

Unofficial Draft Copy

As of: June 30, 2006 (4:01pm)

LC9832

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising requirements for periodic agency evaluation; allowing legislative interim committees to review licensing boards or programs to determine need; requiring agencies to suggest alternatives when termination recommended; specifying review criteria for licensing boards and programs; substituting legislative interim committees for legislative audit committee as responsible entity for legislation related to terminating or modifying agencies or programs; limiting the collection of fees for a licensing board or program to be terminated; repealing section 2-8- 122, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-8-101, MCA, is amended to read:

"2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature ~~questions whether~~ affirms that conditions causing the establishment of these agencies, programs, and rules ~~have not changed~~ may periodically change to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, ~~by establishing a~~

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~~system of periodic evaluation of to periodically evaluate the need for and the performance of agencies or programs preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:~~

(a) ~~The responsiveness by the executive department is responsive branch to the needs of all of the people of the state.;~~

(b) ~~No termination of any agency, program, or rule exists which that is not responsive to those needs.;~~

(c) ~~No use of the state's regulatory power over a profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless only when the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The For the purposes of this subsection:~~

~~(i) exercise of the state's police power shall be done only is limited to the extent necessary for that purpose. protection of public health, safety or welfare; and~~

~~(d) The (ii) regulation by the state may not regulate of a profession, occupation, industry, business, or other endeavor may not be undertaken in a manner which will that unreasonably adversely affect affects the competitive market.~~

~~(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions."~~

{ Internal References to 2-8-101: None. }

Section 2. Section 2-8-105, MCA, is amended to read:

"2-8-105. Determination of agencies and programs to be reviewed. (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of ~~his~~ recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) Before January 1 of each even-numbered year, a legislative interim committee may review one or more licensing boards and programs under the provisions of 2-8-111 to determine the need for the board or program and whether to draft legislation for termination or combination of the board or program with other licensing boards.

~~(2)(3)(a)~~ The legislative audit committee shall review the ~~list~~ lists submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. ~~The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring~~

(b) The legislative audit committee shall conduct a performance audit of each agency and program on the lists under

the provisions of Title 2, chapter 8, ~~within the time specified and prior to termination.~~

(4) The governor, the legislative audit committee, or any legislative interim or standing committee with monitoring responsibilities for the agency or program may recommend termination or combination of an agency or program under the procedures provided for in Title 2, chapter 8."

{Internal References to 2-8-105: None.}

Section 3. Section 2-8-111, MCA, is amended to read:

"2-8-111. Prereview responsibilities of agencies -- licensing boards and programs. (1) An agency designated for termination or whose program or programs are designated for termination ~~shall, by 22 months preceding the date set for termination~~ or for a review under 2-8-105 shall:

(1) (a) delineate the goals of the programs, ~~which~~ and how the goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) (b) delineate the objectives of the programs and lay out, clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals;

(3) (c) furnish to the legislative auditor, upon request of the auditor, the information necessary to conduct a performance audit as required by this chapter; and

(d) provide a recommendation for assigning current duties to other agencies or for combining with existing agencies.

(2) A licensing board or program designated for review under 2-8-105 shall provide responses to the following questions related to need for the regulation to protect public health, safety, or welfare:

(a) does the improper practice of the occupation pose a physical, financial, or emotional threat to public health, safety, or welfare and is there evidence of harm from improper practice; and

(b) does the practice of the occupation require specific training or skills that make evaluation of competency difficult for the consumer."

{Internal References to 2-8-111: None.}

Section 4. Section 2-8-112, MCA, is amended to read:

"2-8-112. Legislative audit interim committee review and report -- review -- criteria. (1) The legislative audit committee is responsible for conducting a review of each agency or program scheduled for termination. The review shall be completed at least 6 months prior to the date set for termination. If for any reason a review of an agency or program cannot be completed as required by this chapter, the legislative audit committee shall submit a proposed bill for the ensuing legislative session to reestablish the agency or program.

(2) The legislative interim committee that requests a performance audit under 2-8-104 is responsible for drafting

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legislation that recommends termination, modification, or continuation of an agency or program audited under 2-8-105

~~(2) The review conducted shall include a performance audit of the agency or program, with emphasis on its effect on the public health, safety, and welfare.~~

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which under the requirements of Title 5, chapter 13, part 3 to facilitate the review and evaluation as required in this part.

~~(4)(3) Upon completion of its review, the legislative audit committee shall, as provided in 5-11-210, make a report of its recommendations for continuation, modification, or termination and submit a proposed bill to the ensuing legislative session. If termination or combination with another board or program is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes relating to the agency's or program's activities legislative interim committee shall initiate the draft request, hold a hearing, and request an advance fiscal note."~~

{*Internal References to 2-8-112: None.*}

Section 5. Section 2-8-113, MCA, is amended to read:

"2-8-113. Hearings by standing committee -- criteria for termination. (1) Prior to termination of an agency or program, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of

members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency or program involved is attached, the head of the agency involved, and persons who conducted the review.

(2) ~~In the event~~ If the review initiated under 2-8-105 or 2-8-112 results in a recommendation for termination of an agency or program ~~is recommended by the legislative audit committee,~~ the agency involved in the termination has the burden of demonstrating a public need for the agency's or program's continued existence and the extent to which a change in the composition, structure, and operation of the agency or program would improve public health, safety, or welfare.

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review ~~conducted by the legislative audit committee~~ under 2-8-105 or 2-8-112, public testimony, and other matters considered relevant by the committee."

{*Internal References to 2-8-113: None.*}

Section 6. Section 2-8-121, MCA, is amended to read:

"2-8-121. Effect of termination. ~~(1) (a) Unless~~ Except as provided in subsection (2) or otherwise provided by law, upon passage of legislation requiring termination, each agency, program, or unit shall continue in existence until July 1 of the next succeeding year of the effective date of legislation for the purpose of winding up its affairs.

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(b) During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency or program except that no action may be taken which that would continue in effect beyond the 1-year windup period.

(c) Upon the expiration of the ~~1 year after termination,~~ ~~each agency or program not modified or reestablished shall~~ windup period, each terminated agency or program must be abolished ~~and~~ all. All unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

(2) If the legislature terminates a licensing board or program, the department of labor and industry may collect only delinquent licensing fees on behalf of the terminated licensing board or program. Continuing education and other requirements for maintaining a license lapse with the effective date of termination."

{Internal References to 2-8-121: None.}

NEW SECTION. **Section 7. {standard} Repealer.** Section 2-8-122, MCA, is repealed.

{Internal References to 2-8-122: None.}

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