

BILL ANALYSIS

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S.B. 406
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Examiners of Psychologists was created in 1969 to ensure that Texans receive psychological services from competent, qualified practitioners. The board has two primary functions: licensing qualified individuals to provide psychological services in Texas and enforcing the Psychologists' Licensing Act, including investigating and resolving complaints. The board currently licenses more than 6,000 psychological practitioners with a staff of 12 employees and an annual budget of \$720,564.

The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The sunset review found that the licensing and regulation of psychological practitioners is needed and that the board is successful in its mission, but some of the board's processes could be improved to make them fairer and more efficient for both licensees and the public.

As proposed, S.B. 406 eliminates the board's oral examination requirement for psychologist licensure and requires the board to instead assess applicants' competence using its other licensing requirements including education, experience, and written examination requirements.

S.B. 406 abolishes the Psychological Associate Advisory Committee and requires the board to instead seek stakeholder input earlier in its rule development process.

This bill also strengthens the board's enforcement program by requiring the board to prioritize complaints according to risk and to adopt, by rule, a schedule of sanctions, matching the severity of the sanction to the type of violation. It requires at least one public member of the board to participate in informal settlement conferences and authorizes the board to participate in quarterly criminal record checks of its licensees, conducted by the Department of Public Safety.

S.B. 406 continues the Texas State Board of Examiners of Psychologists for 12 years.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas State Board of Examiners of Psychologists is modified in SECTION 19 (Section 501.404, Occupations Code) and SECTION 20 (Section 501.410, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 501.005, Occupations Code, to provide that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Texas State Board of Examiners of Psychologists (board) is abolished and this chapter expires September 1, 2017, rather than 2005.

SECTION 2. Amends Section 501.053, Occupations Code, to redefine "Texas trade association." Clarifies for what type of board employment certain persons ineligible for board membership are also ineligible. Deletes the prohibition that certain persons may not be employees of the board who are exempt from the state's position classification plan or compensated at or above a certain amount. Makes nonsubstantive changes.

SECTION 3. Amends Sections 501.055(a) and (c), Occupations Code, as follows:

(a) Includes as grounds for removal from the board not having certain qualifications at the time of taking office, rather than at the time of appointment, and being ineligible for membership under Section 501.053 (Membership and Employee Restrictions). Deletes as grounds for removal the violation of a prohibition established by Section 501.053. Makes nonsubstantive changes.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board, who in turn, is required to notify the governor and attorney general. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who in turn is required to notify the governor and attorney general. Deletes the requirement of the executive director to notify the board if a ground for removal may exist, and the requirement of the board to notify the governor and attorney general upon determination that a potential ground for removal exists. Makes nonsubstantive changes.

SECTION 4. Amends Section 501.057(a), Occupations Code, to require the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor. Deletes the requirement that the board select from its members a presiding officer at its annual meeting.

SECTION 5. Amends Section 501.059, Occupations Code, as follows:

Sec. 501.059. TRAINING PROGRAM FOR MEMBERS. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting or performing other board functions until the person completes a training program that complies with this section. Deletes the prohibition of a board member on assuming the member's duties or being confirmed by the senate until the member completes at least one course of the training program established by the board under this section.

(b) Modifies the information with which the training program must provide the person. Makes nonsubstantive changes.

(c) Entitles a person appointed to the board to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes the requirement that the board, in developing the program, consult with the governor, attorney general, and Texas Ethics Commission. Deletes the requirement that the board, if another state agency or entity is authorized to establish the training requirements for board members, adopt that training instead of developing its own program.

SECTION 6. Amends Section 501.103, Occupations Code, to require the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and staff of the board, rather than policies that define the respective responsibilities of the board and the staff of the board.

SECTION 7. Amends Subchapter D, Chapter 501, Occupations Code, by adding Section 501.160, as follows:

Sec. 501.160. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

SECTION 8. Amends Subchapter D, Chapter 501, Occupations Code, by adding Section 501.161, as follows:

Sec. 501.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures for the adoption of board rules and

appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to coordinate the implementation of the policy under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 9. Amends Subchapter D, Chapter 501, Occupations Code, by adding Section 501.162, as follows:

Sec. 501.162. DEVELOPMENT OF PROPOSED RULES. (a) Provides that this section applies to the process by which the board develops proposed rules before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. Provides that this section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) Requires the board to establish methods under which the board will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Sets forth which methods the board is required to include.

(c) Sets forth which methods the board is authorized to include in seeking input.

(d) Prohibits a rule adopted by the board from being challenged on the grounds that the board did not comply with this section. Requires the board, if it was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, to state in writing the reasons why the board was unable to do so.

SECTION 10. Amends Section 501.201(a), Occupations Code, to delete the requirement that the board prepare information of public interest that describes the procedures by which complaints are filed with and resolved by the board.

SECTION 11. Amends Section 501.203, Occupations Code, as follows:

Sec. 501.203. New heading: INFORMATION ABOUT COMPLAINT ACTIONS. (a) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain certain information about the complaint. Deletes the requirement that the board maintain certain other information about the complaint.

