



April 4, 2016

Representative Ryan Lynch, Chair
Economic Affairs Interim Committee
Montana Legislative Services Division
P.O. Box 201706
Helena, Montana 59620-1706

RE: SB390 – Interim Study of Department of Labor and Industry Fees

Dear Chairman Lynch and Members of the Economic Affairs Interim Committee:

I previously provided a letter to your committee dated June 8, 2015. This letter serves as additional information after having reviewed documents and testimony provided to your committee. The additional information will provide the basis as to why I believe your committee should support some level of base funding for the Board of Sanitarians.

CONSIDERATIONS FOR PROVIDING BASE FUNDING FOR THE BOARD OF SANITARIANS:

1. The Montana Legislature has determined it is in the public interest that sanitarians be licensed.

The Montana Legislature has determined that the sanitarian profession is to be licensed for public health and safety reasons. The legislature has placed the full cost of this professional licensing upon the licensees, with no general fund monies allocated to support this public protection. Just because a profession is small in number does not mean that the legislature's decision to require licensure is less valuable.

2. Licensing of sanitarians is in the interest of public health and safety. Registered sanitarians are part of the state's public health system. Licensing of this workforce is definitely in the interest of public health and safety as a means to provide both an educational and ethical standard. A more complete discussion of this topic was provided to the Montana Department of Labor and Industry (DLI) during board review under the 2013 Legislature's HB 525 – see attached response.

3. The Department of Labor and Industry's method of determining and assigning charges for licensing boards is as fair and equitable as possible but has financial consequences for small boards.

The Department of Labor and Industry has provided testimony at your December 2015 meeting on why the current method to assign fees charged for board services, both direct and indirect, is the best possible method to fairly and equitably distribute the cost of professional licensing. I believe this is a reasonable effort to assure that fees are commensurate with services. However, as with any system, there are unforeseen and unintended consequences such as the high impact on small boards due to lack of economies of scale.

4. Licensed Sanitarians cannot simply increase business activity or increase charges to cover increases in license fees.

Licensed Sanitarians work primarily for local government and have modest salaries. Licensing fees are either paid by the individual sanitarian or by their government employers. Unlike many professions, neither the sanitarian nor his/her employer has the ability to solicit additional business or increase charges for services in order to cover licensing fee increases.

5. The Board of Sanitarians has done everything possible at this time to address its weak financial position and maintain its licensing under current Montana law.

The Board of Sanitarians, as a very small group of 185* licenses and annual revenues of \$43,000, is struggling financially to maintain its professional licensing program. As a means to address its financial situation, the board has completed the following actions as advised by DLI staff:

- a. The Board increased its fees for 2016 from \$170/year to \$270/year. The Board was advised that this increase, the largest of the fee options presented by DLI staff to the Board, was projected to be adequate for a five-year period and would result in an ample reserve fund to provide for unanticipated expenses such as legal issues.
- b. At its December 2016 meeting, the Board voted to approve a policy as a means to allow DLI staff to process more license applications routinely without the Board meeting for this purpose. The goal of this policy is to both provide faster processing of applications and save the cost of additional Board meetings.

6. The Board revised its rules in order to increase licensing fees resulting in higher indirect costs.

When the Board revised its rules in order to increase licensing fees, it paid for the direct cost of DLI attorney and staff time to facilitate the rule revision. This is understood and expected. However, such direct costs also increase the Board's percentage of indirect costs during a look-back period. While such increase in indirect costs is inconsequential for large boards, for small boards, such as the Board of Sanitarians, these charges have real negative impact in our financial projections.

7. Rule changes to update professional standards create a financial burden for small boards.

All boards should be encouraged to periodically update their specific rules as a means to better protect public health and safety. Rule revisions are expensive, however, and are rarely undertaken without serious consideration of cost. Unfortunately, for small boards, not only are the direct costs of rule revisions high, but the resulting percentage of indirect costs adds to the cost burden of rule revision. Boards should have adequate financial support to keep their rules updated without overburdening the licensees.

8. Legislative mandates have large impacts on small licensing groups such as the Board of Sanitarians.

In spite of substantially increasing licensing fees for 2016, the Board of Sanitarians learned at its December 2016 meeting that its financial report was not entirely optimistic. The Board was charged by DLI for expenses unanticipated in our fee increase calculation. These expenses were due to attorney fees necessary to respond to a legislative mandate to update the rules governing DLI professional licensing programs. These were "indirect costs" based upon the overall services the department provided to our board.

