

HB 525 LICENSING BOARD STUDY PLAN FOR 2013-2014

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June 11, 2013

Published By



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Backdrop:

The directive of House Bill No. 525, enacted in the 2011 legislative session, was to review all professional and occupational licensing boards with the intent of determining whether they remain necessary to protect public health, safety, or welfare. The legislation, enacted as 37-1-142, MCA, directed that one-half of the 33 licensing boards be reviewed in the first interim and the remainder in the second interim, with the oldest boards reviewed first.

Past work:

All 16 of the boards reviewed in the 2011-2012 interim received support for continuing in existence, although the opportunity for licensees and nonlicensees to comment on the boards generated further discussion about how well the boards operated and whether existing statutes might be changed to improve how the boards function.

In the 2011-2012 review, one or more members of each board had an opportunity to present reasons for the board remaining in existence. Economic Affairs Committee members of the 2011-2012 interim suggested that this type of presentation by board members was a waste of board members' time, especially if there did not appear to be any problems with the board.

Suggested 2013-2014 format:

- Initial review of board background material, with budgetary information highlighted and responses from as many boards as possible to questions asked of all the boards. This material will be presented at the first meeting.
- Selection of which boards the Economic Affairs Committee wants to hear more about, whether because of:
 - ▶ a high number of complaints;
 - ▶ problems with budgets;
 - ▶ turf fights; or
 - ▶ an indication the board is not needed for public health, safety, or welfare purposes.

Complaints may mean that a board serves a useful purpose for members of the public by providing a place to complain about services. A high number of complaints also may mean there are complaints by licensees against competitors or other types of turf battles.

High legal fees may mean that there are a lot of disputes over a board's sanctioning powers. Or high legal fees may mean that federal or state law changes require revisions of board rules.

The balancing act necessary for the Economic Affairs Committee this interim is to determine if any of the 17

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| <p>Fast facts for boards to be studied this interim:</p> <ul style="list-style-type: none"> ▶ Board with highest licensing fee: Board of Private Alternative Adolescent Residential or Outdoor Programs - up to \$13,313/yr ▶ Board with lowest licensing fee: Board of Realty Regulation - \$35 for a license for a timeshare salesperson ▶ Board with the most severe budget imbalance: Board of Social Work Examiners and Professional Counselors • Board with the most licensees Board of Barbers & Cosmetologists (11,124) • Board with the fewest number of licensees - For programs -- Board of Private Alternative Adolescent Residential or Outdoor Programs (14) - For persons licensed - Board of Athletic Trainers (113) |
|---|

licensing boards remaining to be reviewed are necessary for that public purpose. Are there alternatives to having a state license to operate? Does federal law or insurance reimbursement require a license? Can complaints be handled through the Attorney General's Consumer Protection Office? What if public safety indicates a need for a board but there are too few licensees willing to pay a high licensing fee needed to cover the various costs of a board? These are among the questions that underlie the HB 525 study, which ultimately is an up-or-down vote on the need for a licensing board. If the Economic Affairs Committee wants to revisit any of the boards reviewed in the 2011-2012 interim, the committee members may do so under the "monitoring" function as part of the regular statutory duties.

Board involvement:

Each board has been asked to respond to a series of questions approved by the Economic Affairs Committee in the 2011-2012 interim. This draft plan contains responses from boards to be reviewed this interim. A preliminary draft of the overall HB 525 report indicates what has been learned so far for the 16 licensing boards already reviewed. Not all material gathered from the 2011-2012 review is included in the draft report, but enough is there to get an idea of what licensees think about their boards.

Public purpose questions:

As the Economic Affairs Committee members consider the purpose of the HB 525 reviews, the following criteria may help to determine whether the board meets a public purpose:

- Does the unregulated practice of the occupation or profession create a direct, immediate hazard to the public health, safety, or welfare?
- Is the scope of practice readily identifiable and distinguishable from the scope of practice of other professions and occupations?
- Does the occupation or profession require a specialized skill or training for which nationally recognized standards of education and training exist?
- Are qualifications for licensure justified?
- Does licensure provide a public benefit?
- Does licensure significantly increase the cost of service to the public?
- Is there public support for licensure?

More background information:

Table 1 provides information on the licensing boards to be reviewed in the 2013-2014 interim along with information on the number of years in which revenues exceeded expenditures, the average number of complaints and the cost of legal fees for the board, plus the cost of renewing licenses. Although expenditures exceeding revenues may appear to be a bad thing, because of the imprecise nature of budget forecasting for an unknown number of licensees or not knowing how many complaints might be filed in any one year, in some years the expected revenues fall short and in some years revenues are greater than expected. By statute, a licensing board may not accrue a balance of more than twice its biennial budget. So in some years some boards abate their licensing fee renewal collections and revenues drop below expenditures, although the overall budget balance does not become imbalanced. The revenue to expenditure measure is still helpful, however, because the board does have some control over direct expenditures and a consistent excess of expenditures over revenues indicates a potential problem.

