complete a required number of supervised  
15 clinical learning experiences provided by qualified clinical  
16 faculty involving multiple, ongoing assessments and feedback.

17           (b) To the extent funding is available, the nursing resource  
18 section established under Section 105.002(b) shall conduct a  
19 research study to identify:

20           (1) a set of expected student outcomes in terms of  
21 clinical judgment and behaviors that professional nursing students  
22 should possess at the time of graduation from a professional  
23 nursing prelicensure program;

24           (2) standardized, reliable, and valid clinical exit  
25 evaluation tools that could be used to evaluate the competencies in  
26 clinical judgment and behaviors that professional nursing students  
27 possess at the time of graduation from a professional nursing

1 prelicensure program;

2 (3) any correlation between the success rate of  
3 graduates of professional nursing prelicensure programs on  
4 standardized clinical exit evaluation tools and their educational  
5 and experiential background, including:

6 (A) length and type of health care work  
7 experience before entering the professional nursing prelicensure  
8 programs;

9 (B) health care work experience during the  
10 professional nursing prelicensure programs; and

11 (C) alternative methods of teaching clinical  
12 judgment and behaviors, including supervised clinicals and  
13 simulation laboratories; and

14 (4) any correlation between the required number of  
15 hours in supervised clinical learning experiences and expected  
16 student outcomes in terms of clinical judgment and behaviors.

17 (c) In addition to any other objective, the research study  
18 must be designed to determine if the graduates of a clinical  
19 competency assessment program are substantially equivalent to the  
20 graduates of supervised clinical learning experiences programs in  
21 terms of clinical judgments and behaviors. For purposes of this  
22 subsection, the clinical competency assessment program must be one  
23 that:

24 (1) has been requiring a clinical competency  
25 assessment for at least 10 years;

26 (2) has students who reside in this state;

27 (3) has graduates who have been considered by the

1 Texas Board of Nursing to be eligible to apply for a registered  
2 nurse license as a result of graduating from the program on or  
3 before January 1, 2007; and

4 (4) conducts the clinical competency assessment at a  
5 facility or facilities located in this state under the supervision  
6 of a qualified clinical faculty member who is a registered nurse and  
7 who holds a master's or doctoral degree in nursing.

8 (d) Considerations to be used in determining substantial  
9 equivalence under Subsection (c) must include the differences  
10 between the clinical competency assessment program and the  
11 supervised clinical learning experiences program in:

12 (1) the methods of evaluating students' clinical  
13 judgment and behaviors;

14 (2) performance on standardized clinical exit  
15 evaluation tools;

16 (3) the ability of graduates to transition to and  
17 assimilate in the registered nurse's role; and

18 (4) passage rates on the National Council Licensure  
19 Examination.

20 (e) The nursing resource section shall contract with an  
21 independent researcher to develop the research design and conduct  
22 the research. The independent researcher must be selected by a  
23 selection committee composed of:

24 (1) one representative elected by a majority of the  
25 nursing advisory committee under Section 104.0155, who is the chair  
26 of the selection committee;

27 (2) one representative designated by the Texas Health



1 Care Policy Council;

2 (3) the presiding officer of the Texas Board of  
3 Nursing;

4 (4) one representative of the Texas Higher Education  
5 Coordinating Board, designated by the governor;

6 (5) one representative designated by the Texas  
7 Hospital Association;

8 (6) one representative designated by the Texas  
9 Association of Business;

10 (7) one representative designated by a clinical  
11 competency assessment program that meets the requirements of  
12 Section 301.157(d-8), Occupations Code; and

13 (8) the nurse researcher member of the nursing  
14 advisory committee under Section 104.0155.

15 (f) The nursing resource section shall complete the study  
16 not later than June 30, 2014, and shall submit a report to the  
17 office of the governor, the Senate Committee on Health and Human  
18 Services, and the House Committee on Public Health. The report must  
19 include a research abstract prepared by the independent researcher.

