

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

REPORT TO THE 2018 SESSION of the 2017 GENERAL ASSEMBLY

MAY 1, 2018

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TABLE OF CONTENTS

Transmittal Letter.....	7
Statutory Authority	9
Committee Membership.....	11
Committee Proceedings	13
Legislative Proposals	17

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TRANSMITTAL LETTER

May 1, 2018

TO THE MEMBERS OF THE 2018 REGULAR SESSION
OF THE 2017 GENERAL ASSEMBLY

**The Joint Legislative Administrative Procedure Oversight Committee
herewith submits to you for your consideration its report pursuant to G.S. 120-
70.101(8)**

Respectfully submitted,

Senator Andy Wells

Representative Jonathan C. Jordan

Co-Chairs
Joint Legislative Administrative Procedure Oversight Committee

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STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES

ARTICLE 12K.

Joint Legislative Administrative Procedure Oversight Committee.

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) Repealed by Session Laws 2009-125, s. 1, effective October 1, 2009.
- (3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.
- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.

- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes.

§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee.

§ 120-70.103: Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

COMMITTEE MEMBERSHIP

JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

2017-2018 Membership

Senator Andy Wells, Chair 16 W. Jones Street, Room 1028 Raleigh, NC 27601-2808 (919) 733-5876 Andy.Wells@ncleg.net	Representative Jonathan C. Jordan, Chair 300 N. Salisbury Street, Room 420 Raleigh, NC 27603-5925 (919) 733-7727 Jonathan.Jordan@ncleg.net
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COMMITTEE PROCEEDINGS

The Joint Legislative Administrative Procedure Oversight Committee (Committee) met four times during the interim between the 2017 and the 2018 Regular Sessions of the General Assembly. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library and [online](#).

October 3, 2017

The Committee met on Tuesday, October 3, 2017 at 1:00 p.m. in Room 643 of the Legislative Office Building (LOB). Meeting minutes for the referenced committee meeting can be found [here](#).

The following business was conducted:

- Senator Andy Wells chaired the Committee and presented a brief review of the topics to be discussed. Co-Chair Representative Jonathan Jordan gave introductory remarks;
- Senator Wells recognized Dr. James Broughel from Mercatus Center at George Mason University. He gave a presentation on the regulatory landscape in North Carolina. He explained he was going to touch on a few different points of a project he was involved in to quantify regulation across the 50 different states and a short report on the regulatory environment in North Carolina. ([See Attachment](#))
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

January 9, 2018

The Committee met on Tuesday, January 9, 2018 at 1:00 p.m. in Room 643 of the Legislative Office Building (LOB). Meeting minutes for the referenced committee meeting can be found [here](#).

The following business was conducted:

- Representative Jonathan Jordan chaired the Committee and presented a brief review of the topics to be discussed. Co-Chair Senator Andy Wells gave introductory remarks;
- Chairman Jordan recognized Renee Metz, Chief Counsel of the North Carolina Alcoholic Beverage Committee Control Commission to present a report on ABC permitting issues ([Attachment Three](#));

- Chairman Jordan recognized Mike Tadych, Counsel of the North Carolina Acupuncture Licensing Board, to give an update on the dry-needling cases ([Attachment Five](#));
- Chairman Jordan recognized Garth Dunklin, Chair of the North Carolina Rules Review Commission ([Attachment 13](#)). Page five of attachment 13 provides an update on the Rules Review process;
- Chairman Jordan recognized Garth Dunklin again to report on periodic review of rules ([Attachment 14](#));
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

March 6, 2018

The Committee met on Tuesday, March 6, 2018 at 1:00 p.m. in Room 544 of the Legislative Office Building (LOB). Meeting minutes for the referenced committee meeting can be found [here](#) upon approval.

The following business was conducted:

- Senator Andy Wells chaired the Committee and presented a brief review of the topics to be discussed. Co-Chair Representative Jonathan Jordan gave introductory remarks;
- Minutes from the October 3, 2017, and January 9, 2018, meetings were approved;
- Senator Wells recognized John Turcotte, Program Evaluation Division (PED), of the North Carolina General Assembly, to present a report on the results of the workgroup. Members of the workgroup include the Chairs of Committee; PED Representatives; Honorable Beth Wood, State Auditor; Donna Allen, Deputy State Auditor; Katrina Bell, Financial Audit Director; and Pam Wade, Financial Audit Manager. [See Attachment](#);
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

May 1, 2018

The Committee met on Tuesday, May 1, 2018 at 1:00 p.m. in Room 643 of the Legislative Office Building (LOB). Meeting minutes for the referenced committee meeting can be found [here](#) upon approval.

