



# SENATE BILL 735: Various OLB and Administrative Law Changes.

2017-2018 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 11, 2018
<b>Introduced by:</b>	Sens. Wells, Daniel	<b>Prepared by:</b>	Amy Darden
<b>Analysis of:</b>	Second Edition		Staff Attorney

## OVERVIEW: Senate Bill 735 would:

- *Make various changes to the financial reporting requirements of occupational licensing boards.*
- *Merge the Barber and Electrolysis Boards.*
- *Authorize agencies to make technical corrections to the rules without review by the Rules Review Commission and authorize the Codifier of Rules to make technical corrections to the rules.*
- *Clarify that a party may commence a contested case in a dispute with an agency without petitioning the agency for rule making or seeking or obtaining a declaratory ruling.*
- *Revise the process for the review and periodic reoption of existing rules.*
- *Add two members to the North Carolina Board of Massage and Bodywork Therapy.*

## BACKGROUND and CURRENT LAW:

### Part I.

This part of Senate Bill 735 is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee to the 2018 Regular Session of the General Assembly.

### Part II.

The State Board of Barber Examiners was originally established in the 1920s. "The Practice of Barbering" is any part of combination of shaving or trimming the beard or cutting hair, dyeing the hair or applying hair tonics, permanent waving or marcelling the hair, or giving facial or scalp massages, or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances. The provisions governing the licensure of barbers are contained in Chapter 86A of the General Statutes.

The North Carolina Board of Electrolysis Examiners was established in 1989. "Electrology" is the practice of hair removal by application of an electric current to the hair papilla by means of a needle so as to cause growth inactivity and thus permanently remove the hair. The provisions governing the licensure of electrologists and laser-hair practitioners are contained in Chapter 88A of the General Statutes.

### Part III.

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This part of Senate Bill 735 consists of several recommendations from the Joint Legislative Administrative Procedure Oversight Committee (APO) to the 2017 Regular Session of the 2017 General Assembly. These recommendations were proposed to APO by the Office of Administrative Hearings and the Rules Review Commission.

## **Part IV.**

The North Carolina Board of Massage and Bodywork Therapy's authority was expanded last year to regulate massage and bodywork therapy establishments.

## **BILL ANALYSIS:**

### **Part I:**

This part of Senate Bill 735 would make various changes to the financial reporting requirements of occupational licensing boards as follows:

Section 1.1 would instruct the Joint Legislative Administrative Procedure Oversight Committee to study whether the definition of "occupational licensing board" under G.S. 93B-1 and the definition of "occupational licensing agency" under G.S. 150B-2 should include specific lists of occupational licensing boards in order to clarify which State agencies should be considered occupational licensing boards for purposes of Chapter 93B and Chapter 150B. The Committee will report the results of its study to the 2019 General Assembly.

Sections 1.2 and 1.3 would direct the State Controller to develop a uniform format for the reporting of the annual financial audits conducted by occupational licensing boards.

Section 1.4 would require all occupational licensing boards to operate on a fiscal year beginning July 1 and ending on June 30.

Section 1.5 would direct the State Controller to consider whether to integrate occupational licensing board financial audit reports into any new standard accounting system or accounting software acquired and utilized by the State.

Section 1.6 would require all occupational licensing boards to conduct an annual financial audit of their operations. Under current law, only those occupational licensing boards with budgets of at least \$50,000 are required to conduct such audits. Section 1.6 would also require that the audits be conducted in compliance with the Generally Accepted Government Auditing Standards developed by the United States Government Accountability Office and provided in a form as prescribed by the State Controller.

This section would also require occupational licensing boards to include in their annual report the number of applicants who applied for initial licensure, and the number of initial licenses issued, pursuant to the fee waiver for military-trained applicants and military spouses.

Section 1.7 would provide that the State Auditor may perform an audit of an occupational licensing board upon the recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

### **Part II.**

This part would consolidate the State Board of Barber Examiners and the Board of Electrolysis Examiners into a single board to be known as the "North Carolina Board of Barber and Electrolysis Examiners." There are no changes to the powers of the Board, licensure requirements, or fees unless specifically noted.

**Board Composition.** – The combined Board would consist of seven members as follows:

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- Four licensed barbers.
- One electrologist who has engaged in the practice of electrolysis for at least five years.
- One physician licensed under Chapter 90 of the General Statutes, who shall be nominated by the North Carolina Medical Board.
- One public member, not licensed under this chapter or under Chapter 90 of the General Statutes.

**Fees.** – The fees are the same as under the current law with 3 exceptions:

- The fee for an initial license for electrolysis and laser, light source, and pulsed-light treatment would decrease from \$150 to \$125 – G.S. 86B-31(2).
- The fee for an examination or reexamination for electrolysis and laser, light source, and pulsed-light treatment would increase from \$125 to \$150 – G.S. 86B-31(3).
- The bill would establish a temporary permit for barbers at a fee of \$25.00.

**Transitional Provisions.** – Sections 2.3 through 2.5 of the bill consist of various transitional provisions to address the handling of existing licenses, applications, and rules, the property and assets, and any pending litigation and disciplinary proceedings under the authority of the individual boards.

## **Part III.**

### **Sections 3.1(a) and 3.1(b): Authorize Rule Technical Changes**

Under current law, an agency can make certain types of technical changes to its rules without publishing notice of the text in the North Carolina Register or holding a public hearing, but such a change must still be submitted to the Rules Review Commission.

Section 3.1(a) would provide that these technical changes would not need to be submitted to the Rules Review Commission.

Section 3.1(b) would authorize the Codifier of Rules to make certain types of technical changes to an agency's rules. The Codifier could only do this after consulting with the agency.

### **Sections 3.2(a) and 3.2(b): Clarify Contested Case Policy**

Under current law, a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before seeking judicial review.

Section 3.2(a) would provide that a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case.

Section 3.2(b) would make a conforming change.

### **Section 3.3: Amend Periodic Review of Rules Process**

Under the current process for the periodic review of rules, agencies must classify their rules as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Agencies must then readopt the rules that were classified as necessary with substantive public interest. Such rules are subject to notice and public comment requirements and review by the Rules Review Commission. Rules that are classified as unnecessary or necessary without substantive public interest are not subject to readoption.

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Section 3.3 would eliminate the category of necessary without substantive public interest so that all rules would be classified as either necessary or unnecessary. Rules that are classified as necessary would be subject to readoption.

## **Part IV.**

This part of Senate Bill 735 would expand the Board of Massage and Bodywork Therapy by two members. The two new members will be appointed by the General Assembly, one on the recommendation of the Speaker of the House and on the recommendation of the President Pro Tempore of the Senate, and will hold a license to operate a massage and bodywork therapy establishment.

## **EFFECTIVE DATE:**

### **Part I.**

The requirement for occupational licensing boards to operate on a fiscal year beginning July 1 and ending on June 30 would become effective July 1, 2019. The remainder of the Part would become effective when it becomes law.

### **Part II.**

Section 2.3 would be effective when the act becomes law. The remainder of Part II would be effective January 1, 2019, and apply to applications for licensure, examination, or renewal submitted on or after that date.

### **Part III.**

This Part of the act would be effective when it becomes law. The revisions to the process for the review and periodic readoption of existing rules would apply to agency rule reports submitted to the Office of Administrative Hearings on or after January 1, 2019.

### **Part IV.**

This part of the act would become effective July 1, 2018.

*Jeff Hudson and Trina Griffin, Staff Attorneys, substantially contributed to this summary.*