

HF908 - 0 - MN Nursing Home Workforce Standards Board Act

Chief Author: **Esther Agbaje**
 Committee: **Labor and Industry Finance & Policy**
 Date Completed: **2/13/2023 8:09:26 AM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Governors Office Secretary of State

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Governors Office	-	-	-	-	-	-
General Fund	-	-	-	-	-	-
Labor and Industry Dept						
General Fund	-	661	357	404	357	
State Total						
General Fund	-	661	357	404	357	
	Total	-	661	357	404	357
	Biennial Total			1,018		761

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Governors Office	-	-	-	-	-
General Fund	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	2	2	2	2
	Total	-	2	2	2

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 2/13/2023 8:09:26 AM
Phone: 651-296-6055 **Email:** karl.palm@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Governors Office	-	-	-	-	-
General Fund	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	661	357	404	357
Total	-	661	357	404	357
Biennial Total			1,018		761
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Governors Office	-	-	-	-	-
General Fund					
Expenditures	-	1	-	-	-
Absorbed Costs	-	(1)	-	-	-
Labor and Industry Dept					
General Fund	-	661	357	404	357
Total	-	661	357	404	357
Biennial Total			1,018		761
2 - Revenues, Transfers In*					
Governors Office	-	-	-	-	-
General Fund	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

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Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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Total	-	661	357	404	357	
Biennial Total			1,018		761	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	2	2	2	2
Total	-	2	2	2	2

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 2/13/2023 8:08:13 AM
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State Cost (Savings) Calculation Details

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General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-			-

Bill Description

The bill modifies Minn. Stat. § 177.27, subd. 4 to provide the Commissioner authority to issue compliance orders to enforce the new Minnesota Nursing Home Workforce Standards Board Act, Minn. Stat § 181.211 - 181.217 (NHWSBA). It also amends Minn. Stat. § 177.27, subd. 7 in reference to any Rules created and codifies the new NHWSBA in Ch. 181.

The bill creates a board composed of commissioners from the MN Department of Human Services (DHS), the MN Department of Health (MDH), and the MN Department of Labor & Industry (DLI), along with three members each for nursing home employers and nursing home workers that are appointed by the governor. The board selects its own chairperson and their term. Board action requires a minimum of 5 board votes. The board may hire an executive director and other staff to carry out its duties.

The bill requires that the board investigate market conditions and existing wage, benefit and working conditions of nursing home workers for specific geographic areas of the state and specific nursing home occupations. The geographic locations and occupations are not specified. The bill further requires the board to consider the following information from relevant geographic locations and nursing home occupations in making wage rate determinations: 1) wage rate and benefit data collected by or submitted to the board; 2) statements showing wage rates and benefits paid; 3) executed CBAs applicable to nursing home workers; 4) testimony and information from current and former workers, worker organizations, nursing home employers and employer organizations; 5) local minimum nursing home employment standards; 6) information submitted by or obtained from state and local government entities; and 7) other information deemed pertinent to establishing minimum nursing home employment standards.

The bill requires that the board adopt rules establishing minimum standards that are necessary and appropriate to protect the health and welfare of nursing home workers, to properly train them and to fully inform them of their rights under the new NHWSBA. The rules must include standards on compensation, working hours, and other working conditions for nursing home workers. The rules established must be at least as protective or beneficial to nursing home workers as any other statute or rule and can never be less protective or beneficial than any rule previously established by the board. The standards set in the rulemaking may be set statewide, to a specific nursing home occupation, to a specific geographic area in the state, or any combination thereof.

If any of the minimum standards determined by the board to be necessary to protect the health and welfare of nursing home workers falls under the MN Occupational Safety and Health Administration’s (OSHA) Ch. 182, the board cannot adopt those rules and must recommend them to the DLI commissioner. The commissioner must adopt the recommendations under Minn. Stat. § 182.655, OSHA standards, unless the commissioner determines the recommended standard is outside of her statutory authority or is unlawful and issues a written explanation of the determination.

The bill requires that the rulemaking be completed by August 1, 2024, and that the Governor's appointments to the board be completed by August 1, 2023.

The bill further requires that the board must, at least once every two years, conduct a full review of the minimum nursing home employment standards, adopt, amend, or repeal any existing rules or make recommendations for new rules to meet the purpose of the NHWSBA.

