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 |
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1 AN ACT concerning

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

FOR the purpose of requiring the Secretary of Health and Mental Hygiene and the Office of Administrative Hearings, in consultation with stakeholders and other interested parties, to adopt certain regulations for the supervision of certain boards and commissions for certain purposes; requiring the Office of Administrative Hearings, in accordance with certain regulations, to review certain decisions or actions to make certain determinations; requiring certain secretaries or certain designees to make certain reviews, make certain assessments, and issue certain decisions under certain circumstances; prohibiting the Office and certain secretaries or designees from approving certain decisions and certain actions under certain circumstances; requiring certain regulations to specify certain actions that the Secretary may refer to the Office for review, certain review processes, and that the actions of certain boards and commissions are not final actions until after a certain review requiring the Office to establish a certain process; prohibiting certain boards and commissions from implementing certain decisions or actions until after the Office has conducted a certain review; requiring a certain process to require the Office to take certain actions; requiring certain decisions or actions of certain boards, commissions, and units to comply with certain decisions of the Office; prohibiting the Office from authorizing certain administrative law judges to perform a certain review under certain circumstances; providing that certain boards and commissions are responsible for certain costs; providing for the construction of a certain provision of this Act; prohibiting certain secretaries or designees from being certain individuals; 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.

<u>Underlining</u> indicates amendments to bill.

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



1 supervision of certain units within the jurisdiction of the secretaries, for a certain 2 purpose, subject to a certain exception; specifying that certain decisions or actions of 3 certain units are not final decisions or actions until after a certain review; requiring 4 that the final actions or decisions of certain units comply with a certain written 5 decision; requiring certain regulations to be drafted in consultation with certain 6 stakeholders and other interested parties; requiring the Department of Health and 7 Mental Hygiene and the Office to satisfy certain requirements of this Act in a certain 8 manner; requiring the Department and the Office to submit certain regulations to 9 the Joint Committee on Administrative, Executive, and Legislative Review on or 10 before a certain date; specifying the purpose of this Act; and generally relating to the powers and regulatory authority of secretaries of principal departments. 11

- 12 BY repealing and reenacting, with amendments,
- 13 Article Health Occupations
- 14 Section 1–203
- 15 Annotated Code of Maryland
- 16 (2014 Replacement Volume and 2016 Supplement)
- 17 BY repealing and reenacting, with amendments,
- 18 Article State Government
- 19 Section 8–205(b)
- 20 Annotated Code of Maryland
- 21 (2014 Replacement Volume and 2016 Supplement)
- 22 BY adding to
- 23 Article State Government
- 24 Section 8–205.1
- 25 Annotated Code of Maryland
- 26 (2014 Replacement Volume and 2016 Supplement)
- 27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND.
- 28 That the Laws of Maryland read as follows:

29 Article – Health Occupations

- 30 1–203.
- 31 (a) [The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE 32 power of the Secretary over plans, proposals, and projects of units in the Department does 33 not include the power to disapprove or modify any decision or determination that a board 34 or commission established under this article makes under authority specifically delegated 35 by law to the board or commission.
- 36 (b) The power of the Secretary to transfer staff or functions of units in the 37 Department does not apply to any staff of a board or commission, established under this 38 article, or to any functions that pertain to licensing, disciplinary, or enforcement authority, 39 or to any other authority specifically delegated by law to a board or commission.

