

Murdo, Patricia

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To: Murdo, Patricia
Subject: Sunrise Information

Pat:

Below is a summary of the rise and fall of the Sunrise process.

The Sunrise law required the proposed licensed profession or occupation to provide information in the following areas and also pay a fee to the committee to cover the cost of public hearings and staff analyses of the proposal. The required information centered on the following questions:

- Would licensing protect and benefit the public?
- Would licensing improve the quality of service?
- What is the public support for licensing?
- Is the proposed license dissimilar from current occupations or professions?
- Will licensing exclude existing practitioners or reduce the numbers?
- Will licensing increase the cost of services to the public?
- How many are likely to use the services?
- What are the proposed qualifications for licensure?
- What are the requirements for continuing education?
- Are there nationally recognized organizations supporting licensure?
- Is there an established code of ethics?
- What is the proposed makeup of the licensing Board?
- What types of disciplinary procedures are to be used?
- What is the yearly cost to the state to administer the program?
- What are the proposed fees to cover the cost of the licensing?
- Do any professional societies or other interested groups exist?
- Do other states license the profession or occupation?
- How many existing practitioners are there?

After four years of experience with the Sunrise process, it became apparent to the Legislative Audit Committee, the Legislature, and those submitting proposals that the hearings before the Audit Committee were not adding much value. The Audit Committee could only issue a report detailing the information, analysis, and testimony provided. The report listed the committee's findings; an estimate of the cost to the state; a proposed schedule of fees; and the committee's recommendation as to whether the profession or occupation should be licensed by the state. The proposals would go to the full Legislature whether the recommendation was pro or con. The Audit Committee concluded that this was not an effective use of their time or staff's time.

The Audit Committee and those groups making the proposals realized that the proposals could go directly to the Legislature because a legislator could not be barred from introducing a bill on any subject. The same types of questions would be asked during the legislative hearing process as at the Audit Committee hearings. The thought process of those making proposals was why pay a fee, duplicate reporting and analysis requirements, and answer questions at a hearing prior to the session, when they could do it during the session and not pay the fee.

The sunrise process was eventually seen as an administrative process, with hoops to jump through, rather than an effective decision making process. The Audit Committee introduced legislation to repeal Sunrise in 1993.

Hope this helps.

Jim

Repealed Sunrise Statutes

Below are the repealed provisions of certain "sunrise" statutes that provided criteria for creating new boards. The statutes were repealed in 1993. The committee referenced was the Legislative Audit Committee. 2-8-201 is the purpose. 2-8-202 is definitions. 2-8-203 is Committee review and report.

2-8-204. Criteria for committee assessment. (1) The applicant shall demonstrate to the committee and if necessary furnish additional information requested by the committee to show that:

- (a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;
- (b) the scope of practice is readily identified and easily distinguished from the scope of practice of other professions and occupations;
- (c) the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
- (d) practice of the occupation or profession requires specialized skill or training, and nationally recognized standards of education and training exist;
- (e) the proposed qualifications for obtaining a license are justified;
- (f) the public will benefit from the proposed regulation of the occupation or profession;
- (g) public support for licensure exists;
- (h) licensing will not significantly increase the cost of services to the public; and
- (i) no other board licenses a similar or closely related occupation or profession.

(2) In assessing the merits of the proposal for a new licensing board, the committee shall evaluate the applicant's information for each of the factors listed in subsection (1) and in addition determine:

- (a) the number of existing practitioners and the approximate number of people who would be licensed in the future;
- (b) the number of people who are likely to use the services of the occupation or profession;
- (c) the manner and degree of improved quality of service;
- (d) the degree to which licensing will facilitate clients' access to reimbursement for government assistance programs;
- (e) whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;
- (f) whether the public can effectively be protected by other means; and
- (g) whether the licensing will:
 - (i) significantly increase the cost of goods and services provided by the occupation or profession;
 - (ii) adversely affect the scope of practice of other professions and occupations, whether regulated or not; or
 - (iii) exclude existing practitioners or otherwise reduce the number of practitioners in Montana.

(3) The committee shall consider in its assessment each of the factors in subsections (1) and (2) and shall include in the final report specific findings with respect to each of those factors.

2-8-205. Procedure. (1) The committee shall adopt an appropriate form for use by

applicants, containing a copy of this part and requiring applicants to list:

- (a) proposed qualifications of licensed practitioners;
- (b) disciplinary procedures that would be applied to practitioners;
- (c) proposed requirements for continuing education, if any; and
- (d) the information required by 2-8-204.

(2) After the committee has initiated its review under 2-8-203, it may request any additional information it requires necessary to complete its assessment of the proposal.

(3) The committee may in its discretion hold one or more public hearings.

(4) At least 21 days before its final report is presented to the legislature, the committee shall provide an opportunity for the applicant to review of preliminary draft of the report and prepare a response. The committee shall consider all responses in preparing its final report.

(5) At least one copy of the final report must be kept on file with the legislative auditor and made available for public inspection.

2-8-206. Application fee. An application for review under 2-8-203 must include an application fee established by the committee in an amount not to exceed \$6,500. The fee must be used by the committee to pay the cost of the review, and any unused portion must be refunded to the applicant.

2-8-207. Consolidation of existing boards. Any person or organization may propose consolidation of two or more existing boards. The provisions of 2-8-202 through 2-8-206 apply to such a proposal, except that:

(1) the committee shall designate a representative of each of the occupations or professions regulated by the licensing boards proposed for consolidation, and each representative must be treated as an applicant for purposes of 2-8-202 through 2-8-206; and

(2) the committee shall weigh the merits of the proposed consolidation against the merits of retaining a separate licensing board for each affected occupation or profession and in its final report recommend to the legislature:

- (a) the proposed consolidation;
- (b) continuation of the existing licensing boards; or
- (c) a modification of the proposed consolidation.

2-8-208. Boards or licensing functions instituted by initiative. (1) If an initiative to establish a new licensing board or to add a new licensing responsibility to the duties of an existing licensing board is approved by the electorate, the committee shall:

(a) review the initiative to assess the degree to which it meets the criteria in 2-8-204(1);

(b) request sufficient information from practitioners or other persons to make the determinations required by 2-8-204(2); and

(c) evaluate the initiative in terms of:

- (i) clarity and conciseness;
- (ii) conformity to existing statutes and principles of administrative law; and
- (iii) specificity of the delegation of authority to promulgate the rules and set fees.

(2) The committee shall prepare a report to the next session of the legislature. The report must include:

- (a) the committee's findings with respect to each of the criteria in 2-8-204;
- (b) an estimate of the cost to the state of licensing the occupation or profession and a

proposed schedule of fees that will cover the cost of the licensing program as required by 37-1-134;

(c) the committee's recommendation as to whether the initiative should be amended; and

(d) if amendments are recommended, a legislative proposal.

(3) Committee recommendations for amendments to the initiative must be incorporated in a bill introduced during the next session of the legislature by request of the committee.