

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 960

(Senator Kelly)

Finance

Health and Government Operations

State Board of Nursing – Sunset Extension, Licensure Exceptions, and Board Operations and Membership

This emergency bill extends the termination date for the State Board of Nursing (MBON) by two years to July 1, 2025. Through June 30, 2025, the Secretary of Health has authority over the “infrastructure operations” of MBON for which MBON special funds may not be used; accordingly, should the board’s termination date be *further* extended, authority over infrastructure operations reverts to MBON on July 1, 2025. The terms of MBON board members in office on the date the bill takes effect are terminated on a staggered basis beginning May 1, 2023. MBON must hire an external consultant to conduct an independent evaluation of the board to develop an action plan, as specified; the external consultant must report by September 1, 2023. By December 1, 2023, MBON must report on specified processing times. The bill also alters the exceptions to registered nurse (RN) and licensed practical nurse (LPN) licensure requirements and expands the required contents of MBON’s annual report.

Fiscal Summary

State Effect: Maryland Department of Health (MDH) general fund expenditures increase beginning in FY 2023 and continue through FY 2025 to assume responsibility over MBON infrastructure operations, as discussed below; special fund expenditures correspondingly decrease. The FY 2024 budget as passed by the General Assembly includes \$8.0 million in general funds for this purpose, contingent on enactment of this bill or its cross file. Special fund expenditures related to licensing, investigation, and disciplinary activities continue through FY 2025 and may increase by an indeterminate amount, as discussed below. Special fund expenditures increase in FY 2023 (and possibly 2024) by at least \$150,000 to hire an external consultant. MBON special fund revenues continue.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Infrastructure operations” means the administrative activities of a health occupations board or a commission, including tools and resources for the use and support of deliberative actions. “Infrastructure operations” does not include policy or regulatory decisions of a board or commission or licensing, investigation, or disciplinary activities.

Authority Over Infrastructure Operations

The bill temporarily repeals MBON’s authority to employ staff, define the duties of its staff, and employ an executive director. Instead, authority over MBON’s infrastructure operations transfers to the Secretary of Health. Through June 30, 2025, the Secretary of Health is authorized to employ staff for the board in accordance with the State budget and designate a staff member who is an RN as the board’s executive director.

The Secretary is also authorized to set the compensation of a board employee whose position is unique to the board, requires specific skills or experience to perform the duties of the position, and does not require the employee to perform functions that are comparable to functions performed in other units of the Executive Branch. The Secretary of Budget and Management, in consultation with the Secretary of Health, must determine the positions for which the Secretary may set compensation.

The bill prohibits using special funds from the Board of Nursing Fund to pay for infrastructure operations while the Secretary retains authority.

Independent Evaluation and Action Plan

Uncodified language requires MBON to hire an external consultant, approved by the Secretary of Health, to conduct an independent evaluation of MBON and develop an action plan to implement the recommendations identified in the report MBON submitted pursuant to the 2022 *Joint Chairmen’s Report*. The action plan must be developed in partnership with the Department of Budget and Management, the Department of Information Technology, and MDH, and must include:

- a gap analysis to address immediate infrastructure needs, as specified;
- the identification of new workflows to reduce the time needed to fill vacancies;
- an evaluation of the qualifications necessary to serve as executive director of the board, including a recommendation on whether to repeal the requirement that the executive director be an RN;
- a plan to hire additional investigators to ensure timely processing of complaints;

- an update of MBON's organizational structure and the provision of a new organizational chart;
- a plan to create and staff a new Office of Compliance and a Communications Department within the Operations Division;
- strategic goals established in collaboration with MBON's president and executive director; and
- a review of fee structure and rates, including a comparison with neighboring states.

By September 1, 2023, the external consultant must report on its findings and the action plan to the Senate Finance Committee and the House Health and Government Operations Committee. The report may serve as the basis for additional recommendations made by the Office of Program Evaluation and Government Accountability (OPEGA) in the Department of Legislative Services (DLS) as part of the performance evaluation of the board that is currently underway.

Termination of Current Board Members' Terms

The terms of MBON members who are in office on the date the bill takes effect must end on the following dates:

- the terms of seven members on May 1, 2023; and
- the terms of seven members on November 1, 2023.

An affected board member may apply for reappointment. A member appointed to fill a vacancy must serve for the remainder of the term. However, if an affected board member is reappointed, the member's appointment runs from the date of the member's initial appointment. For the Governor's appointments of MBON's two consumer members only, the advice and consent of the Senate is required during the legislative session immediately following the dates of appointment (*i.e.*, the 2024 legislative session).