In the event of any conflict of law regarding any rules passed by the board, the rules adopted by the board apply to nursing home workers and nursing home employers unless one of the following occurs: (1) a conflicting rule of another state agency is adopted after the board's rule and the other agency's rule provides better protection or is more beneficial; or (2) the commissioner of health determines a rule established or recommended by the board conflicts with federal regulations regarding nursing home certification or state statute or rules regarding licensure of nursing homes.

Nothing in the NHWSBA can be interpreted to limit the rights of parties to a CBA to bargain and agree or diminish the obligations of a nursing home employer to comply with any contract or employment benefit program or plan that meets or exceeds, and does not conflict with, the minimum standards and requirements of the NHWSBA.

The bill further requires the board to develop rule setting certification criteria that worker organizations must meet to be certified as a trainer for nursing home workers. The training criteria must provide effective and interactive training in languages that the workers are proficient on all requirements of the NHWSBA and follow-up written materials and responses to any nursing home workers' questions in the languages in which they are proficient. The bill requires the board to develop requirements for the certified training criteria and sets minimum training standards regarding all aspects of the NHWSBA and information on all other laws, rules, and ordinances on every level of government that effect nursing home working conditions for nursing home worker health and safety. The certified training must be completed within three training sessions. The board must review the curriculum requirements at least once a year and must revise them as appropriate to meet the purposes of the NHWSBA. Each curriculum requirement review must include at least one public hearing to solicit input on the requirements. All worker organizations certified by the board to do this training must comply with all the standards and curriculum requirements. Certified worker organizations must be available for questions during and after training sessions and may conduct surveys as to training effectiveness.

The bill requires that every six months nursing home employers must ensure, and provide proof to the DLI commissioner, that each of their nursing home workers has completed one hour of training meeting the bill's requirements and provided by a certified worker organization. It further requires that nursing home employers must, upon request of a certified worker organization post training, provide the organization with the names and contact information of its nursing home workers who attended training, unless the worker has opted out by submitting a written statement opting out to the nursing home employer. Further, nursing home employers must pay workers their regular rate of wages and benefits for each hour of required training completed.

In addition to the training and written materials that must be done by a certified worker organization, the bill requires that the nursing home employers also notify the workers through notices of their rights and obligations under the NHWSBA. These notices to the workers must be provided in the same manner that the employer uses to provide other work-related notices to workers. Notice must include text that workers are entitled to request the notice in a specific language. The board must assist employers with translating all notices into requested languages.

The bill requires the board to adopt a rule reiterating the minimum requirements of the proposed § 181.215, subd. 1. The board is required to provide nursing home employers with a template satisfying the notice requirements of § 181.215.

The bill precludes retaliation of any type by a nursing home employer against a nursing home worker.

The bill requires that the minimum wages, maximum hours of work and other working conditions set by the board in rule will be the minimum nursing home employment standards and will be the minimum wages, maximum hours of work and standard conditions of labor for nursing home workers as a matter of law. The bill makes it unlawful for any nursing home employer to employ nursing home workers at or under any other conditions that violate these minimum standards.

The bill further provides that DLI may investigate possible violation of the NHWSBA. The investigations may occur whenever DLI "has cause to believe that a violation has occurred."

The bill puts enforcement authority with DLI using MS § 177.27, subs. 4 and 7.

Lastly, the bill allows that nursing home workers may bring a civil action in district court for violations of the NHWSBA. The bill further provides that any agreement between an employer and worker or labor union that fails to meet all the minimum standards and requirements of the NHWSBA is not a defense to an action brought under this subdivision.

Assumptions

Board Assumptions

To carry out duties of the board under this bill, the NHWSB will need an executive director (Managerial Plan 20M, 1.0 FTE) and one support staff member (MAPE 10L, 1.0 FTE). DLI assumes these staff will perform work for the NHWSB but will be employees of DLI.

DLI and the NHWSB assumes that it will be required to pay for initial rulemaking required to be completed by August 1, 2024, and that this type of rulemaking would be considered "major". Per the MN Rulemaking Manual, estimated costs for a major rule are \$314,298 (FY24). DLI acknowledges the potential for smaller biannual rulemaking to follow for the next several biennia. This assumption will be shown as a "small rule" (\$46,605) every other year starting in FY26.

DLI and the NHWSB will be responsible for providing meeting space and administrative assistance to board members. It assumes that board meetings will be held at DLI's St. Paul location during regular business hours. If board membership deems meeting at DLI's greater Minnesota offices appropriate, meetings could be held in Bemidji, Mankato, Rochester, Duluth, or St. Cloud. DLI will provide meeting space, the expense for which can be absorbed by the Department's current lease. Traveling for meetings would increase costs for mileage, hotel, and meals and are not reflected in the fiscal estimates below.