Again, while the actual cost amounts discussed above are inconsequential to many boards, to the Board of Sanitarians, the amounts are substantial expenditures that adversely impact our financial goal of having an annual licensing fee that will bring the board into a positive financial condition that will last five years and provide a reserve.

9. Addressing unprofessional conduct complaints is essential to the public protection provided by licensing. However, such complaints can create serious financial burdens for small boards.

A key purpose of licensing is to provide the public a means to address unprofessional practice. For small boards that have critical funding issues, such complaints can be financially crippling as they involved additional administrative and legal fees. While boards assess licensing fees that fund the

cost of some complaints, complex cases can create a real hardship for small boards. If the board cannot afford the cost of the complaint, state laws allow for the license holders to be charged additionally beyond the annual licensing fee to cover legal costs.

It is critical small boards be adequately funded such that they are fully prepared to address complaints from the public regarding its license holders.

10. Combining of licensing groups or operation of licensing without a board does not provide for optimal public health and safety.

The Department's report indicates that the economies of scale regarding licensing costs work well for large licensing groups to minimize costs. Taken to its logical conclusion, economies of scale would provide the greatest financial benefit if all 97,000 professional licenses were grouped together, charged one standard licensing fee, and oversighted by one entity.

However, such mega-structure does not serve the public health and safety of Montana. Specific professional licensing boards are the best means to manage the specific standards of each profession. This is true whether the board has 22,000+ licenses such as the Board of Nursing or whether the board is small such as the Board of Sanitarians with its 185 licenses. Only the individual board has the expertise to address the standards and performance of its licensees in an optimal way. Therefore, the option of combining of boards that are unrelated or licensing administration without a board only to improve a board's finances does not serve the public health and safety of Montana.

As stated in my earlier letter, I believe the sanitarian community is more than willing to pay a reasonable annual fee to maintain its licensing program. However, in comparison with the professionals we most closely associate with, our fees at \$270.00 are very high. Nurses (22,000+ licenses) pay \$100/2years; professional engineers and land surveyors (2,000+ licenses) pay \$50.00/2 years. *(NOTE: license numbers reported in my previous letter were erroneous based upon errors contained within Board Summary tables available on the DLI website: FY12 & FY13 Professional & Occupational Licensing Report. Perhaps this is to what Director Bucy was referring in her comments at the June 2015 hearing when she mentioned "numerous inaccuracies" in my letter without further explanation.)*

As your committee concludes its work, I urge you to recommend to the 2017 Montana Legislative Session that base funding be made available to the Montana Board of Sanitarians in a formula and amount that will establish and maintain a licensing fee that is more comparable with our professional colleagues.

Thank you for your consideration of the above comments and for your work on this interim study.

Sincerely,



Susan K. Brueggeman, R.S.
Polson, Montana

*Licensing numbers and fees given in this letter were taken from the following document provided to your committee:
Fixed Costs and Indirect Costs Related to Licensing Boards' Fees
by Pat Murdo, Legislative Analyst

The Economic Affairs Committee asks that Board Representatives Answer the Following Questions during the Board Review under House Bill No. 525:

- What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

Registered Sanitarians (RS) are part of the public health system that includes registered public health nurses, epidemiologists, and others concerned with issues of public health significance. The profession of sanitarian is also known as Environmental Health Specialist.

Environmental Health is the aspect of public health that addresses the interaction between human health and the environment. Our health is affected by the quality of air, land, food and water resources. Maintaining and improving public health by managing those environmental factors that affect health is the goal of this professional group. Examples of duties associated with the environmental health field include:

- On-site wastewater treatment system permitting, design and inspection
- Assuring wastewater system compliance with the Montana Water Quality Act
- State licensing and inspection of retail food establishments
- State licensing and inspection of wholesale food manufacturers
- State licensing and inspection of public accommodations
- State licensing and inspection of trailer parks, work camps, campground, youth camps
- State licensing and inspection of pools, spas, and similar facilities
- Licensing and inspection of tattoo parlors
- Inspection of day care centers
- Inspection of group homes for the disabled
- Review of subdivisions under MCA 76-4 Sanitation in Subdivisions Act
 - Includes review of water, wastewater, stormwater, and solid waste management facilities
- Air quality program activities
- Solid waste compliance issues
- Public water system inspection under contract with MDEQ
- Education and training on all of the above
- Compliance and enforcement actions on all of the above

In Montana, those working in environmental health for a local government agency are required to be licensed by the Montana Department of Labor and Industry; state employees may require licensure if required by their position description.

