

## 1 HOUSE BILL NO. 582

2 INTRODUCED BY G. HERTZ

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF  
5 PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD MAY HIRE ITS OWN STAFF; ~~IS ALLOCATED TO~~  
6 ~~THE DEPARTMENT OF LABOR AND INDUSTRY FOR PLANNING AND COORDINATION PURPOSES;~~  
7 ~~EXEMPTING BOARD EMPLOYEES FROM THE STATE PAY PLAN; REQUIRING THE BOARD TO~~  
8 ~~COORDINATE WITH VARIOUS ENTITIES ON ITS BIENNIAL BUDGET; CREATING A NEW SPECIAL~~  
9 ~~REVENUE ACCOUNT THAT IS STATUTORILY APPROPRIATED FOR THE BOARD'S USE; EXPANDING~~  
10 ~~RULEMAKING AUTHORITY; AMENDING SECTIONS SECTION 2-15-1756, 2-18-103, 17-7-502, 37-1-130,~~  
11 ~~37-1-134, 37-50-202, 37-50-204, 37-50-205, AND 37-50-315, MCA; AND PROVIDING AN EFFECTIVE DATE."~~  
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14

15 **Section 1.** Section 2-15-1756, MCA, is amended to read:

16 **"2-15-1756. Board of public accountants.** (1) There is a board of public accountants.

17 (2) The board consists of seven members appointed by the governor. The members are:

18 (a) except as provided in subsection (3), five certified public accountants certified under Title 37, chapter  
19 50, who are certified and actively engaged in the practice of public accounting and who have held a valid  
20 certificate for at least 5 years before being appointed; and

21 (b) two members of the general public who are not engaged in the practice of public accounting.

22 (3) The board may include four certified public accountants pursuant to subsection (2)(a) and one  
23 licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public  
24 accounting and who has held a valid license for at least 5 years prior to appointment.

25 (4) Professional associations of public accountants may submit to the governor a list of names of two  
26 candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However,  
27 the governor is not restricted to the names on the list. The list may include recommendations for a certified public  
28 accountant or a licensed public accountant.

29 (5) Each appointment is subject to confirmation by the senate and must be submitted for consideration  
30 at the next regular session following appointment.

1 (6) The members shall serve staggered 4-year terms. The governor may remove a member for neglect  
2 of duty or other just cause.

3 (7) The board is allocated to the department for ~~administrative the purposes only as prescribed in~~  
4 ~~2-15-121 of planning and coordination. The governance, management, and control of the board are vested in the~~  
5 ~~board. The board is a state agency as defined in 2-15-102 and retains the immunity provided in 2-9-108 and~~  
6 ~~2-9-305. The department shall provide services requested by the board and shall charge the board an amount~~  
7 ~~that is commensurate with the reasonable cost of the services provided.~~

8 ~~———— (8) The board is exempt from 2-15-121, except for 2-15-121(1)(a), and ADMINISTRATIVE PURPOSES ONLY~~  
9 ~~AS PRESCRIBED IN 2-15-121, EXCEPT THAT THE PROVISIONS OF 2-15-121(2)(D) AND (3)(A) DO NOT APPLY AND THE~~  
10 ~~BOARD may hire its own staff FOLLOWING CONSULTATION WITH THE DEPARTMENT."~~

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12 ~~———— **Section 2.** Section 2-18-103, MCA, is amended to read:~~

13 ~~———— "**2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following~~  
14 ~~officers and employees in state government:~~

- 15 ~~———— (1) elected officials;~~  
16 ~~———— (2) county assessors and their chief deputies;~~  
17 ~~———— (3) employees of the office of consumer counsel;~~  
18 ~~———— (4) judges and employees of the judicial branch;~~  
19 ~~———— (5) members of boards and commissions appointed by the governor, the legislature, or other elected~~  
20 ~~state officials;~~  
21 ~~———— (6) officers or members of the militia;~~  
22 ~~———— (7) agency heads appointed by the governor;~~  
23 ~~———— (8) academic and professional administrative personnel with individual contracts under the authority of~~  
24 ~~the board of regents of higher education;~~  
25 ~~———— (9) academic and professional administrative personnel and live-in houseparents who have entered into~~  
26 ~~individual contracts with the state school for the deaf and blind under the authority of the state board of public~~  
27 ~~education;~~  
28 ~~———— (10) investment officer, assistant investment officer, executive director, and five professional staff~~  
29 ~~positions of the board of investments;~~  
30 ~~———— (11) four professional staff positions under the board of oil and gas conservation;~~