- NOTWITHSTANDING §§ 8-205(B)(5) AND 8-205.1 OF THE STATE 1 2 GOVERNMENT ARTICLE AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE SECRETARY AND THE OFFICE OF ADMINISTRATIVE HEARINGS, IN 3 4 CONSULTATION WITH STAKEHOLDERS AND OTHER INTERESTED PARTIES, SHALL ADOPT REGULATIONS FOR THE SUPERVISION OF EACH BOARD OR COMMISSION 5 6 THAT IS COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE OCCUPATION OR PROFESSION REGULATED BY THE BOARD OR COMMISSION, 7 INCLUDING THE REVIEW BY THE OFFICE OF ADMINISTRATIVE HEARINGS 8 DESCRIBED UNDER THIS SUBSECTION, IN ORDER TO: 9
- 10 (I) PREVENT UNREASONABLE ANTICOMPETITIVE ACTIONS BY 11 THE BOARD OR COMMISSION; AND
- 12 (II) DETERMINE WHETHER THE ACTIONS OF THE BOARD OR 13 COMMISSION FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE 14 COMPETITION IN THE REGULATED MARKET.
- 15 (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
- 22 (II) MAY NOT APPROVE AN A DECISION OR ACTION OF A BOARD
 23 OR COMMISSION THAT DOES NOT FURTHER A CLEARLY ARTICULATED STATE POLICY
 24 TO DISPLACE COMPETITION IN THE REGULATED MARKET; AND
- 25 <u>(III) IN CONJUNCTION WITH THE OFFICE OF THE ATTORNEY</u> 26 <u>GENERAL, SHALL ESTABLISH A PROCESS:</u>
- 27 <u>BY WHICH THE OFFICE OF ADMINISTRATIVE</u> 28 <u>HEARINGS REVIEWS DECISIONS OR ACTIONS OF A BOARD OR COMMISSION;</u>
- 29 <u>2. That is independent of the process by which</u>
 30 <u>The Office of Administrative Hearings hears adjudicated, contested</u>
 31 <u>Cases; and</u>
- 32 <u>3.</u> <u>That includes:</u>
- 33 <u>A</u>.

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COMMISSION FOR FURTHER REVIEW.

| 1 2 | (3) A REGULATION ADOPTED UNDER THIS SUBSECTION SHALL SPECIFY: |
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| 3 | (1) THE TYPES OF <u>DECISIONS OR</u> ACTIONS OF A BOARD OR |
| 4 | COMMISSION THAT THE SECRETARY MAY REFER BE REFERRED TO THE OFFICE OF |
| 5 | ADMINISTRATIVE HEARINGS FOR REVIEW; |
| 6 | B. QUALIFICATIONS AND SPECIALIZED TRAINING |
| 7 | REQUIREMENTS FOR ADMINISTRATIVE LAW JUDGES CONDUCTING REVIEWS AS |
| 8 | REQUIRED UNDER THIS SUBSECTION; |
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| 9 | C. CHECKS FOR IDENTIFICATION AND MANAGEMENT OF |
| 10 | POTENTIAL CONFLICTS WHEN THE OFFICE OF ADMINISTRATIVE HEARINGS |
| 1 | CONDUCTS A CONTESTED CASE HEARING IN ACCORDANCE WITH TITLE 10, |
| 12 | SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; AND |
| 13 | D. APPROPRIATE STANDARDS AND GUIDELINES FOR |
| 4 | CONDUCTING REVIEWS AS REQUIRED UNDER THIS SUBSECTION. |
| 5 | (II) THE PROCESS BY WHICH THE OFFICE OF ADMINISTRATIVE |
| 16 | HEARINGS SHALL REVIEW THE ACTIONS; AND |
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| 17 | (HI) THAT AN ACTION OF A |
| 18 | (3) A BOARD OR COMMISSION MAY NOT CONSTITUTE IMPLEMENT A |
| 19 | DECISION OR A FINAL ACTION OF THE BOARD OR COMMISSION UNTIL AFTER THE |
| 20 | OFFICE OF ADMINISTRATIVE HEARINGS HAS CONDUCTED THE REVIEW REQUIRED |
| 21 | UNDER THIS SUBSECTION. |
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| 22 | (4) THE PROCESS SPECIFIED UNDER PARAGRAPH (3)(II) OF |
| 23 | THIS SUBSECTION SHALL REQUIRE THE OFFICE OF ADMINISTRATIVE HEARINGS TO: |
| 24 | (I) REVIEW THE MERITS OF THE PROPOSED DECISION OR |
| 25 | ACTION OF A BOARD OR COMMISSION; |
| | (T) Aggreg Timerine mile propegie progress of Agricus |
| 26 | (II) ASSESS WHETHER THE PROPOSED DECISION OR ACTION |
| 27 | FURTHERS A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN |
| 28 | THE REGULATED MARKET; AND |
| 29 | (III) ISSUE EXPEDITIOUSLY A WRITTEN DECISION APPROVING, |
| 30 | DISAPPROVING, OR MODIFYING THE PROPOSED DECISION OR ACTION OR |
| 31 | REMANDING THE PROPOSED DECISION OR ACTION BACK TO THE BOARD OR |