20 (g) The nursing resource section may cooperate with the  
21 Texas Board of Nursing and the Texas Higher Education Coordinating  
22 Board in conducting the study.

23 (h) The nursing advisory committee formed under Section  
24 104.0155 shall serve as the oversight committee for the study.

25 (i) Any data collected as part of the study that contains  
26 information identifying specific students, patients, or health  
27 care facilities is confidential, is not subject to disclosure under

1 Chapter 552, Government Code, and may not be released unless all  
2 identifying information is removed.

3 (j) In addition to funds appropriated by the legislature,  
4 the nursing resource section may solicit, receive, and spend  
5 grants, gifts, and donations from public or private sources for the  
6 purpose of conducting the study.

7 (k) If grants or other funds are available through the  
8 National Council of State Boards of Nursing that could be used to  
9 fund the study, the nursing resource section shall apply for the  
10 funds to the maximum amount available up to the estimated cost of  
11 the study. In making the application or accepting the funding, the  
12 nursing resource section may not relinquish any oversight  
13 responsibility for the study, including responsibility for  
14 designing and conducting the research or developing the findings.

15 SECTION 17. Section 301.202(b), Occupations Code, is  
16 repealed.

17 SECTION 18. (a) The change in law made by Section 301.4521,  
18 Occupations Code, as added by this Act, applies only to an  
19 application filed with the Texas Board of Nursing on or after the  
20 effective date of this Act. An application filed before the  
21 effective date of this Act is covered by the law in effect when the  
22 application was filed, and the former law is continued in effect for  
23 that purpose.

24 (b) The changes in law made by Section 301.4551, Occupations  
25 Code, as added by this Act, and Section 301.468, Occupations Code,  
26 as amended by this Act, apply only to a violation of an order issued  
27 by the Texas Board of Nursing on or after the effective date of this

1 Act. A violation of an order issued by the Texas Board of Nursing  
2 before the effective date of this Act is covered by the law in  
3 effect when the order was issued, and the former law is continued in  
4 effect for that purpose.

5 SECTION 19. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2009.



LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: **HB3961** by McReynolds (Relating to the regulation of nursing.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3961, As Passed 2nd House: 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 Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1
2010	\$0	\$0
2011	(\$300,000)	\$300,000
2012	\$0	\$0
2013	\$0	\$0
2014	\$0	\$0

**Fiscal Analysis**

The bill would amend language in Section 301 of the Occupations Code from "registered nurse" to "nurse". The bill would establish confidentiality requirements of information the Board of Nursing collects for emergency relief programs and health information provided for licensure. The bill would authorize the Board of Nursing to require a nurse or license applicant submit to a physical or psychological evaluation based on probable cause that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients. The bill would direct the Board of Nursing to schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings if an applicant refuses to submit to an evaluation. The bill would also authorize the Board of Nursing to temporarily suspend a license for drug or alcohol use.

The bill would establish the terms by which a nursing program is considered to meet standards substantially equivalent to the board's standards and authorize the board to issue a license in certain



circumstances to a graduate of a program in another state that is approved by the board. The bill would subject this authorization to sunset review.

The bill would repeal Section 301.202 (b) that requires the Board of Nursing to enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies to coordinate reporting requirements regarding the Board of Nursing's contact information.

The bill would require to the extent funding is available, the Texas Nursing Resource Center to conduct a study of alternate ways to assure clinical competency of graduates of nursing educational programs. The bill would require the Texas Nursing Resource Center to contract with an independent researcher to develop the research design and conduct the research. The independent researcher would be selected by a committee composed various representatives of nursing advisory committee, one representative of the Texas Health Care Policy Council, the presiding officer of the Texas Board of Nursing, a representative of the Texas Higher Education Coordinating Board, one representative of the Texas Hospital Association, one representative of the Texas Association of Business, and a representative of a clinical competency assessment program. The bill would authorize the Texas Higher Education Coordinating Board to consider the Nursing Resource Center for grants issued to institutions proposing to address the shortage of registered nurses.

