

# JAMISON LAW FIRM

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To: Pat Murdo  
From: Mona Jamison  
RE: SJR 35 - Comments on questions posed in memo of 9/13/05  
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**A. Can improvements be made in reference to types of boards to better meet public health, safety, welfare issues—title or title-practice boards, quasi-judicial boards, or board’s administrative attachment?**

Comment: If the purpose of a particular board is to protect the public health, safety and welfare, perhaps a section could be added to the board’s licensing law, indicating which specific purpose(s) is being served by the creation or establishment of the board. Not all currently enacted licensing statutes provide this type of declaration. In addition, if part of the licensure goal is title protection, perhaps that intent should also be indicated, with the specific titles enumerated which the profession or occupation wants protected. Again, not all of the current licensing statutes contain title protection provisions; and yet, many arguments occur over this matter. This clarification would assist allow and help remind some why the board was actually created.

While any group can submit a bill for licensure, it would be helpful if the bill contained a statement of intent or declaration section setting forth the reasons for the bill (public health, title protection, or both), so the public and affected parties could understand the “goals” of the group seeking licensure. It may be wishful, but if the public understood why a new board and bureaucracy were being proposed, perhaps such an inclusion would lessen the contentiousness during the session.

The status of some board’s “quasi-judicial” authority is unclear. Some statutes clearly state that a board is quasi-judicial, others are silent. Whether a board is quasi-judicial is a matter of law and dependent upon the language creating the board as set forth in Title 2, MCA. While the overwhelming number of licensing boards are actually created in Title 2, the licensing statutes of those professions and occupations governed by the boards, are set forth in Title 37, MCA.

While section 2-15-102(10), MCA, defines “quasi-judicial function”, and 2-15-124, MCA, describes “quasi-judicial boards” however, a review of Titles 2 and 37 indicates that many of the boards *functionally and substantively* qualify as “quasi-judicial”, but do not have such designation in either part of the Code. As a matter of law, a board’s status should be clarified as a board’s duties and obligations are further defined in case law by this designation. (Comments on Board’s “administrative attachment” are in C below.)

**B. How can membership composition be improved or revised to better address boards' public health, welfare, and safety mandate? –ratio of specialists on multi specialization boards and number of public members?**

Comment: Specialists bring expertise to the boards, public members bring public perspective and common sense. It assists a board in implementing its duties to have at least one public member. Public members who by definition do not possess the education, training or expertise of the speciality however, should not possess majority powers over the specialists.

**C. Can changes be made to improve administrative attachment–this section (2-15-121, MCA) affects staffing, budgeting, rule adoption, quasi-judicial and quasi-legislative functions as well as report submission and representation?**

Comment: Section 2-15-121, MCA, and its implementation can not be analyzed without reviewing the purposes behind the executive reorganization of 1971 and Title 2, Chapter 15, MCA generally.

One of the primary purposes of executive reorganization was to eliminate the large number of boards which were proliferating, were unorganized, and were unaccountable.

In implementing Article VI, section 7, of the 1971 Montana Constitution, Section 2-15-101(1), MCA, requires no more than 20 state agencies be created, among other things to , “strengthen the executive capacity to administer effectively and efficiently at all levels.” The existence of boards, which under section 2-15-121, MCA, exercise their functions independently of the department and without approval or control of the department, diminishes the efficiencies which have been gained under executive reorganization and also diminish the power of the executive to administer the legislature’s statutes effectively. Boards can and do run amok. They are accountable to no one, but the courts. For the most part, removal of a board member is “for cause” only. Under Article VI, Section 4, of the Montana Constitution, it clearly states that the “executive power is vested in the Governor”. Board’s diminish executive authority.

The department to which a board is attached should have some type of management authority over the board.

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