



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 215 of the 128th G.A.](#)

Date: June 24, 2009

Status: As Introduced

Sponsor: Rep. Letson

Local Impact Statement Procedure Required: No — No local cost

Contents: Modifies the law governing investigations and hearings conducted by the State Dental Board

State Fiscal Highlights

- The State Dental Board may incur additional costs as responsibility for oversight of investigations is spread among the four supervisory investigative panels and a minimal increase in costs to manage the panels and cases.
- The Board may realize cost savings as a result of utilizing state employees as hearing examiners.
- The Board will likely incur additional minimal costs to provide the *entire* patient record or file free of charge to each individual charged with a violation.
- The Board may incur minimal costs to create and implement a notification process for licensees and certificate holders that do not renew a license or certificate prior to taking disciplinary action.
- The Board may incur a one-time minimal increase in costs to adopt rules.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Supervisory investigative panels

The bill requires the State Dental Board to appoint four supervisory investigative panels, each consisting of two Board members, to be selected at random to oversee all investigations conducted by the Board. Each panel is responsible for making recommendations pertaining to the disposition of each investigation to which it is assigned, within one year from the date of assignment. The bill prohibits the investigatory panel members from participating in any deliberations of the case after a recommendation has been made.

According to the Executive Director of the Dental Board, investigation oversight is currently managed by a board member who spends about 20 hours a week performing this duty and is assisted by another board member, both of whom are paid an hourly rate to perform this function. While the amount the current two members who oversee investigations receive will likely decrease as the responsibility is spread among eight board members, the Board's overall costs to implement this provision may increase. In addition, the Board will likely experience a minimal increase in administrative costs to assign and manage the panels and cases.

Hearing examiners

The bill requires the Board to develop a roster of at least ten referees or examiners that are attorneys at law, have been admitted to the practice of law, and are classified as either administrative law attorney examiners or as administrative law attorney examiner administrators, to oversee all of the Board's disciplinary hearings and deliberations. The bill requires that the referees or examiners be assigned to hearings at random without regard to experience or background. Currently, the Board contracts with two hearing examiners for oversight of all disciplinary hearings and deliberations. At the beginning of each fiscal year, the Board enters into personal service contracts for up to \$10,000 with each of the hearing examiners, to be paid at a rate of \$75 per hour.

In accordance with the bill, the examiners or referees would be state employees that meet the minimal qualification of an administrative law attorney examiner or as an administrative law attorney examiner administrator. It is presumed that these employees would be unclassified and intermittent, and paid hourly for their services as needed. The starting pay for administrative law attorney examiners and administrative law attorney examiner administrators is \$19.70 per hour and \$24.01 per hour respectively, plus additional benefits depending upon the number of hours worked. In FY 2008 and in FY 2009, the Board conducted three administrative hearings. At the lower pay rate than contracted examiners, this provision may result in a decrease in costs for the Board.

Discovery

Currently, Board proceedings relative to an investigation or the determination of whether reasonable grounds exist to believe that a violation has occurred are confidential and not subject to discovery. The bill requires the Board, in compliance with the Administrative Procedure Act, to provide one copy of each item that the Board procures or creates in the course of an investigation of an individual, to the individual free of charge, if the Board has notified an individual of an opportunity for a hearing. These items may include, but are not limited to, complaints filed with the Board; correspondence, reports, and statements of any kind; deposition transcripts; and patient dental records. The Board currently provides individuals who have been charged with a violation a copy of any information in the investigative file that specifically pertains to the charge against them.

According to the Board's Executive Director, there are between 75 and 100 charges filed each year and each person who is charged with a violation is notified of an opportunity for a hearing. The Board will likely experience an increase in costs to provide the *entire* patient record or file free of charge to each individual as required by the bill.

Various other investigatory and disciplinary changes

Various other investigatory and disciplinary changes made by the bill include, allowing the Board to determine which criminal offenses are substantially related to any of the professions regulated by the Board and requiring the Board to adopt rules identifying those criminal offenses for purposes of disciplinary action, removing a provision requiring the automatic suspension of a licensee for failing to renew registration or submit evidence of completed continuing education credits and instead requiring the Board to create a notification process whereby licensees would be notified prior to any disciplinary action, and requiring investigatory panels assigned by the Board to consult with the Office of the Attorney General to determine whether there is probable cause prior to issuing a subpoena.

The Board may experience a one-time minimal increase in administrative costs to adopt rules identifying criminal offenses that will be subject to disciplinary action. Additional costs that could be incurred by the Board include the creation and implementation of the notification process for licensees and certificate holders that do not renew a license or certificate prior to disciplinary action. The Board currently utilizes the Office of the Attorney General for legal representation services and should not incur additional costs as a result of the requirement to consult with the Office prior to issuing a subpoena.