

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2561 by Thompson, Senfronia (Relating to the continuation and functions of the Texas State Board of Pharmacy; authorizing a reduction in fees.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2561, As Passed 2nd House: 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 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2017
2018	(\$307,990)	\$307,990	2.0
2019	(\$241,400)	\$241,400	2.0
2020	(\$241,400)	\$241,400	2.0
2021	(\$241,400)	\$241,400	2.0
2022	(\$241,400)	\$241,400	2.0

Fiscal Analysis

The bill would amend the Health and Safety Code relating to the continuation and functions of the Texas State Board of Pharmacy (TSBP); authorizing a reduction in fees. The bill would continue TSBP for twelve years until September 1, 2029.

The bill would require the TSBP, in consultation with the Optometry Board, Texas Medical Board, Texas State Board of Podiatric Medical Examiners, State Board of Dental Examiners, State Board of Veterinary Medical Examiners, and the Texas Board of Nursing, to determine conduct that constitutes abusive prescribing patterns or practices by applicable licensees. Under the provisions of the bill, TSBP would be permitted to send electronic notification to a dispenser or a prescriber if the information submitted to the Prescription Monitoring Program (PMP) indicates harmful prescribing patterns. The bill would require a wholesale distributor to report the same information that is reported to the Automation of Reports and Consolidated Orders System of the Federal Drug Enforcement Administration to TSBP.

The bill would require TSBP to develop a policy to encourage the use of certain negotiated rulemaking and appropriate alternative dispute resolution procedures. Under the provisions of the bill, TSBP would be required to coordinate the implementation of the policy, provide training for implementation of the policy, and collect data on the effectiveness of the procedures.

The bill would permit an applicant or a licensee to assert as an affirmative defense in an administrative hearing or as a claim of defense in a judicial proceeding that a rule, regulation, policy or a penalty imposed by TSBP limits an applicant's exercise of religion or membership in a religious organization. The bill would provide exemptions to certain rules, regulations, policies, or penalties imposed by TSBP. Under the provisions of the bill, a licensee or applicant could bring an action for injunctive relief against a violation.

The bill would modify the renewal fee of a pharmacy technician based on the amount of time from the expiration of the licensee's former license. The bill would require TSBP to adopt rules relating to the continuing education requirements for pharmacy technicians.

The bill would require regulatory agencies, including the Texas State Board of Dental Examiners, Optometry Board, Board of Veterinary Medical Examiners, Texas Medical Board, Texas Board of Nursing and the Board of Podiatric Medical Examiners to periodically access and monitor the Prescription Monitoring Program for prescribing behavior and dispensing patterns of licensees. The bill would allow a regulatory agency to notify a prescriber of potentially harmful behavior and allow for the opening of a complaint by the agency under certain requirements. The bill would require a regulatory agency to provide contact information for applicable licensees to the TSBP and the TSBP would be required to notify the regulatory agency when TSBP notifies a licensee that a potentially harmful prescribing pattern has been indicated. The bill would permit TSBP to send electronic notifications to prescribers and dispensers meeting harmful patterns. The bill would require certain licensees to access prescription history prior to prescribing or dispensing certain substances. The bill provides exceptions.

The bill would specify that a pharmacist has the exclusive authority to determine whether or not to dispense a drug. The bill would require the Texas State Board of Pharmacy (TSBP) to develop a process for a remote dispensing site to apply for classification as a Class A pharmacy.

The bill would authorize, in certain circumstances, the donation of unused prescription drugs and the dispensing of donated drugs. The bill would require the Department of State Health Services (DSHS) to develop a form for donors and recipients participating in the program and establish and

maintain an electronic database of participating providers. Additionally, the bill would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules to implement the program.

The bill would amend the Education Code to require the primary building in which the Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy is operated to be located in Kleberg County.

The bill would take effect on September 1, 2017.

Methodology

The provisions of the bill would result in a cost of \$307,990 in General Revenue in fiscal year 2018 and a cost of \$241,400 in General Revenue in fiscal year 2019 and following fiscal years. This analysis assumes that TSBP would input and track wholesale pharmaceutical distributor reporting in a database.

Based on the analysis of the TBSP, it is assumed the TSBP would require two additional full-time-equivalents (FTEs) to implement provisions of the bill relating to TSBP inputting and tracking wholesale pharmaceutical distributor reporting in a database and monitoring requirements by searching PMP data and providing the information to the other regulatory agencies, including the Texas State Board of Dental Examiners, Optometry Board, Board of Veterinary Medical Examiners, Texas Medical Board, Texas Board of Nursing and the Board of Podiatric Medical Examiners. The additional two FTEs would have an estimated cost to General Revenue of \$149,594 in fiscal year 2018 and \$141,404 each year thereafter. TSBP estimates one-time start up costs of \$8,190 for the additional FTEs and annual costs of \$100,224 in salaries and wages for a Program Specialist III, \$36,701 in employee benefits and other payroll contribution costs, and \$4,480 for other operating expenses.

TSBP also estimates a one-time cost of \$58,400 in General Revenue in fiscal year 2018 for a database to track the additional required information from wholesale pharmaceutical distributors and a PMP upgrade to include contact information for notifications of potentially harmful prescribing or dispensing habits to licensees. In addition to the one-time costs in fiscal year 2018, TSBP estimates an ongoing operating cost of \$99,996 for the database in each fiscal year due to ongoing hosting and data support for the wholesale pharmaceutical distribution information.

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

This analysis assumes that any increased Prescription Monitoring Program cost to the TSBP, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue by the agency and other regulatory agencies whose licensees are required to access the PMP, including the Board of Veterinary Medical Examiners, Texas State Board of Dental Examiners, Optometry Board, Texas Medical Board, Texas Board of Nursing and the Board of Podiatric Medical Examiners.

The Comptroller of Public Accounts estimates the modification to the renewal fee of a pharmacy technician based on time elapsed since the expiration of the licensee's former license would result in a decrease of approximately \$36,000 in revenue to the General Revenue Fund per fiscal year.

The Department of Public Safety, Department of State Health Services, Health and Human Services Commission, Office of the Attorney General, State Office of Administrative Hearings, Office of Court Administration, Texas A&M University System Administration, Texas State Board of Dental Examiners, Optometry Board, Board of Veterinary Medical Examiners, Texas Medical Board, Texas Board of Nursing, and Texas Board of Podiatric Medical Examiners anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Technology

The costs identified above include estimated one-time information technology costs of \$58,400 in fiscal year 2018 and ongoing costs of \$99,996 for database development to accompany the wholesale distributor reporting requirements and \$2,308 for one-time equipment for the additional FTE at TSBP.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 515 Board of Pharmacy, 302 Office of the Attorney General, 405 Department of Public Safety, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 512 Board of Podiatric Medical Examiners, 514 Optometry Board, 578 Board of Veterinary Medical Examiners

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