DLI assumes the NHWSB will meet monthly beginning August 2023. DLI will be responsible for processing board member reimbursement expenses to allowable members from appropriations designated for board expenses. 3 of the 9 board members are state employees and are not eligible for \$55 per day compensation. DLI assumes 4 of the 9 members are located out-state and will be eligible for mileage reimbursement. DLI estimates \$8,760 annually for board member compensation and mileage reimbursement. It is assumed that non-state employee board members will not be issued state owned computers or emails through MN.IT.

Labor Standards Unit Enforcement Assumptions

In addition, resources will be needed for the Labor Standards unit to respond to complaints of violations of the laws and rules formed from this bill. DLI may initiate investigations into violations when there is cause to believe a violation has occurred either based on a report of a suspected violation or other credible information.

Under Section 2 of this bill, Labor Standards will have the authority to issue compliance orders for violation of the following sections:

181.214 Training Requirements - Ensuring workers are provided with training related to the laws and rules established through this bill, the duties of certified worker organizations and nursing home employers are met, and employers are paying employees for the training hours at their regular rate of pay.

181.215 Notice Requirements - Employers are required to provide notices to nursing home workers informing them of the rights and obligations established by this bill.

181.216 Retaliation Prohibited - Nursing home employers cannot retaliate against nursing home workers for exercising rights afforded to them under this bill, or participating in the training, board hearings or investigations related to the bill.

181.217 Enforcement of Standards (to be established by the Board):

- o Minimum wages

- o Maximum hours of work
- o Standard conditions of labor

Any rules promulgated under 181.213 or 181.215

Under Section 3 of this bill, DLI will also have the authority to issue orders requiring employers to:

Cease and desist from engaging in the violative practice and take affirmative steps that will effectuate the purposes of the rule(s) being violated,

Pay back pay, gratuities, and compensatory damages, and an equal amount as liquidated damages,

Pay a penalty for willful or repeated violations of these rules, and

Reimburse DLI for litigation and hearing costs

We are unable to provide the exact number of “nursing home workers” as defined under the bill, because it includes direct care staff, administrative staff, and contractors. However, the best estimate based on available information is 41,117 workers. This equals approximately 1.49% of the working population in Minnesota. The average number of Labor Standards cases over the past two years is 1,019. This includes investigations, inform & educate work, as well as wage claims.

DLI estimates 15 cases related to this bill (1,019 total annual cases X 1.49% rate of nursing home workers = 15). Only one of these 15 cases would likely turn into an investigation. The remaining cases would be wage claims and inform and educate cases that require fewer resources. The estimated amount of time to be spent per investigation is 40 hours, and wage claims and inform and educate cases are 5 hours.

1 case X 40 hours = 40 hours investigator time
 14 cases X 5 hours = 70 hours investigator time
 110 hours total investigator time (0.05 FTE absorbed by current staffing)

Due to the low volume of cases estimated for this bill, DLI assumes there will be no investigations resulting in the collection of monetary penalties assessed by the commissioner.

MNOSHA Compliance Assumptions

Minnesota OSHA Compliance (MNOSHA) assumes that this legislation will result in two occupational safety and health standards in the first year and one standard each year after. MNOSHA anticipates adoption of these standards to be most like cost estimates for a noncontroversial procedure amendment, as MNOSHA does not file with the Office of Administrative Hearings (OAH). There will be no costs associated with the Attorney General’s Office or OAH. Adoption of the standards would require MNOSHA to follow Minnesota Statutes section <https://www.revisor.mn.gov/statutes/cite/182.655%20and%20Minnesota%20Rule%205210.0020-5210.0060> and Minnesota Rules parts <https://www.revisor.mn.gov/rules/5210/full>. MNOSHA assumes that upon adoption of each standard, the NHWSB has provided a standard that is well vetted by the members on the Board, providing the clarity needed for MNOSHA rulemaking procedures. Therefore, MNOSHA will publish in the State Register a notice of proposed rulemaking pursuant to Minn. Rules 5210.0050. The notice shall include:

Terms of the proposed rule;

Reference to the act and to the appropriate section of any statute applicable to the employments affected by the rule;

Notification to interested persons of their right to submit, within 30 days after publication of the notice, written data, comments, or objections, which shall be available for public inspection and copying, except information, the disclosure

of which is prohibited by law;

Notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice; and

Any other appropriate provisions with regard to the proceeding.
 MNOSHA does not anticipate that a public hearing will be necessary (Minnesota Rules 5210.0060, subp. 2).