The areas listed above involve not only critical issues of public health but also are involved with the business issues, legal status of property development, and similar matters. It is imperative that the registered sanitarian have an appropriate educational background, continuing educational, and ethical standards to competently address the science of public health, compliance with state and local regulations, provide education and training to promote environmental health in the community, and interact with the public and business community in an effective and ethical way.

Without an educational and ethical standard, the administration of public health programs could result in inconsistencies in how public health laws are applied, lack of knowledge in how to protect the public's health based upon valid scientific evidence, application of state law in an unethical manner and without recourse available to the public, and a variety of other substandard practices.

The RS working for a local environmental health program is, essentially, where the state public health standards meet the public. It is critical for both current and future generations that the laws are applied accurately, fairly, and with an informed scientific basis.

- If your profession/occupation were not licensed, what public protection would be lost?
See above comments

- If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

The Board oversight is critical. State regulations require that a registered sanitarian have a degree in Environmental Health from an accredited college OR a degree that is equivalent as determined by the Board. Because few applications come from those with an Environmental Health degree, the Board routinely reviews applications for educational equivalency. The Board also does the required application review to determine if the applicant has licensing or ethics issues in their past that might prevent them from serving the Montana public well as a RS.

Because Registered Sanitarians routinely deal with applying public health law and standards, it is very important that the Montana public has recourse to the Board if they believe they have been treated unfairly or unethically by a sanitarian. While these requests are infrequent, this opportunity to have a hearing to address such a complaint is an essential part of the licensing system.

- Does your board deal with unlicensed practice issues? If yes, what types of issues?
(It is not clear to me if the DOLI or the Board would deal with a complaint of a person who is practicing the profession of sanitarian without the required license. I believe this responsibility rests with the department – Department can respond!)
- People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?
The only group required to be licensed are those practicing the profession of sanitarian and employed by local government or those working for state government who position descriptions require this licensing. There are many individuals working for private industry, state government, federal government, or self-employed who are qualified and work in areas related to the profession of the sanitarian. Examples are environmental consultants who evaluate land for development, prepare sanitation in subdivision applications, design on-site wastewater systems, and serve as in-house inspectors and trainers for the food industry. These individuals are valuable contributors to our communities and many choose to be professionally licensed as a means to demonstrate their commitment to their profession, public/environmental health, and an ethical standard.
- How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?
The Board monitors only one profession – Registered Sanitarian/Sanitarian-in-Training. I do not know of any prescribed method to monitor bias other than any member who feels they may have a conflict of interest associated with an application, license, or ethical issue has freely recused themselves from voting.
- Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?
Registered Sanitarians are typically members of the Montana Environmental Health Association (MEHA) and/or the National Environmental Health Association (NEHA). MEHA is formed as an affiliate under NEHA. There is no requirement either MEHA or NEHA exist, so it is possible that any oversight these associations might provide could cease. MEHA does not have, and I would be quite confident that they would not choose to have, any involvement with professional licensing or application of an ethical standard. NEHA has professional licensing: Environmental Health Specialist (EHS) which is comparable to the Montana RS license. One avenue to meeting the Environmental Health Degree equivalency standard of Montana is to have a NEHA EHS license and a Microbiology course. NEHA licensing has not been deemed a suitable replacement for Montana licensing in that it does not have an ethical standard associated with the EHS certification. The educational standards also vary somewhat which is a topic currently being addressed by the Board.
- Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?
No - The above issue is not related to Sanitarian registration.
- What are the benefits of a board being part of the licensing and discipline process instead of the

department handling one or both?

- Is there an optimum ratio between licensees, board size, or public representation?
- If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?
- If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?
- Should any board have the ability to limit use of certain terminology to only a licensee? (see for example under the Board of Psychologists, the exemption from definitions:
37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:
(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic"....
(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.