

HOUSE BILL 628

P1, J2, C2

7lr1334
CF SB 517

By: **Delegates Barron and West**

Introduced and read first time: January 30, 2017

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2017

CHAPTER _____

1 AN ACT concerning

2 **Secretaries of Principal Departments – Supervision and Review of Decisions**
3 **and Actions by Units Within Departments**

4 FOR the purpose of requiring the Secretary of Health and Mental Hygiene and the Office
5 of Administrative Hearings, in consultation with stakeholders and other interested
6 parties, to adopt certain regulations for the supervision of certain boards and
7 commissions for certain purposes; requiring the Office ~~of Administrative Hearings~~,
8 in accordance with certain regulations, to review certain decisions or actions to make
9 certain determinations; requiring certain secretaries or certain designees to make
10 certain reviews, make certain assessments, and issue certain decisions under certain
11 circumstances; prohibiting the Office and certain secretaries or designees from
12 approving certain decisions and certain actions under certain circumstances;
13 ~~requiring certain regulations to specify certain actions that the Secretary may refer~~
14 ~~to the Office for review, certain review processes, and that the actions of certain~~
15 ~~boards and commissions are not final actions until after a certain review~~ requiring
16 the Office to establish a certain process; prohibiting certain boards and commissions
17 from implementing certain decisions or actions until after the Office has conducted
18 a certain review; requiring a certain process to require the Office to take certain
19 actions; requiring certain decisions or actions of certain boards, commissions, and
20 units to comply with certain decisions of the Office; prohibiting the Office from
21 authorizing certain administrative law judges to perform a certain review under
22 certain circumstances; providing that certain boards and commissions are
23 responsible for certain costs; providing for the construction of a certain provision of
24 this Act; prohibiting certain secretaries or designees from being certain individuals;
25 requiring the secretaries of certain principal departments to be responsible for the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



supervision of certain units within the jurisdiction of the secretaries, for a certain purpose, subject to a certain exception; specifying that certain decisions or actions of certain units are not final decisions or actions until after a certain review; requiring that the final actions or decisions of certain units comply with a certain written decision; requiring certain regulations to be drafted in consultation with certain stakeholders and other interested parties; requiring the Department of Health and Mental Hygiene and the Office to satisfy certain requirements of this Act in a certain manner; requiring the Department and the Office to submit certain regulations to the Joint Committee on Administrative, Executive, and Legislative Review on or before a certain date; specifying the purpose of this Act; and generally relating to the powers and regulatory authority of secretaries of principal departments.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 1–203
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–205(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY adding to
Article – State Government
Section 8–205.1
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health Occupations

1–203.

(a) **[The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE** power of the Secretary over plans, proposals, and projects of units in the Department does not include the power to disapprove or modify any decision or determination that a board or commission established under this article makes under authority specifically delegated by law to the board or commission.

(b) The power of the Secretary to transfer staff or functions of units in the Department does not apply to any staff of a board or commission, established under this article, or to any functions that pertain to licensing, disciplinary, or enforcement authority, or to any other authority specifically delegated by law to a board or commission.

(c) (1) NOTWITHSTANDING §§ 8-205(B)(5) AND 8-205.1 OF THE STATE GOVERNMENT ARTICLE AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE SECRETARY AND THE OFFICE OF ADMINISTRATIVE HEARINGS, IN CONSULTATION WITH STAKEHOLDERS AND OTHER INTERESTED PARTIES, SHALL ADOPT REGULATIONS FOR THE SUPERVISION OF EACH BOARD OR COMMISSION THAT IS COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE OCCUPATION OR PROFESSION REGULATED BY THE BOARD OR COMMISSION, INCLUDING THE REVIEW BY THE OFFICE OF ADMINISTRATIVE HEARINGS DESCRIBED UNDER THIS SUBSECTION, IN ORDER TO:

(i) PREVENT UNREASONABLE ANTICOMPETITIVE ACTIONS BY THE BOARD OR COMMISSION; AND

(ii) DETERMINE WHETHER THE ACTIONS OF THE BOARD OR COMMISSION FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKET.

(2) IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER THIS SUBSECTION, THE OFFICE OF ADMINISTRATIVE HEARINGS:

(i) SHALL REVIEW ~~AN A DECISION OR ACTION OF A BOARD OR COMMISSION THAT IS REFERRED TO THE OFFICE BY THE SECRETARY OR THE SECRETARY'S DESIGNEE~~ IN ORDER TO DETERMINE WHETHER THE DECISION OR ACTION FURTHERS A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKET; AND

(ii) MAY NOT APPROVE ~~AN A DECISION OR ACTION OF A BOARD OR COMMISSION THAT DOES NOT FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKET; AND~~

(iii) IN CONJUNCTION WITH THE OFFICE OF THE ATTORNEY GENERAL, SHALL ESTABLISH A PROCESS:

1. BY WHICH THE OFFICE OF ADMINISTRATIVE HEARINGS REVIEWS DECISIONS OR ACTIONS OF A BOARD OR COMMISSION;

2. THAT IS INDEPENDENT OF THE PROCESS BY WHICH THE OFFICE OF ADMINISTRATIVE HEARINGS HEARS ADJUDICATED, CONTESTED CASES; AND

3. THAT INCLUDES:

A.