Report on Processing Times

Uncodified language requires MBON, by December 1, 2023, to report to the Governor, the Senate Finance Committee, and the House Health and Government Operations Committee on the average processing times for fiscal 2023 for (1) issuing initial licenses, certifications, and renewals, as specified; (2) the issuance of authorization to test; and (3) the approval of proposed nursing curriculum revisions, new nursing and certified nursing assistant education programs, new faculty, and new clinical sites.

Licensure Requirements

The bill alters an existing exception to the requirement that an individual must be licensed before practicing as an RN or LPN. An individual who has an application for licensure pending before MBON may now continue to practice as an RN or LPN, as specified, even if the individual has taken and failed the licensing examination once during the 120-day period immediately following the individual's submission of their application. An individual who has failed the licensing examination twice or more may not continue to practice while their application is pending.

Contents of Annual Report

The bill expands the contents of MBON's annual report to include any additional aggregate data, identified by the board in consultation with stakeholders, determined to be necessary to facilitate workforce and health planning purposes. The data may not reference any individual's name or other personal identifier.

Current Law: Generally, an individual must be licensed and/or certified by MBON to practice registered or licensed practical nursing in the State.

Authorized Practice Without a License

An individual may practice without a license, pursuant to rules and regulations adopted by MBON, if the individual (1) has otherwise qualified to practice registered nursing or licensed practical nursing in any other state or country and is in the State temporarily or (2) has an application for licensure pending before MBON, but has either not taken the licensing examination yet, is awaiting the results of the examination, or has passed the examination but the completion of their criminal history records check (CHRC) is pending.

Board of Nursing Fund

The Board of Nursing Fund is a continuing, nonlapsing fund that must be used exclusively to cover the actual documented and indirect costs of fulfilling the statutory and regulatory duties of MBON. MBON may set reasonable fees for the issuance and renewal of licenses and its other services. The fees charged must be set in a manner to produce funds that approximate the cost of maintaining MBON and its operations. Any unspent portions of the fund may not be transferred or revert to the general fund.

Board Membership

MBON comprises 14 board members, of which 9 must be RNs; 1 must be a licensed nurse who is either an LPN, an RN, or an advanced practice registered nurse; 2 must be LPNs;

and 2 must be consumers. All appointments are made by the Governor. For the appointment of an RN or LPN board member, the Governor must select an appointee from specified lists of qualified individuals furnished by designated nursing organizations. For the appointment of a consumer member, the Governor must make the appointment with the advice of the Secretary and the advice and consent of the Senate.

Annual Report

MBON is required to submit to the Governor, the Secretary, and the General Assembly an annual report that includes the following data calculated on a fiscal year basis:

- the number of initial and renewal licenses and certificates issued;
- the number of positive and negative CHRC results received;
- the number of individuals denied initial or renewal licensure or certification due to positive CHRC results;
- the number of individuals denied licensure or certification due to reasons other than a positive CHRC;
- the number of new complaints received;
- the number of complaints carried over from year to year;
- the most common grounds for complaints; and
- the number and types of disciplinary actions taken by MBON.

Maryland Program Evaluation Act

MBON is one of approximately 60 regulatory entities and activities subject to termination unless reauthorized periodically through statute. MBON is scheduled to terminate July 1, 2023. Under the Maryland Program Evaluation Act, these entities may also be subject to an evaluation by OPEGA. However, OPEGA may conduct an evaluation only if directed by specified entities or by legislation. On January 3, 2023, the Executive Director of DLS directed OPEGA to conduct a performance evaluation of MBON. The evaluation is expected to be completed by the end of calendar 2023.

State Expenditures: MBON is special funded. Currently, all board operations are paid with special funds generated through fee revenues. Under the bill, costs associated with infrastructure operations shift to MDH beginning in fiscal 2023 (and continuing through fiscal 2025). This analysis assumes that personnel expenditures related to MBON's Executive, Operations (including information technology, fiscal, and human resources), and Legal divisions transfer to the Secretary's control and are general funded. MDH also assumes payment of fixed infrastructure costs, including rent, utilities, office supplies, and printing (which total at least \$500,000 annually). Expenditures related to MBON's Accountability (complaints, investigations, discipline, and compliance), Exams and

Education, and Licensure and Certification divisions remain under the board's control and are special funded. Beginning July 1, 2025, all MBON expenditures are special funded.