The bill would authorize the Texas Board of Nursing to increase the range of the surcharge for renewal for a registered nurse of at least \$3 and no more than \$5 and a surcharge for a vocational nurse of at least \$2 and not more than \$3 to transmit to the Department of State Health Services for the Nursing Resource Center. The bill would also require the Nursing Resource Center to apply for the maximum amount of grant funds available through the National Council of State Boards of Nursing and other eligible grants that could be used to fund the study.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2009.

### **Methodology**

The Board of Nursing estimates the bulk of the cost and the research would be conducted in 2011 and would cost \$300,000. The Board of Nursing and the Texas Nursing Resource Center could apply for and potentially receive a grant from the National Council of State Boards of Nursing of \$300,000 to fund the program in 2011. The Board of Nursing anticipates the funding for the program would be provided through this grant, or from other eligible grants. If the grant were not awarded, the Board of Nursing would still be able to generate revenues to cover the costs of the study. For the purposes of this analysis, it is assumed that this cost would be funded from fee generated General Revenue.

The Board of Nursing is currently authorized to collect a fee on license renewals to pass through to the Department of State Health Services for the Nursing Resource Center. The bill would authorize the Board of Nursing to increase the fee in order to fund the study regarding alternate ways to assure clinical competency.

This analysis assumes that any increased costs to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

The Board of Nursing anticipates receiving the grant from the National Council of State Boards of Nursing. If such a grant would be received, it is assumed that costs reflected in the table above would be paid from the grant instead of General Revenue and the need to generate additional fees to cover increased costs would dissipate.

Based on the analysis of the Sunset Advisory Commission, the State Office of Administrative Hearings, and the Higher Education Coordinating Board, 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:** 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 781 Higher Education Coordinating Board, 507 Texas Board of Nursing

**LBB Staff:** JOB, SD, ES, CL, MW



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

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

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

IN RE: **HB3961** by McReynolds (Relating to the regulation of nursing.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3961, Committee Report 2nd House, Substituted: 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 Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1
2010	\$0	\$0
2011	(\$300,000)	\$300,000
2012	\$0	\$0
2013	\$0	\$0
2014	\$0	\$0

**Fiscal Analysis**

The bill would amend language in Section 301 of the Occupations Code from "registered nurse" to "nurse". The bill would establish confidentiality requirements of information the Board of Nursing collects for emergency relief programs and health information provided for licensure. The bill would authorize the Board of Nursing to require a nurse or license applicant submit to a physical or psychological evaluation based on probable cause that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients. The bill would direct the Board of Nursing to schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings if an applicant refuses to submit to an evaluation. The bill would also authorize the Board of Nursing to temporarily suspend a license for drug or alcohol use.

The bill would establish the terms by which a nursing program is considered to meet standards



substantially equivalent to the board's standards and authorize the board to issue a license in certain circumstances to a graduate of a program in another state that is approved by the board. The bill would subject this authorization to sunset review.

The bill would repeal Section 301.202 (b) that requires the Board of Nursing to enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies to coordinate reporting requirements regarding the Board of Nursing's contact information.

The bill would require to the extent funding is available, the Texas Nursing Resource Center to conduct a study of alternate ways to assure clinical competency of graduates of nursing educational programs. The bill would require the Texas Nursing Resource Center to contract with an independent researcher to develop the research design and conduct the research. The independent researcher would be selected by a committee composed various representatives of nursing advisory committee, one representative of the Texas Health Care Policy Council, the presiding officer of the Texas Board of Nursing, a representative of the Texas Higher Education Coordinating Board, one representative of the Texas Hospital Association, one representative of the Texas Association of Business, and a representative of a clinical competency assessment program. The bill would authorize the Texas Higher Education Coordinating Board to consider the Nursing Resource Center for grants issued to institutions proposing to address the shortage of registered nurses.

