

August 30, 2022

MEMORANDUM

TO: Legislative Finance Committee (LFC)

FROM: Sunset/Sunrise Subcommittee
Representative Harry Garcia, Chair
Senator Pete Campos, Vice Chair
Representative Gail Armstrong
Senator Roberto “Bobby” J. Gonzales
Representative Dayan Hochman-Vigil
Senator Gay G. Kernan
Representative Brian G. Baca
Senator George K. Muñoz
Representative Patricia A. Lundstrom

SUBJECT: Sunset/Sunrise Subcommittee Report

The Sunset/Sunrise Subcommittee met on August 16, 2022, to hear presentations from agencies scheduled to sunset in FY23. The subcommittee directed LFC staff to draft legislation updating statutes for the boards and commissions based on committee action.

(464) **Board of Licensure for Professional Engineers and Land Surveyors (BLPEPS).** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029, pending appointments to fill four board vacancies. Executive Director Perry Valdez reported that the office of the governor is currently vetting the board’s open surveyor position. The remaining three positions are holdovers, one of which is scheduled for reappointment, leaving the other two board positions to be replaced.

The subcommittee action is also contingent on the board recommending statutory changes to increase scholarship funds from the board’s existing cash balance, which is over \$1 million. BLPEPS also would like to amend the statute to allow New Mexico

State University and New Mexico Tech to receive equipment funding for their geomatics programs.

In 2020, the board delegated authority to the executive director to issue licenses, rather than wait for subsequent board meetings, which reduced the time to licensure for applicants by an average of 50 percent. The BLPEPS has recently revised its fee schedule for state residents and graduates from New Mexico universities to promote the retention of New Mexico graduates while expediting the path to licensure. Fees are also waived for students who have graduated within five years from an in-state university. The BLPEPS has gone before the National Council for Engineers and Surveyors (NCEES) to propose changes in language that would expedite licensing nationally.

- (404) **Board of Examiners and Architects (NMBEA).** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029, contingent on clarifying language that would allow NMBEA to provide per diem to student members because they are unlicensed professionals.
- (479) **Board of Veterinary Medicine.** The subcommittee moved to adopt the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. The subcommittee requested the board update its statutes with non-compete clauses and propose policies to recruit and retain students of veterinary medicine, such as establishing an expanded loan repayment program through the Western Interstate Commission for Higher Education (WICHE). This will encourage students who pursue veterinary careers to remain or return to work here in New Mexico. The subcommittee also requested information about the history of state-funding through WICHE, and whether funding ended for veterinary medicine education and training.

Subsequently, LFC staff learned WICHE pays tuition differentials for New Mexico students to receive training out-of-state. The \$1.1 million program has eight new slots per year. Veterinary school is four years and the tuition differential paid by the state is \$33.9 thousand. So, total state spending on this program is 32 students * \$33.9 thousand tuition = \$1.1 million per year. The program is offered on a loan-for-service basis meaning that students must complete their training and return to New Mexico to practice for three years. The number of program slots is determined by WICHE and is based on program capacity. This means that New Mexico could not increase the number of program slots by increasing the appropriation to WICHE.

LFC staff noted that the General Appropriation Act included \$100 thousand to support students participating in the Texas Tech veterinary program. Funding is designated to assist five New Mexican students of veterinarian medicine. The subcommittee requested Director William Duran examine that opportunity and funding to ensure it is working effectively. The subcommittee requested a non-compete clause be updated in statute because the private industry has non-compete clauses that force veterinarians out of New Mexico.

Confirmation of appointment for two board holdovers is also needed.

Because animal care is a growing industry in the state and unlicensed activity for artificial insemination is increasing, the board would like to add one more investigator FTE to its staff, growing from two FTE to three FTE. The additional FTE would serve as an investigator and might be added with a supplemental appropriation. Unlicensed activity for artificial insemination should be addressed through the addition of a full-time board investigator, ideally with a career background in state law enforcement. Rule changes are needed surrounding job requirements from full-time licensed veterinarians to contract positions.

The board has not increased its fees since 2013, so legislators suggested consideration of modest fee increases to generate more revenue. Pending the board meeting on August 17, 2022, Director Duran is to provide the subcommittee details on specific changes to the board's fee structures; he recommended a 12.5 percent increase to cover a roughly 10.7 percent increase in costs over the last several years. The additional 1.8 percent would prevent the board from going into another deficit.

This subcommittee members also encouraged releasing grant funds to spay and neuter programs across the state, an effort that should help address the state's dog and cat overpopulation and homeless animal crisis. More than \$900 thousand has accrued in the animal care and facility fund, mainly through an annual fee on brand-name pet food suppliers created under Senate Bill 57 from the 2020 legislative session. That amount is scheduled to be distributed after the end of the calendar year. A lawsuit to invalidate SB57 is underway, and Director Duran reports the lawsuit is about getting rid of the fee, not seeking a return of what has already been collected. The board has received \$915 thousand in spay and neuter funds from the New Mexico Department of Agriculture, which collects the fee under the state Commercial Feed Act and plans to ultimately model the state spay and neuter program after the state of Maryland. The creation of a spay and neuter program at the board would decrease, if not eliminate, the need for the Animal Sheltering Committee.

Regulation Licensing Department (RLD)

RLD oversees 29 boards and commissions and maintained a 9.5 percent vacancy rate and a 10 percent turnover rate since January 2022. One recent substantive change was to break the Boards and Commissions Division into two bureaus; a Health Licensing Bureau and a Professional Licensing Bureau. The new Health Licensing Bureau Chief is Dr. Culpepper and he can be reached at 505.746.4604 or at Arthur.culpepper@state.nm.us to assist with any constituent questions about getting provider licenses; RLD is working to revise rules for ease of issuance.