Impact of Transferring Authority Over Infrastructure Operations

MDH general fund expenditures increase significantly beginning in fiscal 2023, to pay costs relating to infrastructure operations (including personnel), as well as fixed infrastructure costs. DLS advises that approximately one-third of MBON positions as of August 2022 (31) were associated with infrastructure operations, while two-thirds (60) were associated with licensing, investigation, and disciplinary activities. Total estimated personnel expenditures (both regular and contractual staff) for fiscal 2023 are approximately \$7.6 million; another \$1.4 million is budgeted for contractual services.

For illustrative purposes only, should one-third of costs for personnel and all costs for contractual services (totaling \$3.9 million) shift to MDH and two-thirds of personnel costs remain with MBON (\$5.1 million), MDH general fund expenditures increase by approximately \$4.4 million on an annual basis to reflect personnel and fixed infrastructure costs, while MBON special fund expenditures decrease accordingly (with the board responsible for the remaining \$5.1 million in personnel expenditures and potentially some other costs). Assuming the bill takes effect May 1, 2023, general fund expenditures could increase by approximately \$738,900 in fiscal 2023. The exact impact on general and special fund expenditures cannot be reliably estimated at this time. MDH advises that the number of additional MDH staff that may be assigned to MBON, the cost of necessary upgrades to information technology platforms, and the impact of adjusting compensation levels and filling staff vacancies is unknown at this time.

The fiscal 2024 budget as passed by the General Assembly includes \$8.0 million in general funds for the Office of the Secretary within MDH for the purpose of supporting infrastructure operations of MBON contingent on the enactment of House Bill 611 or Senate Bill 960. Funds not expended for this purpose may not be transferred by budget amendment or otherwise to any other purpose and must revert to the general fund.

Impact of Other Provisions

MBON must hire an external consultant to conduct an independent evaluation of the board and develop a specified action plan. The consultant must report its findings and action plan by September 1, 2023. As the bill authorizes board special funds to be used to cover this cost, MBON special fund expenditures increase by *at least* \$150,000 in fiscal 2023. Assuming the bill takes effect May 1, 2023, the external consultant will have only four months to complete its evaluation and develop and submit the action plan.

Under the bill, an individual who has an application for licensure pending before MBON may continue to practice as an RN or LPN if the individual has failed the licensing examination once. MBON advises that it must track RN and LPN graduate applicants who fail the exam to ensure that they do not continue to work beyond the 120-day period. Thus, the board may incur additional contractual expenses beginning in fiscal 2023, presumably in May, June, and December when large volumes of new graduate applications are received.

The bill also expands the contents of MBON's annual report to include any additional aggregate data, identified by the board in consultation with stakeholders, determined to be necessary to facilitate workforce and health planning purposes. MBON advises that it would need to hire a research statistician to collect and evaluate aggregated data and would incur significant additional information technology expenses related to updating paper and electronic applications and licensing systems to collect additional data. The board's current applications capture only licensure type, county of practice, specialty, type of position, and type of setting. As any additional data is to be identified by the board, actual expenditures are reliant on which data points are identified by the board with its stakeholders and cannot be reliably estimated at this time.

State Revenues: MBON special fund revenues continue under the bill. Any reduction in special fund expenditures resulting from infrastructure operations being covered with general funds in fiscal 2023 through 2025 results in special funds remaining in the Board of Nursing Fund. MBON's closing fund balance at the end of fiscal 2022 was \$385,932. This fund balance is projected to be completely depleted by the end of fiscal 2024. Thus, use of general funds for a portion of expenditures that would otherwise be special funded allows the MBON special fund balance to increase substantially by the end of fiscal 2025 when MBON resumes covering all expenditures with special funds.

Additional Comments: Absent extension of the board's termination date (as included in this legislation and Senate Bill 729 of 2023), MBON operations cease effective July 1, 2023. Under the bill, MBON instead terminates July 1, 2025, the date on which the board would otherwise reassume responsibility for its infrastructure operations. However, this analysis assumes that the board's termination date will be *further* extended in either the 2024 or 2025 legislative session – after required reports have been provided and before July 1, 2025. DLS advises that the requirement that MBON hire an external consultant to conduct an independent evaluation and develop an action plan may be duplicative of the performance evaluation of MBON currently being conducted by OPEGA, which is anticipated to be completed by December 2023.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 611 (Delegate Kelly, *et al.*) - Health and Government Operations.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2023

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