- 1 ~~—— (12) assistant director for security of the Montana state lottery;~~  
 2 ~~—— (13) executive director and employees of the state compensation insurance fund;~~  
 3 ~~—— (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;~~  
 4 ~~—— (15) executive director of the Montana wheat and barley committee;~~  
 5 ~~—— (16) commissioner of banking and financial institutions;~~  
 6 ~~—— (17) training coordinator for county attorneys;~~  
 7 ~~—— (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;~~  
 8 ~~—— (19) chief information officer in the department of administration;~~  
 9 ~~—— (20) chief business development officer and six professional staff positions in the office of economic~~  
 10 ~~development provided for in 2-15-218;~~  
 11 ~~—— (21) chief public defender appointed by the public defender commission pursuant to the Montana Public~~  
 12 ~~Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed~~  
 13 ~~by the chief public defender; and~~  
 14 ~~—— (22) chief appellate defender in the office of appellate defender; and~~  
 15 ~~—— (23) the executive director, legal counsel, and staff of the board of public accountants, as provided in~~  
 16 ~~[section 11]."~~

17  
 18 ~~—— **Section 3.** Section 17-7-502, MCA, is amended to read:~~

19 ~~—— "**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory~~  
 20 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the~~  
 21 ~~need for a biennial legislative appropriation or budget amendment.~~

22 ~~—— (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both~~  
 23 ~~of the following provisions:~~

24 ~~—— (a) The law containing the statutory authority must be listed in subsection (3).~~

25 ~~—— (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory~~  
 26 ~~appropriation is made as provided in this section.~~

27 ~~—— (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;~~  
 28 ~~5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;~~  
 29 ~~10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;~~  
 30 ~~15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;~~

1 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;  
 2 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;  
 3 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-315; 37-51-501; 39-71-503; 41-5-2011;  
 4 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115;  
 5 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222;  
 6 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603;  
 7 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

8 ——— (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
 9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
 10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
 11 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
 12 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
 13 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
 14 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is  
 15 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.  
 16 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and  
 17 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.  
 18 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the  
 19 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621  
 20 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,  
 21 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.  
 22 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,  
 23 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of  
 24 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates  
 25 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates  
 26 June 30, 2017.)"

27

28 ——— **Section 4.** Section 37-1-130, MCA, is amended to read:

29 ——— **"37-1-130. Definitions.** As used in this part, the following definitions apply:

30 ——— (1) "Administrative fee" means a fee established by the department to cover the cost of administrative

1 ~~services as provided for in 37-1-134.~~

2 ~~——— (2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or~~  
 3 ~~occupation and that is administratively attached to the department as provided in 2-15-121. Unless specifically~~  
 4 ~~excluded, the term means a licensing board that regulates a profession or occupation and that is attached to the~~  
 5 ~~department for planning and coordination purposes only and that contracts with the department or obtains~~  
 6 ~~services from the department under a specific agreement.~~

7 ~~——— (3) "Board fee" means:~~

8 ~~——— (a) a fee established by the board to cover program area costs as provided in 37-1-134; and~~

9 ~~——— (b) any other legislatively prescribed fees specific to boards and department programs.~~

10 ~~——— (4) "Department" means the department of labor and industry established in 2-15-1701.~~

11 ~~——— (5) "Department program" means a program administered by the department pursuant to this title and~~  
 12 ~~not affiliated with a board.~~

13 ~~——— (6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after~~  
 14 ~~the renewal date for the license.~~

15 ~~——— (7) "Lapsed license" means a license that is not renewed by the renewal date and that may be~~  
 16 ~~reactivated within the first 45-day period after the renewal date for the license.~~

17 ~~——— (8) "License" means permission granted under a chapter of this title to engage in or practice at a specific~~  
 18 ~~level in a profession or occupation, regardless of the specific term used for the permission, including permit,~~  
 19 ~~certificate, recognition, or registration.~~

