

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

**FISCAL NOTE, 85TH LEGISLATURE 1st CALLED SESSION - 2017**

**August 3, 2017**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB114** by Hinojosa (Relating to the creation of the Texas Behavioral Health Executive Council and to the continuation and transfer of the regulation of sex offender treatment providers, psychologists, marriage and family therapists, professional counselors, chemical dependency counselors, and social workers to the Texas Behavioral Health Executive Council; providing civil and administrative penalties; authorizing a fee.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB114, As Introduced: an impact of \$0 through the biennium ending August 31, 2019.

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
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

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

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund <b>1</b>	Probable Revenue Gain/(Loss) from General Revenue Fund <b>1</b>	Probable Savings/(Cost) from Appropriated Receipts <b>666</b>	Probable Revenue Gain/(Loss) from Appropriated Receipts <b>666</b>
2018	(\$840,273)	\$840,273	(\$1,054,784)	\$1,054,784
2019	(\$564,432)	\$564,432	(\$1,054,784)	\$1,054,784
2020	(\$550,432)	\$550,432	(\$325,784)	\$325,784
2021	(\$394,685)	\$394,685	(\$325,784)	\$325,784
2022	(\$394,685)	\$394,685	(\$325,784)	\$325,784

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2017</b>
2018	0.5
2019	3.0
2020	3.0
2021	0.0
2022	0.0

## **Fiscal Analysis**

The bill would add Chapter 506 to and amend various chapters of the Occupations Code to create the Texas Behavioral Health Executive Council (the council) and authorize the council to regulate psychologists, marriage and family therapists, professional counselors, social workers, sex offender treatment providers, and chemical dependency counselors.

These populations are currently regulated by the Texas State Board of Examiners of Psychologists (BEP), the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Social Worker Examiners, the Council on Sex Offender Treatment, and the Licensed Chemical Dependency Counselor Program, respectively. Each of those, other than BEP, are currently attached to the Department of State Health Services (DSHS). The bill creates the council on September 1, 2017, requires that members of the council be appointed by December 1, 2017, that the council hire an executive director by April 1, 2018, and that all employees and regulatory authority outlined by the bill be transferred to the council no later than August 31, 2018.

The bill requires that the Council on Sex Offender treatment be administratively attached to the council. The bill would also require that the council create an advisory board on the regulation of chemical dependency counselors, and that all the boards previously regulating psychologists, marriage and family therapists, professional counselors, and social workers continue in advisory roles to the council.

The bill would require the psychology board, the marriage and family therapy board, the professional counseling board, and the social worker board to appoint one professional member and one public member to the council, and to propose rules on the regulation of their respective professions. The bill would give the council general rulemaking authority to administer the regulatory programs, but would permit the council to adopt only those rules proposed by a board. The bill would require the council to set fees in amounts sufficient to cover its costs of operation. The bill would create the Texas Behavioral Health Incubation Task Force, consisting of the executive directors of BEP, DSHS, and the Texas Department of Licensing and Regulation, to oversee the establishment of and transfer of programs to the council.

The bill would require that an applicant for licensure submit fingerprints to the council or the Department of Public Safety (DPS) for the purpose of a criminal history record check from the DPS and Federal Bureau of Investigation. The bill would allow the council to enter into an agreement with DPS to administer the criminal history check and authorize DPS to collect from applicants an amount to cover the costs incurred by the agency in conducting the criminal history check.

The bill would require the council to establish a process to review a national practitioner database to determine whether another state has taken any disciplinary or other legal action against an

applicant or license holder before issuing a license or license renewal.

The bill would require the council to adopt a schedule of administrative penalties and other sanctions levied against licensees that committed offenses.

The bill would permit the council to extend the validity of a license issued by the council from one year to two years through council rule.

The bill would require that the council set late license renewal penalties at one-half of the renewal fee, instead of one-half of the exam fee as it is currently set at BEP.

The bill would eliminate BEP's authority to administer oral examinations of license applicants.

The bill would remove BEP's authority to issue a provisional license as a separate license, and would not include this authority in the council's authorizing statute.

The bill would adopt the Psychology Interjurisdictional Compact, allowing psychologists to provide psychological services using telecommunication technologies and limited in-person treatment to clients in other Compact States. The Compact would establish a Psychology Interjurisdictional Compact Commission to implement and administer the compact provisions and levy an annual assessment from each party state to fund its operations.

The bill repeals sections of the Occupations Code to reflect the transfer of authority from the respective boards to the council and the aforementioned amendments to BEP's statute.

Except as otherwise specified, the bill would take effect on September 1, 2017.

## **Methodology**

The Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Social Worker Examiners, and the Council on Sex Offender Treatment are currently set to transfer to Health and Human Services Commission (HHSC) on September 1, 2017. Per the provisions of the bill, the council will establish a transition plan to transfer the regulatory functions of these boards to the council no later than August 31, 2018. Assuming that the council will be starting up during fiscal year 2018, it is assumed that these entities will transition to HHSC on September 1, 2017 before transitioning to the council in fiscal year 2018 as prescribed by the transition plan. Additionally, BEP is assumed to continue as a standalone agency in fiscal year 2018 to perform its regulatory functions until its regulatory authority is transferred to the council as prescribed by the transition plan. To the extent that regulatory programs are transferred to the council in fiscal year 2018, it is assumed that appropriations and corresponding FTE positions will be transferred accordingly to the council.

