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FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED ORIGINAL DATE <u>2/22/23</u>
SHORT TITLE <u>Uniform Licensing Act Changes</u>	BILL NUMBER <u>CS/Senate Bill 247/aSHPAC/SJCS</u>
ANALYST <u>Campbell</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 83, which addresses licensure for podiatrists.
 Relates to House Bill 93, which proposes to amend the Pharmacy Act.
 Relates to House Bill 115, which addresses licensure for home inspectors.
 Relates to House Bill 201, which addresses the termination of agency life for a number of ULA boards.
 Relates to House Bill 248, the Physical Therapy Licensure Compact.
 Relates to House Bill 249, the Psychology Interjurisdictional Compact.
 Relates to Senate Bill 35, which addresses licensure for anesthesiologists.
 Relates to Senate Bill 80, which addresses licensure for certified registered nurse anesthetists.
 Relates to Senate Bill 92, which addresses licensure for pharmacists.
 Relates to Senate Bill 110, which addresses licensure for chiropractors.
 Relates to Senate Bill 111, which proposes to temporarily suspend provisional and initial license fees for individuals entering into professions and occupations in New Mexico.
 Relates to Senate Bill 117, which proposes to enact a new Prescribing Psychologist Practice Act.
 Relates to Senate Bill 256, which would amend Section 61-1-3.3 of the ULA regarding the use of conversion therapy.

Sources of Information

LFC Files

Memo from the Interstate Commission of Nurse Licensure Compact Administrators (ICNLCA)

Responses Received From

(Note: These responses were to the original bill; responses to the SJC Substitute have been requested but not yet received due to a shortage of time.)

Office of the Attorney General (NMAG)
 NM Board of Nursing (NMBN)
 NM Board of Examiners for Architects (BEA)
 Regulation and Licensing Department (RLD)

Medical Board (NMMB)
State Board of Licensure for Professional Engineers and Professional Surveyors
Board of Veterinary Medicine (BVM)

SUMMARY

Synopsis of SJC Substitute for Senate Bill 247

The Senate Judiciary Committee substitute for Senate Bill 247 proposes to amend the Uniform Licensing Act (the “ULA”), NMSA 1978, Sections 61-1-1 to -37 (1957, as amended through 2022). In addition to numerous changes to provide greater clarity in existing statutory provisions, the bill would create new provisions authorizing licensing boards to summarily suspend licenses and fine unlicensed practitioners up to \$10 thousand per violation (an increase from \$1,000). The bill would also require all licensing boards to issue expedited licenses to applicants holding a license in good standing issued by another licensing jurisdiction. In addition, the bill would permit licensing boards to hold administrative disciplinary hearings by virtual means with the agreement of the applicable licensee, applicant, or unlicensed practitioner. Finally, the bill would provide that a hearing officer presiding over an administrative disciplinary hearing must prepare a report containing both findings of fact and “recommendations” as to the underlying case.

FISCAL IMPLICATIONS

In response to the original bill, no fiscal impact was indicated by any of the responding agencies. However, lines 13 to 17 on page 11 of the SCJ Substitute strike a provision from Section 61-1-4 NMSA 1978 that currently requires licensees to bear costs associated with disciplinary proceedings. Removing boards’ ability to recoup those costs from licensees could significantly curtail boards’ ability to fund disciplinary investigations and proceedings.

The Office of the Attorney General (NMAG) points out that costs of disciplinary proceedings can sometimes be quite high, e.g. when expert witnesses or investigative services are required, and that Section 61-4-1(H) requires all fines collected by boards to be deposited in the current school fund.

SIGNIFICANT ISSUES

NMAG points out that the bill creates or expands a conflict between Section 61-1-31.1 NMSA 1978 (expedited licensure) and some others.¹ Essentially, the latter statutes provide that particular licensing boards may issue a license to holders of licenses from other jurisdictions, provided that the licensure requirements of those other jurisdictions are substantially the same as the requirements in New Mexico. The bill requires licensure boards to issue licenses to holders of licenses from other jurisdictions without regard to whether the other jurisdiction’s requirements are equivalent to New Mexico’s.

¹ Examples include Sections 61-14-10 (veterinary license without examination), 61-15-6(F) (architects), 61-24D-10(A) (home inspectors), and 61-28B-11 (public accountants)

NMAG also notes:

As drafted, the Bill’s expansion of expedited licensure pursuant to Section 61-1-31.1 would not afford the ULA boards sufficient time to implement the changes. The effective date of the Bill, and its changes to the ULA, would be June 16, 2023. The changes to the ULA would take effect on that date, and most boards not previously subject to Section 61-1-31.1 would not have rules in place on that date to govern expedited licensure. Under the State Rules Act and corresponding Default Procedural Rule on Rulemaking, the shortest possible time for rules to be introduced and take effect is about 3 months, but in practice it is incredibly difficult for staff, attorneys, and appointed members to discuss, draft, and prepare rules in that timeframe. It is more reasonable to provide boards a 12 month period to update rules in response to a statutory change. In effect, then, and until their administrative rules would take effect, the amendment to Section 61-1-31.1 would require these boards (without rules in place) to grant expedited licenses to any current licensee in good standing from any domestic jurisdiction, regardless of the stringency, or lack thereof, of the other jurisdiction’s licensure requirements. It also would mean that no applicants from foreign nations would be eligible for expedited licensure until the respective board’s administrative rules became effective.