The following business was conducted:

- Representative Jonathan Jordan chaired the Committee and presented a brief review of the topics to be discussed. Co-Chair Senator Andy Wells gave introductory remarks;
- Approval of minutes from the March 6, 2018 meeting;
- Honorable Julian Mann, III, Chief Administrative Law Judge, North Carolina Office of Administrative Hearings, gave a review of *In the Matter of Louisiana Real Estate Appraisers Board*, Federal Trade Commission case;
- John Turcotte, Director, Program Evaluation Division and Chris Saunders, Committee Counsel, Legislative Analysis Division, both of the North Carolina General Assembly, presented the legislative proposals recommended by the Oversight Reporting Work Group, to reform financial reporting of occupational licensing boards;
- The Committee adopted this report;
- Announcements;
- Adjournment.

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LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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D

BILL DRAFT 2017-TQz-35 [v.19]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Reform Financial Reporting of OLBs.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM FINANCIAL REPORTING OF OCCUPATIONAL
3 LICENSING BOARDS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 93B-1 reads as rewritten:

6 **"§ 93B-1. Definitions. Definitions; list of occupational licensing boards.**

7 (a) As used in this ~~Chapter:~~Chapter, "license" means any ~~license~~
8 ~~(other than a privilege license),~~license, certificate, or other evidence of
9 qualification which an individual is required to obtain before he or she may
10 engage in or represent himself or herself to be a member of a particular profession
11 or occupation. A "license" does not include a privilege license.

12 (b) ~~"Occupational licensing board" means any board, committee,~~
13 ~~commission, or other agency in North Carolina which is established for the~~
14 ~~primary purpose of regulating the entry of persons into, and/or the conduct of~~
15 ~~persons within, a particular profession or occupation, and which is authorized to~~
16 ~~issue licenses; "occupational licensing board" does not include State agencies,~~
17 ~~staffed by full-time State employees, which as a part of their regular functions may~~
18 ~~issue licenses.~~As used in this Chapter, "occupational licensing board" means any
19 of the following:

20 (1) [Acupuncture Licensing Board.](#)

21 (2) [Board of Examiners for Speech and Language Pathologists and](#)
22 [Audiologists.](#)

23 (3) [Board of Law Examiners.](#)

24 (4) [Board of Podiatry Examiners.](#)

25 (5) [Cape Fear Navigation and Pilotage Commission.](#)

- 1 (6) [Midwifery Joint Subcommittee.](#)
- 2 (7) [Morehead City Navigation and Pilotage Commission.](#)
- 3 (8) [North Carolina Appraisal Board.](#)
- 4 (9) [North Carolina Auctioneers Commission.](#)
- 5 (10) [North Carolina Board for Licensing of Geologists.](#)
- 6 (11) [North Carolina Board for Licensing of Soil Scientists.](#)
- 7 (12) [North Carolina Board of Architecture.](#)
- 8 (13) [North Carolina Board of Athletic Trainer Examiners.](#)
- 9 (14) [North Carolina Board of Cosmetic Art Examiners.](#)
- 10 (15) [North Carolina Board of Dietetics/Nutrition.](#)
- 11 (16) [North Carolina Board of Electrolysis Examiners.](#)
- 12 (17) [North Carolina Board of Funeral Service.](#)
- 13 (18) [North Carolina Board of Landscape Architects.](#)
- 14 (19) [North Carolina Board of Licensed Professional Counselors.](#)
- 15 (20) [North Carolina Board of Massage and Bodywork Therapy.](#)
- 16 (21) [North Carolina Board of Nursing.](#)
- 17 (22) [North Carolina Board of Occupational Therapy.](#)
- 18 (23) [North Carolina Board of Pharmacy.](#)
- 19 (24) [North Carolina Board of Physical Therapy Examiners.](#)
- 20 (25) [North Carolina Cemetery Commission.](#)
- 21 (26) [North Carolina Interpreter and Transliterator Licensing Board.](#)
- 22 (27) [North Carolina Irrigation Contractors' Licensing Board.](#)
- 23 (28) [North Carolina Landscape Contractors' Licensing Board.](#)
- 24 (29) [North Carolina Locksmith Licensing Board.](#)
- 25 (30) [North Carolina Marriage and Family Therapy Licensure Board.](#)
- 26 (31) [North Carolina Medical Board.](#)
- 27 (32) [North Carolina On-Site Wastewater Contractors and Inspectors](#)
- 28 [Certification Board.](#)
- 29 (33) [North Carolina Psychology Board.](#)
- 30 (34) [North Carolina Real Estate Commission.](#)
- 31 (35) [North Carolina Recreational Therapy Licensure Board.](#)
- 32 (36) [North Carolina Respiratory Care Board.](#)
- 33 (37) [North Carolina Social Work Certification and Licensure Board.](#)
- 34 (38) [North Carolina State Bar.](#)
- 35 (39) [North Carolina State Board of Dental Examiners.](#)
- 36 (40) [North Carolina State Board of Examiners for Nursing Home](#)
- 37 [Administrators.](#)
- 38 (41) [North Carolina State Board of Examiners in Optometry.](#)
- 39 (42) [North Carolina State Board of Examiners of Fee-Based](#)
- 40 [Practicing Pastoral Counselors.](#)
- 41 (43) [North Carolina State Board of Opticians.](#)
- 42 (44) [North Carolina State Hearing Aid Dealers and Fitters Board.](#)
- 43 (45) [North Carolina Substance Abuse Professional Practice Board.](#)