MNOSHA anticipates the cost be \$9,108 for each standard. It is anticipated that the first year will produce two standards (\$18,216) and each year after to have a cost of \$9,108.

Expenditure and/or Revenue Formula

Executive Director - Managerial 20M	2024	2025	2026	2027
FTE	1	1	1	1
Salary per FTE (midpoint)	114,458	121,425	121,425	121,425
Fringe Benefits (35% of Salary)	40,060	42,499	42,499	42,499
Indirect (22.89% of Salary/Fringe)	35,369	37,522	37,522	37,522
Salary / Fringe / Indirect	189,887	201,446	201,446	201,446
Non-Personnel Services	10,441	10,441	10,441	10,441
Cumulative Cost	200,328	211,887	211,887	211,887

Support Staff - MAPE 10L	2024	2025	2026	2027
FTE	1	1	1	1
Salary per FTE (midpoint)	66,346	70,385	70,385	70,385
Fringe Benefits (35% of Salary)	23,221	24,635	24,635	24,635
Indirect (22.89% of Salary/Fringe)	20,502	21,750	21,750	21,750
Salary / Fringe / Indirect	110,069	116,770	116,770	116,770
Non-Personnel Services	10,441	10,441	10,441	10,441
Cumulative Cost	120,510	127,210	127,210	127,210

Cumulative Expenditures	2024	2025	2026	2027
Executive Director - Managerial 20M	200,328	211,887	211,887	211,887
Support Staff - MAPE 10L	120,510	127,210	127,210	127,210
Board Compensation / Mileage	8,030	8,760	8,760	8,760
Board Rulemaking	314,298	-	46,605	-
MNOSHA Procedural Standard Changes	18,216	9,108	9,108	9,108
Cumulative Expenditures	661,382	356,965	403,570	356,965

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Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Mn Rulemaking Manual

Agency Contact: Jessica Grosz (651-284-5307)

Agency Fiscal Note Coordinator Signature: Jacob Gaub

Phone: 652-284-5812

Date: 2/10/2023 5:29:34 AM

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HF908 - 0 - MN Nursing Home Workforce Standards Board Act

Chief Author: **Esther Agbaje**
 Committee: **Labor and Industry Finance & Policy**
 Date Completed: **2/13/2023 8:09:26 AM**
 Agency: **Governors Office**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Susan Nelson **Date:** 2/3/2023 3:38:59 PM
Phone: 651-296-6054 **Email:** susan.nelson@lbo.mn.gov

State Cost (Savings) Calculation Details

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General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	1	-	-	-	-
Absorbed Costs	-	(1)	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill creates the MN Nursing Home Workforce standards act and provides clarifications on appointments necessary for the creation of the board.

Assumptions

The Appointments team and members of the Policy team will prepare appointments for the 6 members appointed by the governor in the bill.

The impact to the Governor’s Office will be 8 hours of work for the Director of Appointments, 4 hours of work for the Jr Appointments Coordinator and 2 hours of work for the relevant Policy Advisor in the first year. The future appointments will be absorbed as part of the work of the Appointments team.

Expenditure and/or Revenue Formula

The Governor’s Office will absorb the costs of the appointments in this bill.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Alyssa Haugen (651-201-3416)

Agency Fiscal Note Coordinator Signature: Alyssa Haugen

Date: 2/3/2023 2:37:23 PM

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HF908 - 0 - MN Nursing Home Workforce Standards Board Act

Chief Author: **Esther Agbaje**
 Committee: **Labor and Industry Finance & Policy**
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State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
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Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
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Total	-	-	-	-	-

LBO Analyst's Comment

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LBO Signature: Susan Nelson **Date:** 2/2/2023 3:53:52 PM
Phone: 651-296-6054 **Email:** susan.nelson@lbo.mn.gov

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	Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
	Total	-	-	-	-	-
	Biennial Total			-		-
2 - Revenues, Transfers In*						
	Total	-	-	-	-	-
	Biennial Total			-		-

Bill Description

This bill established the Minnesota Nursing Home Workforce Standards Board. The only function for the Office of the Secretary of State is to choose by lot which members have which initial term lengths.

Assumptions

There is no fiscal impact to this one-time act, which requires no measurable amount of staff time.

Expenditure and/or Revenue Formula

None

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

Bibi Black

651-201-1326

Agency Contact:

Agency Fiscal Note Coordinator Signature: Adam Hansen

Date: 1/31/2023 2:19:36 PM

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