

# HOUSE BILL 628

P1, J2, C2

7lr1334  
CF 7lr1269

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By: **Delegates Barron and West**

Introduced and read first time: January 30, 2017

Assigned to: Health and Government Operations

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## A BILL ENTITLED

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, in consultation  
5 with stakeholders and other interested parties, to adopt certain regulations for the  
6 supervision of certain boards and commissions for certain purposes; requiring the  
7 Office of Administrative Hearings, in accordance with certain regulations, to review  
8 certain actions to make certain determinations; requiring certain secretaries or  
9 certain designees to make certain reviews, make certain assessments, and issue  
10 certain decisions under certain circumstances; prohibiting the Office and certain  
11 secretaries or designees from approving certain decisions and certain actions under  
12 certain circumstances; requiring certain regulations to specify certain actions that  
13 the Secretary may refer to the Office for review, certain review processes, and that  
14 the actions of certain boards and commissions are not final actions until after a  
15 certain review; requiring a certain process to require the Office to take certain  
16 actions; requiring certain actions of certain boards, commissions, and units to comply  
17 with certain decisions of the Office; prohibiting the Office from authorizing certain  
18 administrative law judges to perform a certain review under certain circumstances;  
19 prohibiting certain secretaries or designees from being certain individuals; requiring  
20 the secretaries of certain principal departments to be responsible for the supervision  
21 of certain units within the jurisdiction of the secretaries, for a certain purpose,  
22 subject to a certain exception; specifying that certain decisions or actions of certain  
23 units are not final decisions or actions until after a certain review; requiring that the  
24 final actions or decisions of certain units comply with a certain written decision;  
25 requiring certain regulations to be drafted in consultation with certain stakeholders  
26 and other interested parties; requiring the Department of Health and Mental  
27 Hygiene to satisfy certain requirements of this Act in a certain manner; specifying  
28 the purpose of this Act; and generally relating to the powers and regulatory authority  
29 of secretaries of principal departments.

30 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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, THE SECRETARY, 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**

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

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

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

11                   (II) MAY NOT APPROVE AN ACTION OF A BOARD OR COMMISSION  
12 THAT DOES NOT FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE  
13 COMPETITION IN THE REGULATED MARKET.

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

16                   (I) THE TYPES OF ACTIONS OF A BOARD OR COMMISSION THAT  
17 THE SECRETARY MAY REFER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR  
18 REVIEW;

19                   (II) THE PROCESS BY WHICH THE OFFICE OF ADMINISTRATIVE  
20 HEARINGS SHALL REVIEW THE ACTIONS; AND

21                   (III) THAT AN ACTION OF A BOARD OR COMMISSION MAY NOT  
22 CONSTITUTE A FINAL ACTION OF THE BOARD OR COMMISSION UNTIL AFTER THE  
23 OFFICE OF ADMINISTRATIVE HEARINGS HAS CONDUCTED THE REVIEW REQUIRED  
24 UNDER THIS SUBSECTION.

25                   (4) THE PROCESS SPECIFIED UNDER PARAGRAPH (3)(II) OF THIS  
26 SUBSECTION SHALL REQUIRE THE OFFICE OF ADMINISTRATIVE HEARINGS TO:

27                   (I) REVIEW THE MERITS OF THE PROPOSED ACTION OF A  
28 BOARD OR COMMISSION;

29                   (II) ASSESS WHETHER THE PROPOSED ACTION FURTHERS A  
30 CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN THE  
31 REGULATED MARKET; AND

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

(5) THE FINAL ACTION OF 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 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.

#### 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

1            [(7)] (8)       recommend to the Governor any modification, abolition, and  
2 transfer of advisory bodies within the secretary's jurisdiction.

3    **8-205.1.**

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

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

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

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

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

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

23           (3)    ISSUE EXPEDITIOUSLY A WRITTEN DECISION APPROVING,  
24 DISAPPROVING, OR MODIFYING THE PROPOSED DECISION OR ACTION OR  
25 REMANDING THE PROPOSED DECISION OR ACTION BACK TO THE UNIT FOR FURTHER  
26 REVIEW BEFORE:

27           (I)    A FINAL DECISION IS ISSUED; OR

28           (II)   THE PROPOSED ACTION IS IMPLEMENTED.

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

(b) The Department 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;

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

(iii) the Office of Administrative Hearings.

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.

1 1101 (2015), to ensure that there is State supervision of boards and commissions that have  
2 a controlling number of active market participants.

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