

# HOUSE BILL 628

P1, J2, C2

7lr1334  
CF SB 517

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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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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2017

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## CHAPTER \_\_\_\_\_

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 and the Office  
5 of Administrative Hearings, in consultation with stakeholders and other interested  
6 parties, to adopt certain regulations for the supervision of certain boards and  
7 commissions for certain purposes; requiring the Office ~~of Administrative Hearings~~,  
8 in accordance with certain regulations, to review certain decisions or actions to make  
9 certain determinations; requiring certain secretaries or certain designees to make  
10 certain reviews, make certain assessments, and issue certain decisions under certain  
11 circumstances; prohibiting the Office and certain secretaries or designees from  
12 approving certain decisions and certain actions under certain circumstances;  
13 ~~requiring certain regulations to specify certain actions that the Secretary may refer~~  
14 ~~to the Office for review, certain review processes, and that the actions of certain~~  
15 ~~boards and commissions are not final actions until after a certain review~~ requiring  
16 the Office to establish a certain process; prohibiting certain boards and commissions  
17 from implementing certain decisions or actions until after the Office has conducted  
18 a certain review; requiring a certain process to require the Office to take certain  
19 actions; requiring certain decisions or actions of certain boards, commissions, and  
20 units to comply with certain decisions of the Office; prohibiting the Office from  
21 authorizing certain administrative law judges to perform a certain review under  
22 certain circumstances; providing that certain boards and commissions are  
23 responsible for certain costs; providing for the construction of a certain provision of  
24 this Act; prohibiting certain secretaries or designees from being certain individuals;  
25 requiring the secretaries of certain principal departments to be responsible for the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining 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  
 11 powers and regulatory authority of secretaries of principal departments.

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.

1 (c) (1) NOTWITHSTANDING §§ 8-205(B)(5) AND 8-205.1 OF THE STATE  
2 GOVERNMENT ARTICLE AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS  
3 SECTION, THE SECRETARY AND THE OFFICE OF ADMINISTRATIVE HEARINGS, IN  
4 CONSULTATION WITH STAKEHOLDERS AND OTHER INTERESTED PARTIES, SHALL  
5 ADOPT REGULATIONS FOR THE SUPERVISION OF EACH BOARD OR COMMISSION  
6 THAT IS COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE  
7 OCCUPATION OR PROFESSION REGULATED BY THE BOARD OR COMMISSION,  
8 INCLUDING THE REVIEW BY THE OFFICE OF ADMINISTRATIVE HEARINGS  
9 DESCRIBED UNDER THIS SUBSECTION, IN ORDER TO:

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  
16 SUBSECTION, THE OFFICE OF ADMINISTRATIVE HEARINGS:

17 (i) SHALL REVIEW ~~AN~~ A DECISION OR ACTION OF A BOARD OR  
18 COMMISSION THAT IS REFERRED TO THE OFFICE ~~BY THE SECRETARY OR THE~~  
19 ~~SECRETARY'S DESIGNEE~~ IN ORDER TO DETERMINE WHETHER THE DECISION OR  
20 ACTION FURTHERS A CLEARLY ARTICULATED STATE POLICY TO DISPLACE  
21 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 (iii) IN CONJUNCTION WITH THE OFFICE OF THE ATTORNEY  
26 GENERAL, SHALL ESTABLISH A PROCESS:

27 1. BY WHICH THE OFFICE OF ADMINISTRATIVE  
28 HEARINGS REVIEWS DECISIONS OR ACTIONS OF A BOARD OR COMMISSION;

29 2. THAT IS INDEPENDENT OF THE PROCESS BY WHICH  
30 THE OFFICE OF ADMINISTRATIVE HEARINGS HEARS ADJUDICATED, CONTESTED  
31 CASES; AND

32 3. THAT INCLUDES:

33 A.

1           ~~(3) A REGULATION ADOPTED UNDER THIS SUBSECTION SHALL~~  
2 ~~SPECIFY:~~

3           ~~(I) THE TYPES OF DECISIONS OR 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;

9           C. CHECKS FOR IDENTIFICATION AND MANAGEMENT OF  
10 POTENTIAL CONFLICTS WHEN THE OFFICE OF ADMINISTRATIVE HEARINGS  
11 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  
14 CONDUCTING REVIEWS AS REQUIRED UNDER THIS SUBSECTION.

15           ~~(H) THE PROCESS BY WHICH THE OFFICE OF ADMINISTRATIVE~~  
16 ~~HEARINGS SHALL REVIEW THE ACTIONS; AND~~

17           ~~(III) 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.

22           (4) THE PROCESS SPECIFIED UNDER PARAGRAPH ~~(3)(H)~~ (2)(III) 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;

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  
32 COMMISSION FOR FURTHER REVIEW.

1           (5) ~~THE FINAL~~ DECISION OR ACTION ~~OF~~ IMPLEMENTED BY A BOARD  
 2 OR COMMISSION SHALL COMPLY WITH THE WRITTEN DECISION OF THE OFFICE OF  
 3 ADMINISTRATIVE HEARINGS.

4           (6) THE OFFICE OF ADMINISTRATIVE HEARINGS MAY NOT  
 5 AUTHORIZE AN ADMINISTRATIVE LAW JUDGE TO REVIEW THE DECISION OR ACTION  
 6 IF THE JUDGE IS APPOINTED BY, UNDER THE OVERSIGHT OF, OR A MEMBER OF A  
 7 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) LETTERS OF SURRENDER.

21   **Article – State Government**

22 8–205.

23           (b) A secretary shall:

24           (1) receive the salary and have the assistants, employees, and professional  
 25 consultants provided in the budget, unless otherwise provided by law;

26           (2) be responsible for establishing policy to be followed by the units of State  
 27 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  
13 budgets of other units of State government within the secretary's jurisdiction;

14 [(6)] (7) be responsible for the organization of the secretary's office and  
15 for recommending to the Governor changes in the organization and placement of units of  
16 State government within the secretary's jurisdiction; and

17 [(7)] (8) recommend to the Governor any modification, abolition, and  
18 transfer of advisory bodies within the secretary's jurisdiction.

19 **8-205.1.**

20 (A) EXCEPT AS PROVIDED IN § 1-203(C) OF THE HEALTH OCCUPATIONS  
21 ARTICLE, THE SECRETARY OF EACH PRINCIPAL DEPARTMENT SHALL SUPERVISE  
22 EACH UNIT OF STATE GOVERNMENT WITHIN THE SECRETARY'S JURISDICTION THAT  
23 IS COMPOSED IN WHOLE OR IN PART OF INDIVIDUALS PARTICIPATING IN THE  
24 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 Administrative Hearings 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  
34 a public meeting open to anyone interested in the issue.

1 (b) The Department and the Office shall:

2 (1) convene both of the stakeholder meetings at least 6 months before the  
3 regulations are proposed; and

4 (2) include notice to and participation of a representative of:

5 (i) each board and commission under the jurisdiction of the  
6 Secretary of Health and Mental Hygiene; and

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

9 ~~(iii) the Office of Administrative Hearings.~~

10 (c) On or before June 1, 2018, the Department and the Office shall submit  
11 proposed regulations to the Joint Committee on Administrative, Executive, and Legislative  
12 Review.

13 SECTION 3. AND BE IT FURTHER ENACTED, That the purpose of this Act is to  
14 address the decision in North Carolina State Board of Dental Examiners v. FTC, 135 S. Ct.  
15 1101 (2015), to ensure that there is State supervision of boards and commissions that have  
16 a controlling number of active market participants.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
18 1, 2017.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.