The subcommittee expressed concerns about the funding decrease from \$431.1 thousand to \$31 thousand for the Substitute Care Advisory Council (SCAC), which monitors the care of children in state custody, and the subcommittee would like analysis from LFC

staff regarding the reason for the reduction and plans for funding the council in the future. The subcommittee requested that RLD provide a full report about employee duties, progress, and goals of the program before a supplemental appropriation is considered. SCAC is awaiting the governor to appoint additional members so it has a quorum and can release a 2021 report. Subsequently, LFC staff found the reduction to boards and commissions SCAC general fund revenue by \$400 thousand will go towards supporting behavioral health personnel costs at the Children, Youth, and Families Department.

The subcommittee requested RLD consider a lump sum appropriation to adjust pay bands across all boards and commissions, along with a package of statutory changes. RLD should also provide a full report and count of all FTE across each board and commission. Data and a division of staff for each board by fraction of FTE will be provided to ensure the agency links funding to the operational needs and revenues for each board. This information will be included in both the RLD and LFC subcommittee sunset report to the full committee. The subcommittee may request fee increases for some boards.

Chair Garcia and other legislators requested that the (RLD) representatives review their statutes and recommend appropriate changes to include with the LFC sunset legislation.

(420) **Board of Pharmacy.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. The subcommittee requested a response from the Medical Board and Superintendent of Insurance regarding coverage for drug testing costs associated with chronic opioid use because these tests are required by statute and impose large expenses for patients. The subcommittee also requested revisions for modernizing board statutes and public notification of any upcoming changes to these policies.

(420) **Real Estate Appraisers.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029, contingent on a rule change to reflect federal guidelines. Subcommittee members commented on the need to balance board members with from around the state; three current members are from Mesilla. RLD reported communication efforts to recruit geographically diverse candidates are ongoing, not only for this board but for others, and are hampered by an insufficient pool of qualified and interested nominees. The subcommittee requested RLD to provide information of diverse board candidates.

There was significant discussion about the need to increase the number of appraisers. LFC staff requested that the board revisit the requirement that newly licensed applicants work under the supervision of a licensee for one year.

(420) **Board of Optometry.** The subcommittee moved to adopt the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029.

(420) **Board of Dental Health Care.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. The

board should check statutes for a non-compete clause. The subcommittee requested LFC staff to determine if non-compete clauses exist in statute for providers other than medical doctors.

The Western Interstate Commission on Higher Education (WICHE) funds 12 dental program slots per year for students to attend dental school and obtain a Doctor of Dental Surgery (DDS). There is a requirement for the student to return to New Mexico to work after their training/residency. A dental anesthesiology degree is a 36-month program that occurs after the DDS. A student who wishes to pursue that degree would do so on their own without state support. Students who pursue a DDS degree utilizing the WICHE program and then pursue a dental anesthesiologist degree are also required to return to practice in New Mexico to be eligible for forgiveness of the tuition differential paid to WICHE on their behalf.

- (420) **Public Accountancy Board (NMPAB).** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029.
- (420) **Board of Acupuncture and Oriental Medicine.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. The subcommittee requested RLD to examine the board's statutes and potentially add penalties or suspensions for unlicensed practice.
- (420) **Athletic Commission.** With one opposing vote by Senator Campos, the subcommittee moved to table the decision on the board's sunset extension, pending further information. Among the issues highlighted were board's significant decrease in revenue, dependency on revenue from other areas of RLD, staffing time that could be dedicated to other boards, the exclusion of admission fees for events held on Native American land, decrease in the share of revenue from pay-per-view events, and possible duplication with the Gaming Control Board.
- (420) **Board of Funeral Services.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. RLD staff noted boards and commissions should have more authority to institute disciplinary action, which is somewhat restrictive within the Uniform Licensing Act. RLD boards cannot go through due process for matters beyond immediate suspension. There is also a statute of limitations for prosecutions within two years, a window of time that could allow for misconduct or malpractice, or "bad acting."
- (420) **Interior Design Board.** The subcommittee adopted the LFC staff recommendation for the board to serve as an advisory council to RLD, or sunset. Advisory boards do not have the authority to promulgate rules nor can they issue disciplinary actions. The board held two meetings in the past year, oversees 63 active licensees, and offers one type of license. New Mexico is one of 28 states that regulate the profession of interior design.

- (420) **Board of Podiatry.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. RLD recommended changing the board's annual license renewal requirement to a two-year renewal cycle, like other boards, to increase efficiency. The subcommittee requested LFC staff to determine if the two-year renewal cycle change would require separate legislation.
- (420) **Private Investigations Advisory Board.** The subcommittee adopted the LFC staff recommendation to extend the sunset date of the board by six years, to July 1, 2029. The advisory board does not have the authority to promulgate rules or issue disciplinary actions. RLD commented that level one security guard licensing has a backlog of 243 pending applications. Each application requires background checks through both the FBI and Department of Public Safety (DPS), and it is unclear whether RLD should process the background checks or if that is the responsibility of the employer. Internal decision-making regarding risks associated with the proposed licensee's criminal background history is burdensome and time-consuming for the agency. RLD also reported the advisory board does not generate enough revenue to control unlicensed activity. The subcommittee recommended the reclassification of licensing requirements for entry-level security positions, such as the level one position. Neither FBI nor DPS background checks are required for level one or level two licensure renewals. The subcommittee recommends the adjustment of statutes to remove barriers to licensure for level one security professionals.

RLD staff further commented state licensure only applies to contract security guards, not to employees who provide security services for independent businesses. The subcommittee requested clarification for licensing in these areas as the advisory board moves forward.