- 1 (46) [North Carolina Veterinary Medical Board.](#)
- 2 (47) [State Board of Barber Examiners.](#)
- 3 (48) [State Board of Certified Public Accountant Examiners.](#)
- 4 (49) [State Board of Chiropractic Examiners.](#)
- 5 (50) [State Board of Environmental Health Specialist Examiners.](#)
- 6 (51) [State Board of Examiners for Engineers and Surveyors.](#)
- 7 (52) [State Board of Examiners of Electrical Contractors.](#)
- 8 (53) [State Board of Examiners of Plumbing, Heating, and Fire](#)
- 9 [Sprinkler Contractors.](#)
- 10 (54) [State Board of Refrigeration Examiners.](#)
- 11 (55) [State Board of Registration for Foresters.](#)
- 12 (56) [State Licensing Board for General Contractors."](#)

13 **SECTION 2.** G.S. 143B-426.39 reads as rewritten:

14 **"§ 143B-426.39. Powers and duties of the State Controller.**

15 The State Controller shall:

- 16 (1) Prescribe, develop, operate, and maintain in accordance with
- 17 generally accepted principles of governmental accounting, a
- 18 uniform state accounting system for all state agencies. The
- 19 system shall be designed to assure compliance with all legal and
- 20 constitutional requirements including those associated with the
- 21 receipt and expenditure of, and the accountability for public
- 22 funds. The State Controller may elect to review a State agency's
- 23 compliance with prescribed uniform State accounting system
- 24 standards, as well as applicable legal and constitutional
- 25 requirements related to compliance with such standards.
- 26 (2) On the recommendation of the State Auditor, prescribe and
- 27 supervise the installation of any changes in the accounting
- 28 systems of an agency that, in the judgment of the State
- 29 Controller, are necessary to secure and maintain internal control
- 30 and facilitate the recording of accounting data for the purpose of
- 31 preparing reliable and meaningful statements and reports. The
- 32 State Controller shall be responsible for seeing that a new system
- 33 is designed to accumulate information required for the
- 34 preparation of budget reports and other financial reports.

35 ...

- 36 (19) [Develop and prescribe a uniform format for the reporting of the](#)
- 37 [annual financial audits required by G.S. 93B-2\(b\). The State](#)
- 38 [Controller shall prescribe the form of the audit reports, the](#)
- 39 [categories and line items to be reported, the accounting method](#)
- 40 [to be used by the occupational licensing boards, and any other](#)
- 41 [criteria the State Controller deems necessary."](#)

42 **SECTION 3.** In developing the financial audit reporting format for
 43 occupational licensing boards required by Section 2 of this act, the State

1 Controller shall consult with the State Auditor and solicit feedback from
2 occupational licensing boards. The State Controller shall make the financial audit
3 reporting format effective for reports submitted for the 2019-2020 fiscal year at
4 the latest.

5 **SECTION 4.** Chapter 93B of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 93B-2.1. Fiscal year.**

8 Each occupational licensing board shall operate based on a fiscal year
9 beginning on July 1 and ending on June 30."

10 **SECTION 5.** The State Controller shall consider whether to integrate
11 occupational licensing board financial audit reports into any new standard
12 accounting system or accounting software acquired and utilized by the State.