The word “recommendations” on page 13, line [19] of the [Committee substitute] bill is ambiguous and is addressed by the New Mexico Court of Appeals in New Mexico. See Bd. of Dental Health Care v. Jaime, 2013-NMCA-040. While a final decision of a board must contain both findings of fact and “conclusions of law” pursuant to Section 61-1-16, and this requirement is unchanged by the bill (see Section 17), it is unclear what “recommendations” the hearing officer would be making. The bill could provide greater clarity by expanding on the word “recommendations.” Other administrative processes within the state and federal agencies may provide examples in which a hearing officer may make recommendations as to conclusions of law and even propose penalties, the Court in the Bd. of Dental Health Care v. Jaime matter closely examined the ULA and held that hearing officers under the ULA are only fact finders, and that conclusions of law and penalties are outside of their statutory scope. The proposed change in SB 247 would create some confusion and a thorough review of the ULA should be done to update any other references to the scope of a hearing officers’ authority.

PERFORMANCE IMPLICATIONS

Per NMAG:

The bill will likely require the use of significant agency resources, since the Office of the Attorney General’s Open Government Division provides legal counsel to the vast majority of boards subject to the ULA (who will be required to promulgate administrative rules governing applicant eligibility for expedited licensure). The resources utilized in these efforts may affect the agency’s other performance-based targets.

ADMINISTRATIVE IMPLICATIONS

Per NMAG:

As drafted, the bill would require the boards and commissions subject to the Uniform Licensing Act to engage in significant rulemaking activity in which the Office of the Attorney provides drafting and editorial assistance, ongoing legal advice on procedures, assistance with public hearings and compliance with the State Rules Act, and representation in judicial proceedings in the event a rule is appealed. This may require additional resources from the Office of the Attorney General.

Furthermore, the Office of the Attorney General also provides civil administrative prosecution for licensing boards, and board action associated with licensing may result in additional referrals for prosecution in particular if questions of expedited licensure applicability is challenged by applicants.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See the first item in Significant Issues.

TECHNICAL ISSUES

See NMAG's concerns listed in Significant Issues.

OTHER SUBSTANTIVE ISSUES

NMAG also notes:

The provision in Section 9 allowing for a hearing to be conducted by “virtual remote means” is somewhat incongruous with Section 10-15-1(C) of the Open Meetings Act in the event a hearing was held by a quorum of the public body. While the bill would permit boards to hold virtual disciplinary hearings with the consent of the applicable licensee, applicant, or unlicensed practitioner, Section 10-15-1(C) only allows members of a public body to attend a meeting remotely “when it is otherwise difficult or impossible for the member to attend the meeting in person.”

ALTERNATIVES

The Board of Licensure for Professional Engineers and Professional Surveyors notes:

Under current Section 61-23-10 NMSA 1978, the second sentence states "The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors." Therefore, expedited licensure under the Uniform Licensing Act could not require the Board to follow expedited licensure as the Board is the only one with the authority to determine the licensure requirements for professional engineers and professional surveyors.

The Board requests a friendly amendment to SB 247 section 61-1-31.1:

A. A board that issues an occupational or professional license pursuant to Chapter 61, Articles 2 through 22, and 24 through 37 [~~pursuant to this 2022 act~~] shall, as soon as practicable but no later than thirty days after an out-of-state licensee files [~~an~~] a complete application for an expedited license accompanied by any required fees:

The Board of Veterinary Medicine notes that the bill “conflicts with a section of the Veterinary Practice Act which limits the fine imposed for unlicensed practice to five-thousand dollars (\$5,000.00),” citing NMSA 1978, Section 61-14-18(B)(1).

The Regulation and Licensing Department notes:

Section 8, page 12, lines 9-11 requires personal service of a notice of contemplated board action (commonly known as a “Notice of Contemplated Action” or “NCA”) on an unlicensed person if the board does not have an address of record in accordance with the rules of civil procedure.

The pertinent rule of civil procedures provides:

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule “signs” includes the electronic representation of a signature.

The Construction Industries Division (CID) of the RLD notes that it deals with unlicensed contractors on a regular basis for whom the CID does not have an address on record. In the (likely) event an unlicensed contractor refuses service by mail, the CID would be required to attempt to track down and personally serve the unlicensed individual in order to take lawful action for the unlicensed activity. This process could prove time-consuming and costly, as well as involve some level of risk associated with making direct contact with a person who has demonstrated an unwillingness to follow the law. Changing the language to under match civil procedure is recommended.