20 ~~——— (9) "Planning and coordination purposes" means the functions of the department carried out on behalf~~  
 21 ~~of all professional and occupational licensees that are not specific to any one board and that include but are not~~  
 22 ~~limited to maintaining a website for all boards and licensees, publishing rules adopted by the boards, and~~  
 23 ~~providing information technology services and other services for which coordination must be consistent across~~  
 24 ~~boards and for which the department is reimbursed by contract or a specific agreement.~~

25 ~~——— (9)(10) "Terminated license" means a license that is not renewed or reactivated within 2 years of the~~  
 26 ~~license lapsing."~~

27

28 ~~——— **Section 5.** Section 37-1-134, MCA, is amended to read:~~

29 ~~——— **"37-1-134. Fees commensurate with costs.** (1) Each Except as provided in subsection (2), each board~~  
 30 ~~allocated to the department shall set board fees related to the respective program area that are commensurate~~

1 with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and  
 2 audits. A board may set an examination fee that must be commensurate with costs. A board that issues  
 3 endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise  
 4 provided by law, the department may establish standardized fees, including but not limited to fees for  
 5 administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and  
 6 other administrative service fees determined by the department as applicable to all boards and department  
 7 programs. The department shall collect administrative fees on behalf of each board or department program and  
 8 deposit the fees in the state special revenue fund in the appropriate account for each board or department  
 9 program. Administrative service costs not related to a specific board or program area may be equitably distributed  
 10 to board or program areas as determined by the department. Each board and department program shall maintain  
 11 records sufficient to support the fees charged for each program area.

12 ~~—— (2) The department shall, through a contract or specific agreement with a board that is attached for~~  
 13 ~~planning and coordination purposes, charge fees for the services listed in subsection (1) and any other services~~  
 14 ~~specified in the contract or specific agreement.~~

15 ~~—— (3) For any board that has been administratively attached but becomes attached for planning and~~  
 16 ~~coordination purposes, the department shall determine the costs of transferring obligations from the department~~  
 17 ~~to the board and may include in the contract any charge for transferring duties. For a board that is attached for~~  
 18 ~~planning and coordination purposes, the department shall transfer to the board's own state special revenue~~  
 19 ~~account any money in the state special revenue account set up in the state special revenue fund under the~~  
 20 ~~department."~~

21  
 22 ~~—— **Section 6.** Section 37-50-202, MCA, is amended to read:~~

23 ~~—— "**37-50-202. Compensation of members -- expenses.** Each member of the board is entitled to receive~~  
 24 ~~compensation of \$50 for each day spent on official board business and travel expenses as provided for in~~  
 25 ~~37-1-133 2-18-501 through 2-18-503 for official board business. A board member who conducts official board~~  
 26 ~~business in the member's city of residence is entitled to receive a midday meal allowance as provided in~~  
 27 ~~2-18-502. Ex officio board members may not receive compensation but must receive travel expenses."~~

28  
 29 ~~—— **Section 7.** Section 37-50-204, MCA, is amended to read:~~

30 ~~—— "**37-50-204. Rulemaking powers relating to examinations.** The board may adopt rules for the~~

1 following:

2 ~~—— (1) the terms and conditions under which a candidate shall obtain credit for passing the required~~  
 3 ~~examination or portions of the examination;~~

4 ~~—— (2) the period of time that candidates are allowed to apply for reexamination; and~~

5 ~~—— (3) the fees to be charged each candidate for examinations and special examinations, which must be~~  
 6 ~~commensurate with costs; and~~

7 ~~—— (4) the terms and conditions under which the board is to contract or establish a specific agreement with~~  
 8 ~~the department to carry out the duties of a licensing board that is attached to the department for planning and~~  
 9 ~~coordination purposes."~~

10

11 ~~—— **Section 8.** Section 37-50-205, MCA, is amended to read:~~

12 ~~—— **"37-50-205. Duties of the department.** The department shall:~~

13 ~~—— (1) assist the board in transactions of its business and keep a record of the board's official action; and~~

14 ~~—— (2) assess to the board by contract or specific agreement the reasonable costs of the department~~  
 15 ~~incurred in assisting the board. The board shall pay the contract or special agreement costs from funds in the~~  
 16 ~~special revenue account established in 37-50-315."~~