The same information is not available for the licensing boards reviewed in 2011-2012 but for the

final report the comparable data will be available. Table 2 is provided to show which boards already have been reviewed.

Budget information

Included in this draft study plan is information from the 2011-2012 Interim prepared for the HB 525 Study of Licensing Boards. Because of the Business Standards Division reorganization, some budget components have been changed and will be updated by Legislative Fiscal Division Analyst Kris Wilkinson at the June meeting.

Survey

Licensees as well as the general public also have been asked to respond to a survey allowing respondents to voice praise or concerns about a board. The survey may be accessed from the Economic Affairs Committee website: <http://leg.mt.gov/eaic>.

Table 1: Licensing Boards to be Reviewed in 2013-2014

| Boards to Be Reviewed in 2013-2014 | Revenues Exceed Expenditures x of y years | Complaints (average) plus FY 2012 legal costs indicating contested complaints | License renewal fees as of 2013 |
|---|---|---|---------------------------------|
| Alternative Health Care Board | 4 of 4 years | 13.5 / \$10,188 | \$550 |
| Board of Architects and Landscape Architects | 2 of 4 years | 28.75 / \$11,018 | A = \$55 LA = \$250 |
| Board of Athletic Trainers | 2 of 4 years | 0.75 / \$1,992 | \$175 |
| Board of Barbers and Cosmetologists | 1 of 4 years | 196 / \$37,848 | \$75 to \$220 |
| Board of Clinical Laboratory Science Practitioners | 3 of 4 years | 2.75 / \$3,030 | \$60 |
| Board of Massage Therapy | 2 of 3 years | 8.33 / \$11,350 | \$140 |
| Board of Occupational Therapy Practice | 3 of 4 years | 2 / \$1,660 | \$110 |
| Board of Physical Therapy Examiners | 3 of 4 years | 11 / \$19,318 | \$60 |
| Board of Private Alternative Adolescent Residential or Outdoor Programs | 2 of 4 years | 8.5 / \$21,139 | from \$1,688 to \$13,313 |
| Board of Private Security | 2 of 4 years | 34.25 / \$34,487 | \$100 to \$175 |
| Board of Radiologic Technologists | 0 of 4 years | 6 / \$5,623 | \$50 |
| Board of Real Estate Appraisers | 2 of 4 years | 46 / \$69,690 | \$475* to \$3,000 |
| Board of Realty Regulation | 1 of 4 years | 168 / \$186,704 | \$35 to \$100 |
| Board of Respiratory Care Practitioners | 2 of 4 years | 2.75 / \$1,349 | \$75 |
| Board of Sanitarians | 3 of 4 years | 0.5 / \$2,739 | \$180 |

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|---|---------------------------------------|----------------|-------|
| Board of Social Work Examiners & Professional Counselors | 0 of 4 years <i>not in balance</i> | 41 / \$56,718 | \$175 |
| Board of Speech Language Pathologists & Audiologists | 3 of 4 years | 0.25 / \$2,988 | \$100 |
| * The renewal fee for Real Estate Appraisers does not include a \$40 cost of a national registration fee. | | | |

Table 2: Boards Reviewed in 2011-2012 Interim with Review Date and Comments

| Boards Reviewed in 2011-2012 | Review Date | Comments |
|--|-------------|---|
| Board of Chiropractors | 8/24/2011 | No concerns voiced |
| Board of Dentistry | 8/23/2011 | Concerns voiced among 3 entities covered by the board. Comments made in 3 meetings. |
| Electrical Board | 4/20/2012 | The board had a negative fund balance as of June 30, 2012, but was solvent by November. |
| Board of Funeral Services | 10/6/2011 | Comments made at 2 meetings. Some dissension among funeral directors/crematoria. |
| Board of Hearing Aid Dispensers | 10/5/2011 | Budget not in balance, in part due to a loss of audiologist licensees who prior to 2011 had been dually licensed under their own board and this board. Board levied a \$1,000 licensing fee but is still having financial problems. |
| Board of Medical Examiners | 10/6/2011 | No concerns about existence of board. Concerns voiced about licensing process. |
| Board of Nursing | 1/20/2012 | No concerns. |
| Board of Nursing Home Administrators | 10/5/2011 | No concerns. |
| Board of Optometry | 1/20/2012 | No concerns. |
| Board of Outfitters | 1/19/2012 | No concerns |
| Board of Pharmacy | 8/23/2011 | No concerns. |
| Board of Plumbers | 4/20/2012 | No concerns. |
| Board of Professional Engineers & Land Surveyors | 4/20/2012 | No concerns. |
| Board of Psychologists | 6/12/2012 | No concerns. |
| Board of Public Accountants | 1/19/2012 | No concerns. |
| Board of Veterinary Medicine | 8/24/2011 | No concerns. |