| 1 | (5) THE FINAL DECISION OR ACTION OF IMPLEMENTED BY A BOARD |
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| 2 | OR COMMISSION SHALL COMPLY WITH THE WRITTEN DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS. |
| 4 | (6) THE OFFICE OF ADMINISTRATIVE HEARINGS MAY NOT |
| 5 | AUTHORIZE AN ADMINISTRATIVE LAW JUDGE TO REVIEW THE DECISION OR ACTION |
| $\frac{6}{7}$ | 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. |
| ' | BOARD OR COMMISSION WHOSE ACTION IS THE SUBJECT OF REVIEW. |
| 8 | (7) EACH BOARD OR COMMISSION SHALL BE RESPONSIBLE FOR THE |
| 9 | COSTS ASSOCIATED WITH THE REVIEW BY THE OFFICE OF ADMINISTRATIVE |
| 10 | HEARINGS OF DECISIONS OR ACTIONS OF THE RESPECTIVE BOARD OR COMMISSION |
| 11 | (D) SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO: |
| 12 | (1) A DECISION OR DETERMINATION OF A BOARD OR COMMISSION |
| 13 | CONCERNING MINISTERIAL ACTS; |
| 14 | (2) THE INTERNAL OPERATIONS OF A BOARD OR COMMISSION; |
| 15 | (3) INVESTIGATIONS; |
| 16 | (4) CHARGES; AND |
| 17 | (5) AS IT RELATES TO AN INDIVIDUAL REGULATED BY A BOARD OR |
| 18 | COMMISSION: |
| 19 | (I) CONSENT ORDERS; AND |
| 20 | (II) <u>LETTERS OF SURRENDER.</u> |
| 21 | Article - State Government |
| 22 | 8–205. |
| 23 | (b) A secretary shall: |
| 24 25 | (1) receive the salary and have the assistants, employees, and professional consultants provided in the budget, unless otherwise provided by law; |
| 26 27 | (2) be responsible for establishing policy to be followed by the units of State government within the secretary's department; |

- 1 (3) be responsible for the efficient and orderly administration of the 2 department;
- 3 (4) be responsible for the comprehensive planning of programs and services 4 within the secretary's jurisdiction and for reviewing and approving the plans of all units of 5 State government within the secretary's jurisdiction;
- 6 (5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND EXCEPT
 7 AS PROVIDED IN § 1–203(C) OF THE HEALTH OCCUPATIONS ARTICLE, BE
 8 RESPONSIBLE FOR THE SUPERVISION OF THE UNITS OF STATE GOVERNMENT
 9 WITHIN THE SECRETARY'S JURISDICTION THAT ARE COMPOSED IN WHOLE OR IN
 10 PART OF INDIVIDUALS PARTICIPATING IN THE OCCUPATION OR PROFESSION
 11 REGULATED BY THE UNITS;
- 12 **[(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
- 17 **[**(7)**] (8)** recommend to the Governor any modification, abolition, and transfer of advisory bodies within the secretary's jurisdiction.
- 19 **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:
- 25 (1) PREVENT UNREASONABLE ANTICOMPETITIVE ACTIONS BY THE 26 UNIT; AND
- 27 (2) DETERMINE WHETHER THE DECISIONS AND ACTIONS OF THE UNIT 28 FURTHER A CLEARLY ARTICULATED STATE POLICY TO DISPLACE COMPETITION IN 29 THE REGULATED MARKET.
- 30 (B) IF THE SECRETARY OR THE SECRETARY'S DESIGNEE FINDS THAT A
 31 PROPOSED DECISION OR ACTION OF THE UNIT MAY RESULT IN AN UNREASONABLE
 32 ANTICOMPETITIVE DECISION OR MAY NOT FURTHER A CLEARLY ARTICULATED
 33 STATE POLICY TO DISPLACE COMPETITION IN THE REGULATED MARKETPLACE, THE
 34 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 <u>Administrative Hearings</u> 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
- a public meeting open to anyone interested in the issue.

| 1 | (b) The Department and the Office shall: |
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| 2 3 | (1) convene both of the stakeholder meetings at least 6 months before the regulations are proposed; and |
| 4 | (2) include notice to and participation of a representative of: |
| 5 6 | (i) each board and commission under the jurisdiction of the Secretary of Health and Mental Hygiene; <u>and</u> |
| 7 8 | (ii) members of professional licensing associations, as appropriates |
| 9 | (iii) the Office of Administrative Hearings. |
| 10 11 12 | (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. |
| 13 14 15 16 | 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. |
| 17 18 | 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. |