17

18 ~~—— **Section 9.** Section 37-50-315, MCA, is amended to read:~~

19 ~~—— **"37-50-315. Deposit State special revenue account -- deposit of moneys money collected. (1)**~~

20 ~~There is established in the state special revenue fund an account for the use of the board. The account must be~~  
 21 ~~used to provide payment for the governance, management, and operation of the board in regulating the public~~  
 22 ~~accounting profession under the provisions of this chapter. Money in the account is statutorily appropriated as~~  
 23 ~~provided in 17-7-502.~~

24 ~~—— (2) Money earned on the investment of funds in the account must be credited to the account annually.~~

25 ~~—— (3) When money is received by the board and there is no provision for the disposition or deposit of the~~  
 26 ~~money, the money must be deposited in the state special revenue fund for the use of the board.~~

27 ~~—— (4) Fees and other moneys money collected by the department or by the board under this chapter shall~~  
 28 ~~must be deposited in the state special revenue fund for the use of the board.~~

29 ~~—— (5) As a board that is exempt from the administrative attachment provisions in 2-15-121, except for~~  
 30 ~~2-15-121(1)(a), the board shall:~~

1 ~~\_\_\_\_\_ (a) annually prepare a budget and ensure that revenue and expenditures are necessary to carry out the~~  
 2 ~~provisions of this chapter.~~

3 ~~\_\_\_\_\_ (b) report the details of the budget to the department for inclusion in the report to the governor under~~  
 4 ~~37-1-106 and provide a report on the budget to the budget director and the legislative fiscal analyst as provided~~  
 5 ~~in Title 17, chapter 7; and~~

6 ~~\_\_\_\_\_ (c) make available any information required by the legislative auditor."~~

7  
 8 ~~\_\_\_\_\_ **NEW SECTION. Section 10. Schedule of fees.** The board shall adopt a schedule of fees to be charged~~  
 9 ~~for the governance, management, and control of the board and for carrying out the obligations of this chapter.~~  
 10 ~~The fees received must be deposited in the state special revenue fund provided for in 37-50-315 for the use of~~  
 11 ~~the board. The fees must be reasonably related to the cost incurred in regulating certified public accountants.~~

12  
 13 ~~**NEW SECTION. Section 2. Executive director and board staff -- hiring and duties -- ONE-TIME FEE.**~~

14 (1) The board may:

15 (a) establish qualifications and hire ~~OR CONTRACT WITH~~ an executive director and legal counsel to carry  
 16 out duties prescribed by the board pursuant to the board's responsibilities and duties established by law; and

17 (b) authorize the executive director, ~~IN CONSULTATION WITH THE DEPARTMENT, TO CONTRACT WITH OR~~ to hire  
 18 other administrative and clerical employees as may be necessary to properly carry out the provisions of this  
 19 chapter.

20 ~~(2) THE BOARD MAY, AT ITS DISCRETION, HIRE A CONSULTANT AND ESTABLISH A ONE-TIME FEE TO PAY FOR THAT~~  
 21 ~~CONSULTANT. THE CONSULTANT SHALL WORK WITH THE DEPARTMENT TO DETERMINE HOW THE BOARD'S PAID STAFF~~  
 22 ~~INTERACTS WITH DEPARTMENT STAFF.~~

23 ~~(2)(3) For the purposes of benefits, employees EMPLOYEES of the board are state employees. The board~~  
 24 ~~shall coordinate with the department of administration as an employer for purposes of Title 2, chapter 18, Title~~  
 25 ~~19, chapters 1 through 3, and Title 39, chapters 51 and 71.~~

26 ~~\_\_\_\_\_ (3) Board employees are exempt from the state classification and pay plan and grievance provisions in~~  
 27 ~~Title 2, chapter 18, parts 1 through 3 and 10. The board may determine salaries for the board employees.~~

28  
 29 ~~**NEW SECTION. Section 3. Codification instruction.** [Sections 10 and 11] are [SECTION 2] IS intended~~  
 30 ~~to be codified as an integral part of Title 37, chapter 50, part 2, and the provisions of Title 37, chapter 50, part 2,~~

1 apply to ~~sections 10 and 11~~ SECTION 2.

2

3 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2013.

4 - END -