~~(3) A REGULATION ADOPTED UNDER THIS SUBSECTION SHALL SPECIFY:~~

~~(i) THE TYPES OF DECISIONS OR ACTIONS OF A BOARD OR COMMISSION THAT THE SECRETARY MAY REFER BE REFERRED TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR REVIEW;~~

B. QUALIFICATIONS AND SPECIALIZED TRAINING REQUIREMENTS FOR ADMINISTRATIVE LAW JUDGES CONDUCTING REVIEWS AS REQUIRED UNDER THIS SUBSECTION;

C. CHECKS FOR IDENTIFICATION AND MANAGEMENT OF POTENTIAL CONFLICTS WHEN THE OFFICE OF ADMINISTRATIVE HEARINGS CONDUCTS A CONTESTED CASE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; AND

D. APPROPRIATE STANDARDS AND GUIDELINES FOR CONDUCTING REVIEWS AS REQUIRED UNDER THIS SUBSECTION.

~~(ii) THE PROCESS BY WHICH THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL REVIEW THE ACTIONS; AND~~

~~(iii) THAT AN ACTION OF A~~

(3) A BOARD OR COMMISSION MAY NOT CONSTITUTE IMPLEMENT A DECISION OR A FINAL ACTION OF THE BOARD OR COMMISSION UNTIL AFTER THE OFFICE OF ADMINISTRATIVE HEARINGS HAS CONDUCTED THE REVIEW REQUIRED UNDER THIS SUBSECTION.

(4) THE PROCESS SPECIFIED UNDER PARAGRAPH ~~(3)(ii)~~ (2)(iii) OF THIS SUBSECTION SHALL REQUIRE THE OFFICE OF ADMINISTRATIVE HEARINGS TO:

(i) REVIEW THE MERITS OF THE PROPOSED DECISION OR ACTION OF A BOARD OR COMMISSION;

(ii) ASSESS WHETHER THE PROPOSED DECISION OR ACTION FURTHERS A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKET; AND

(iii) ISSUE EXPEDITIOUSLY A WRITTEN DECISION APPROVING, DISAPPROVING, OR MODIFYING THE PROPOSED DECISION OR ACTION OR REMANDING THE PROPOSED DECISION OR ACTION BACK TO THE BOARD OR COMMISSION FOR FURTHER REVIEW.

(5) ~~THE FINAL DECISION OR ACTION OF~~ IMPLEMENTED BY A BOARD OR COMMISSION SHALL COMPLY WITH THE WRITTEN DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS.

(6) THE OFFICE OF ADMINISTRATIVE HEARINGS MAY NOT AUTHORIZE AN ADMINISTRATIVE LAW JUDGE TO REVIEW THE DECISION OR ACTION IF THE JUDGE IS APPOINTED BY, UNDER THE OVERSIGHT OF, OR A MEMBER OF A BOARD OR COMMISSION WHOSE ACTION IS THE SUBJECT OF REVIEW.

(7) EACH BOARD OR COMMISSION SHALL BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH THE REVIEW BY THE OFFICE OF ADMINISTRATIVE HEARINGS OF DECISIONS OR ACTIONS OF THE RESPECTIVE BOARD OR COMMISSION.

(D) SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO:

(1) A DECISION OR DETERMINATION OF A BOARD OR COMMISSION CONCERNING MINISTERIAL ACTS;

(2) THE INTERNAL OPERATIONS OF A BOARD OR COMMISSION;

(3) INVESTIGATIONS;

(4) CHARGES; AND

(5) AS IT RELATES TO AN INDIVIDUAL REGULATED BY A BOARD OR COMMISSION;

(I) CONSENT ORDERS; AND

(II) LETTERS OF SURRENDER.

Article – State Government

8–205.

(b) A secretary shall:

(1) receive the salary and have the assistants, employees, and professional consultants provided in the budget, unless otherwise provided by law;

(2) be responsible for establishing policy to be followed by the units of State government within the secretary's department;

(3) be responsible for the efficient and orderly administration of the department;

(4) be responsible for the comprehensive planning of programs and services within the secretary's jurisdiction and for reviewing and approving the plans of all units of State government within the secretary's jurisdiction;

(5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND EXCEPT AS PROVIDED IN § 1-203(C) OF THE HEALTH OCCUPATIONS ARTICLE, BE RESPONSIBLE FOR THE SUPERVISION OF THE UNITS OF STATE GOVERNMENT WITHIN THE SECRETARY'S JURISDICTION THAT ARE COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE OCCUPATION OR PROFESSION REGULATED BY THE UNITS;

[(5)] (6) be responsible for the budget of the secretary's office and for the budgets of other units of State government within the secretary's jurisdiction;

[(6)] (7) be responsible for the organization of the secretary's office and for recommending to the Governor changes in the organization and placement of units of State government within the secretary's jurisdiction; and

[(7)] (8) recommend to the Governor any modification, abolition, and transfer of advisory bodies within the secretary's jurisdiction.