The bill would authorize the Texas Board of Nursing to increase the range of the surcharge for renewal for a registered nurse of at least \$3 and no more than \$5 and a surcharge for a vocational nurse of at least \$2 and not more than \$3 to transmit to the Department of State Health Services for the Nursing Resource Center. The bill would also require the Nursing Resource Center to apply for the maximum amount of grant funds available through the National Council of State Boards of Nursing and other eligible grants that could be used to fund the study.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2009.

## **Methodology**

The Board of Nursing estimates the bulk of the cost and the research would be conducted in 2011 and would cost \$300,000. The Board of Nursing and the Texas Nursing Resource Center could apply for and potentially receive a grant from the National Council of State Boards of Nursing of \$300,000 to fund the program in 2011. The Board of Nursing anticipates the funding for the program would be provided through this grant, or from other eligible grants. If the grant were not awarded, the Board of Nursing would still be able to generate revenues to cover the costs of the study. For the purposes of this analysis, it is assumed that this cost would be funded from fee generated General Revenue.

The Board of Nursing is currently authorized to collect a fee on license renewals to pass through to the Department of State Health Services for the Nursing Resource Center. The bill would authorize the Board of Nursing to increase the fee in order to fund the study regarding alternate ways to assure clinical competency.

This analysis assumes that any increased costs to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

The Board of Nursing anticipates receiving the grant from the National Council of State Boards of Nursing. If such a grant would be received, it is assumed that costs reflected in the table above would be paid from the grant instead of General Revenue and the need to generate additional fees to cover increased costs would dissipate.

Based on the analysis of the Sunset Advisory Commission, the State Office of Administrative Hearings, and the Higher Education Coordinating Board, 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:** 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 781 Higher Education Coordinating Board, 507 Texas Board of Nursing

**LBB Staff:** JOB, ES, CL, MW





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 1, 2009**

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

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

**IN RE:** **HB3961** by McReynolds (Relating to the regulation of nursing.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend language in Section 301 of the Occupations Code from registered nurse to nurse. The bill would establish confidentiality requirements of information the Board of Nursing collects for emergency relief programs and health information provided for licensure. The bill would authorize the Board of Nursing to require a nurse or license applicant submit to a physical or psychological evaluation based on probable cause that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients. The bill would also authorize the Board of Nursing to temporarily suspend a license for drug or alcohol use.

The bill would repeal Section 301.202 (b) that requires the Board of Nursing to enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies to coordinate reporting requirements regarding the Board of Nursing's contact information.

The bill would require the Board of Nursing to adopt rules to implement the provisions of the bill. The Board of Nursing indicates that any costs associated with implementing the provisions of the bill could be absorbed within the agency's existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 507 Texas Board of Nursing

**LBB Staff:** JOB, CL, ES



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 10, 2009**

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

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

**IN RE: HB3961** by McReynolds (Relating to the regulation of nursing.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend language in Section 301 of the Occupations Code from registered nurse to nurse. The bill would establish confidentiality requirements of information the Board of Nursing collects for emergency relief programs and health information provided for licensure. The bill would authorize the Board of Nursing to require a nurse or license applicant submit to a physical or psychological evaluation based on probable cause that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients. The bill would also authorize the Board of Nursing to temporarily suspend a license for drug or alcohol use.

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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 507 Texas Board of Nursing

**LBB Staff:** JOB, CL, ES



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 29, 2009**

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

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

**IN RE: HB3961** by McReynolds (Relating to the regulation of nursing.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend language in Section 301 of the Occupations Code from registered nurse to nurse. The bill would establish confidentiality requirements of information the Board of Nursing collects for emergency relief programs and health information provided for licensure. The bill would authorize the Board of Nursing to require a nurse or license applicant submit to a physical or psychological evaluation based on probable cause that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients. The bill would also authorize the Board of Nursing to temporarily suspend a license for drug or alcohol use.

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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 507 Texas Board of Nursing

**LBB Staff:** JOB, CL, ES