## Operational Costs and Savings

The analysis assumes fiscal year 2018 council costs to General Revenue of \$555,000 for database transfer and other technology, \$203,763 for employee startup costs for workspace and computers, \$30,000 for council member travel, and \$68,310 for five months of salary and one-half full-time equivalent position (FTE) for the executive director, assuming the executive director is hired by April 1, 2018. This amounts to a total General Revenue cost of \$857,073 that would be partially offset by savings of \$16,800 for the elimination of the administration of oral examinations at BEP.

Beginning in fiscal year 2019 and for each fiscal year thereafter, it is assumed the removal of the programs from HHSC would result in savings of \$1,649,380 in General Revenue and 33 FTEs at HHSC, and the abolishment of BEP as a stand alone agency would save \$1,048,384 in General Revenue and 13.5 FTEs based on fiscal year 2019 appropriations and benefits from the 2018-19 General Appropriations Act. Additionally, any Federal Funds and Appropriated Receipt collections at HHSC and BEP are excluded from the tables, as they would be reduced at the boards and increased in equal amounts at the council.

The analysis assumes this savings at HHSC and BEP would be offset by General Revenue costs to operate the council of \$3,262,196 and \$3,248,196 in fiscal years 2019 and 2020, and an increase of 49.5 FTEs, which includes three additional investigators only in these years to address complaint backlogs from the HHSC boards. Costs to General Revenue in fiscal year 2019 include one-time expenditures of \$19,719 for employee startup, and ongoing costs to General Revenue in fiscal years 2019 and 2020 include \$2,063,519 in salaries, \$724,708 in benefits, and \$454,250 in other operating expenses. Additionally, in fiscal year 2020, a cost of \$5,719 for database maintenance will begin to be incurred. The analysis assumes ongoing General Revenue costs at the council of \$3,092,449 and 46.5 FTEs beginning in fiscal year 2021, which includes \$1,949,519 in salaries, \$684,671 in benefits, and \$458,259 in other operating expenses.

The Sunset Advisory Commission reports that three states have adopted the Psychology Interjurisdictional Compact, and that the Association of State and Provincial Psychology Boards requires seven states to adopt the Compact in order for it to become operational. BEP estimates that, were the Compact enacted, it would incur an annual administration fee of \$6,000. Since the compact is not currently operational, this analysis does not include costs for this fee.

Net costs to General Revenue total \$840,273 in fiscal year 2018, \$564,432 in fiscal year 2019, \$550,432 in fiscal year 2020, and \$394,685 beginning in 2021. This analysis assumes that the net cost to the council, which will be statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee-generated revenue of an equal value.

#### Licensing Revenue Changes

The analysis assumes annual losses of revenue to General Revenue of \$3,811,009 at HHSC and \$1,703,837 at BEP beginning in fiscal year 2019 and each fiscal year thereafter and corresponding revenue increases at the council. Based on information provided by BEP, it is estimated that there would be an annual revenue reduction to General Revenue of \$71,040 from the administration of oral exams and \$47,010 from the change in late license renewal penalties. This revenue loss is excluded from the tables above as it is not anticipated to be significant.

#### Criminal History Background Checks and National Databank Query

According to BEP, the agency currently requires new licensees to obtain fingerprint based background checks, and, based on information provided by HHSC, the Comptroller of Public Accounts (CPA) reports that sex offender treatment providers and chemical dependency counselors do so as well. BEP and the CPA estimate that 2,000 current licensees in psychology, in addition to 52,000 current licensees and 7,000 annual new licensees in marriage and family therapy, counseling, and social work, would be required to obtain a background check from DPS. Based on information from the CPA, it is assumed that the requirement to conduct checks on renewing licensees would be implemented in equal amounts in fiscal years 2018 and 2019. DPS charges applicants \$27 to perform a background check to cover the cost to DPS to obtain state and national criminal history record information. Based on the number of applicants and assumed implementation of the requirement, it is estimated that there will be an annual revenue increase to

Appropriated Receipts at DPS of \$918,000 in each of fiscal years 2018 and 2019, and \$189,000 annually beginning in fiscal year 2020, offset by an equal cost to Appropriated Receipts at the agency in each fiscal year to perform the background check.

The analysis assumes that 7,668 new applicants and 60,724 licensees would require a national databank query annually. The National Practitioner Databank charges \$2 per query. This would result in an annual cost of \$136,784 and corresponding revenue increase to Appropriated Receipts.

Other Bill Provisions

Based on information provided by BEP and the CPA, it is assumed that duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources, and that there would be no additional impact on revenue to the state.

Based on analysis provided by the Office of the Attorney General, the State Office of Administrative Hearings, the Office of the Governor, the Office of Court Administration, the Department of Licensing and Regulation, and the CPA, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

**Technology**

The analysis assumes one-time costs at the council in fiscal year 2018 of \$475,000 for the transfer of licensee data from HHSC's database to the Health Professions Council (HPC) database, \$30,000 for the purchase of licenses on the HPC database, \$45,000 for the removal of data from the HHSC database, and \$5,000 for Voice over Internet Protocol installation. The analysis also assumes FTE start-up costs for computer purchases and phone service at the council of \$64,263 in fiscal year 2018 and \$6,219 in fiscal year 2019.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 360 State Office of Administrative Hearings, 116 Sunset Advisory Commission, 300 Trusteed Programs Within the Office of the Governor, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 356 Texas Ethics Commission, 364 Health Professions Council, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 520 Board of Examiners of Psychologists, 529 Health and Human Services Commission, 537 State Health Services, Department of

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