8-205.1.

(A) EXCEPT AS PROVIDED IN § 1-203(C) OF THE HEALTH OCCUPATIONS ARTICLE, THE SECRETARY OF EACH PRINCIPAL DEPARTMENT SHALL SUPERVISE EACH UNIT OF STATE GOVERNMENT WITHIN THE SECRETARY'S JURISDICTION THAT IS COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE OCCUPATION OR PROFESSION REGULATED BY THE UNIT IN ORDER TO:

(1) PREVENT UNREASONABLE ANTICOMPETITIVE ACTIONS BY THE UNIT; AND

(2) DETERMINE WHETHER THE DECISIONS AND ACTIONS OF THE UNIT FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKET.

(B) IF THE SECRETARY OR THE SECRETARY'S DESIGNEE FINDS THAT A PROPOSED DECISION OR ACTION OF THE UNIT MAY RESULT IN AN UNREASONABLE ANTICOMPETITIVE DECISION OR MAY NOT FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKETPLACE, THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL:

1 (1) REVIEW THE MERITS OF THE PROPOSED DECISION OR ACTION;

2 (2) ASSESS WHETHER THE PROPOSED DECISION OR ACTION
3 FURTHERS A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN
4 THE REGULATED MARKET; AND

5 (3) ISSUE EXPEDITIOUSLY A WRITTEN DECISION APPROVING,
6 DISAPPROVING, OR MODIFYING THE PROPOSED DECISION OR ACTION OR
7 REMANDING THE PROPOSED DECISION OR ACTION BACK TO THE UNIT FOR FURTHER
8 REVIEW BEFORE:

9 (I) A FINAL DECISION IS ISSUED; OR

10 (II) THE PROPOSED ACTION IS IMPLEMENTED.

11 (C) THE SECRETARY OR THE SECRETARY'S DESIGNEE MAY NOT APPROVE A
12 DECISION OR AN ACTION OF A UNIT THAT DOES NOT FURTHER A CLEARLY
13 ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED
14 MARKET.

15 (D) A DECISION OR AN ACTION OF A UNIT MAY NOT CONSTITUTE A FINAL
16 DECISION OR ACTION OF THE UNIT UNTIL AFTER THE SECRETARY OR THE
17 SECRETARY'S DESIGNEE HAS CONDUCTED THE REVIEW REQUIRED UNDER
18 SUBSECTION (B) OF THIS SECTION.

19 (E) A FINAL DECISION OR ACTION OF A UNIT SHALL COMPLY WITH THE
20 WRITTEN DECISION OF THE SECRETARY OR THE SECRETARY'S DESIGNEE ISSUED IN
21 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

22 (F) NEITHER THE SECRETARY NOR THE SECRETARY'S DESIGNEE MAY BE AN
23 INDIVIDUAL WHO IS APPOINTED BY, UNDER THE OVERSIGHT OF, OR A MEMBER OF A
24 BOARD OR COMMISSION WHOSE DECISION OR ACTION IS THE SUBJECT OF REVIEW
25 UNDER SUBSECTION (B) OF THIS SECTION.

26 (G) A REGULATION ADOPTED TO CARRY OUT THIS SECTION SHALL BE
27 DRAFTED IN CONSULTATION WITH STAKEHOLDERS AND OTHER INTERESTED
28 PARTIES.

29 SECTION 2. AND BE IT FURTHER ENACTED, That:

30 (a) The Department of Health and Mental Hygiene and the Office of
31 Administrative Hearings shall satisfy the requirement to draft regulations in consultation
32 with stakeholders under § 1-203(c)(1) of the Health Occupations Article, as enacted by
33 Section 1 of this Act, by convening at least two stakeholder meetings, one of which may be
34 a public meeting open to anyone interested in the issue.

(b) The Department and the Office shall:

(1) convene both of the stakeholder meetings at least 6 months before the regulations are proposed; and

(2) include notice to and participation of a representative of:

(i) each board and commission under the jurisdiction of the Secretary of Health and Mental Hygiene; and

(ii) members of professional licensing associations, as appropriate; ~~and~~

~~(iii) the Office of Administrative Hearings.~~

(c) On or before June 1, 2018, the Department and the Office shall submit proposed regulations to the Joint Committee on Administrative, Executive, and Legislative Review.

SECTION 3. AND BE IT FURTHER ENACTED, That the purpose of this Act is to address the decision in North Carolina State Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015), to ensure that there is State supervision of boards and commissions that have a controlling number of active market participants.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.