(b) Requires the board to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes the requirement that the board, if a written complaint is filed with the board that the board has authority to resolve, at least quarterly and until final disposition of the complaint, notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) Requires the board to analyze complaints filed with the board to identify any trends or issues related to certain violations.

SECTION 12. Amends Section 501.204, Occupations Code, by adding Subsection (e) to require the board to assign priorities and investigate complaints based on the severity of the conduct alleged in the complaint and the degree of harm to public health and safety.

SECTION 13. Amends Section 501.253, Occupations Code, by amending Subsection (b) and adding Subsections (e) and (f), as follows:

(b) Entitles certain provisional license holders who are licensed in another state to practice psychology without the supervision of a psychologist during the time that the board is processing the person's application for a license.

(e) Prohibits the board from restricting the issuance of a license or provisional license to certain applicants who are licensed in another state based on the number of years the applicant has been licensed in good standing in that state.

(f) Authorizes the board to issue a provisional license under certain circumstances to certain applicants licensed in another state who present credentials from a national accreditation organization. Requires an applicant who obtains a provisional license to have passed an examination regarding the laws and rules governing the profession of psychology in this state.

SECTION 14. Amends Section 501.256, Occupations Code, by amending Subsections (a) and (b), and adding Subsection (f), as follows:

(a) Deletes the requirement that the board administer an oral, along with written, examination. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

(f) Prohibits the board from requiring an oral examination under this section.

SECTION 15. Amends Section 501.259(a), Occupations Code, to delete the requirement that the board consult with the Psychological Associate Advisory Committee in setting standards for the issuance of licenses to certain psychological personnel.

SECTION 16. Amends Sections 501.263(a) and (b), Occupations Code, as follows:

(a) Authorizes the board to issue a temporary license to an applicant seeking to practice in this state for a limited time and limited purpose, rather than to an applicant seeking a permanent license. Authorizes the board to issue this license if, among other things, the applicant is supervised by a person licensed by the board under this chapter with whom the temporary license holder may consult during the time the person holds the temporary license. Redesignates existing Subdivision (5) to Subdivision (6).

(b) Provides that the temporary license is valid only for the period specified by the board and for the limited purpose approved by the board. Deletes the provision that the temporary license is valid until the earlier of the date the board approves or denies the temporary license holder's application for a permanent license, or the first anniversary of the date the board issues the temporary license if no action is taken by the board.

SECTION 17. Amends Section 501.302(b), Occupations Code, to recalculate the renewal fees for a person whose license has been expired for 90 days or less, and for a person whose license has been expired for more than 90 days but less than one year.

SECTION 18. Amends Section 501.303(b), Occupations Code, to modify the renewal fee [for certain out-of-state practitioners].

SECTION 19. Amends Section 501.404, Occupations Code, as follows:

Sec. 501.404. SCHEDULE OF SANCTIONS. (a) Requires the board by rule, to adopt a schedule of the disciplinary sanctions that the board may impose under this chapter, rather than to adopt a broad schedule of sanctions for violations under this chapter. Requires the board, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) Requires the board, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, to consider certain factors.

(c) Requires the board to consider taking more severe disciplinary action upon a person who is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter. Requires the board to consider taking a more severe disciplinary action upon a person who has previously been the subject of disciplinary action by the board.

(d) Creates this subsection from existing text.

SECTION 20. Amends Section 501.410(b), Occupations Code, to require rules adopted by the board (regarding procedures governing informal disposition of certain contested cases and informal proceedings) to require the presence of at least one public member of the board. Makes nonsubstantive changes.

SECTION 21. Amends Subchapter K, Chapter 501, Occupations Code, by adding Section 501.505, as follows:

Sec. 501.505. OPTION TO ORDER REFUND. (a) Authorizes the board, under an agreement resulting from an informal settlement conference, to order a license holder to refund to the person who paid for the psychological services at issue an amount not to exceed the amount the person paid to the license holder for a service regulated by this chapter instead of or in addition to imposing an administrative penalty under this chapter.

(b) Prohibits the board from including an estimation of other damages or harm in a refund order.

SECTION 22. Amends Article 60.061(a), Code of Criminal Procedure, to require the board, in addition to other listed agencies, to provide to the Department of Public Safety (DPS) a list of the persons the board has licensed [for DPS to match against conviction records].

SECTION 23. Repealer: Subchapter H (Psychological Associate Advisory Committee), Chapter 501, Occupations Code.

SECTION 24. Abolishes the Psychological Associate Advisory Committee.

SECTION 25. Provides that the changes in law made by this Act to Section 501.053, Occupations Code, do not affect the entitlement of a member serving on the Texas State Board of Examiners of Psychologists immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the term the member is serving on that date. Provides that the changes in law apply only to a member appointed on or after September 1, 2005.

SECTION 26. Effective date: September 1, 2005.