13 **SECTION 6.** G.S. 93B-2 reads as rewritten:

14 **"§ 93B-2. Annual reports and audits required; contents; open to inspection;
15 sanction for failure to report.**

16 (a) No later than October 31 of each year, each occupational licensing
17 board shall file electronically with the Secretary of State, the Attorney General,
18 and the Joint Legislative Administrative Procedure Oversight Committee an
19 annual report containing all of the following information:

- 20 (1) The address of the board, and the names of its members and
21 officers.
- 22 (1a) The total number of licensees supervised by the board.
- 23 (2) The number of persons who applied to the board for examination.
- 24 (3) The number who were refused examination.
- 25 (4) The number who took the examination.
- 26 (5) The number to whom initial licenses were issued.
- 27 (5a) The number who failed the examination.
- 28 (6) The number who applied for license by reciprocity or comity.
- 29 (7) The number who were granted licenses by reciprocity or comity.
- 30 (7a) The number of official complaints received involving licensed
31 and unlicensed activities.
- 32 (7b) The number of disciplinary actions taken against licensees, or
33 other actions taken against nonlicensees, including injunctive
34 relief.
- 35 (8) The number of licenses suspended or revoked.
- 36 (9) The number of licenses terminated for any reason other than
37 failure to pay the required renewal fee.
- 38 (10) The substance of any anticipated request by the occupational
39 licensing board to the General Assembly to amend statutes
40 related to the occupational licensing board.
- 41 (11) The substance of any anticipated change in rules adopted by the
42 occupational licensing board or the substance of any anticipated
43 adoption of new rules by the occupational licensing board.

1 (b) No later than October 31 of each year, each occupational licensing
2 board shall ~~file electronically with the Secretary of State, the Attorney~~
3 ~~General, conduct an annual financial audit of its operations and provide an~~
4 ~~electronic copy of the audit to the State Auditor, the State Controller,~~ the Office of
5 State Budget and Management, and the Joint Legislative Administrative Procedure
6 Oversight ~~Committee a financial report that includes the source and amount of all~~
7 ~~funds credited to the occupational licensing board and the purpose and amount of~~
8 ~~all funds disbursed by the occupational licensing board during the previous fiscal~~
9 ~~year.~~ Committee. The audit shall be conducted in compliance with the Generally
10 Accepted Government Auditing Standards developed by the United States
11 Government Accountability Office and provided in a form as prescribed by the
12 State Controller pursuant to G.S. 143B-426.39.

13 (c) The reports required by this section shall be open to public inspection.

14 (d) The Joint Legislative Administrative Procedure Oversight Committee
15 shall notify any board that fails to file the reports required by this section. Failure
16 of a board to comply with the reporting requirements of this section by October 31
17 of each year shall result in a suspension of the board's authority to expend any
18 funds until such time as the board files the required reports. Suspension of a
19 board's authority to expend funds under this subsection shall not affect the board's
20 duty to issue and renew licenses or the validity of any application or license for
21 which fees have been tendered in accordance with law. Each board shall adopt
22 rules establishing a procedure for implementing this subsection and shall maintain
23 an escrow account into which any fees tendered during a board's period of
24 suspension under this subsection shall be deposited."

25 **SECTION 7.** G.S. 93B-4 reads as rewritten:

26 "**§ 93B-4. Audit of Occupational Licensing ~~Boards;~~Boards by the State**
27 **Auditor; payment of costs.**

28 (a) ~~—~~The State Auditor shall audit occupational licensing boards from time to
29 time to ensure their proper operation. The books, records, and operations of each
30 occupational licensing board shall be subject to the oversight of the State Auditor
31 pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with
32 G.S. 147-64.7(b), the State Auditor may contract with independent professionals
33 to meet the requirements of this section. The State Auditor may perform an audit
34 pursuant to this section upon the recommendation of the Joint Legislative
35 Administrative Procedure Oversight Committee.

36 (b) ~~—~~Each occupational licensing board with a budget of at least fifty
37 thousand dollars (\$50,000) shall conduct an annual financial audit of its operations
38 and provide a copy to the State Auditor."

39 **SECTION 8.** Section 4 of this act becomes effective July 1, 2019, and
40 applies to the fiscal year beginning on that date. The remainder of this act is
41 effective when it becomes law.