

SENATE BILL NO. 53  
INTRODUCED BY V. COCCHIARELLA  
BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE FOR CREATING A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; REQUIRING A LETTER OF INTENT TO ACCOMPANY A BILL DRAFT REQUEST FOR A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; PROVIDING CONDITIONS FOR A LETTER OF INTENT WHEN ADDING PROFESSIONS OR OCCUPATIONS TO EXISTING LICENSING BOARDS; ADDRESSING PROSPECTIVE FEES IN THE LETTER OF INTENT; AND PROVIDING A PROCEDURE FOR REVIEWING EXISTING BOARDS, CONSOLIDATING BOARDS, AND RESOLVING FINANCIAL CONSIDERATIONS FOR REPEALED BOARDS."

WHEREAS, licensing boards or programs provide for self-regulation by professions or occupations and are authorized by the state through its role of protecting public health, safety, or welfare or providing for the common good; and

WHEREAS, documentation regarding the rationale for licensing a profession or occupation is helpful for legislators to use in determining whether the potential increase in cost to the public and limitation on competition are outweighed by the prospective protection of public health, safety, or welfare or provision for the common good; and

WHEREAS, advance information on costs better serves both potential licensees and legislators in determining the cost of a board or a program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the intent of the legislature to:

(1) exercise the police power of the state through the establishment of licensing boards only when regulation of a profession or occupation ~~serves~~ BENEFITS the public health, safety, welfare, or common good of the state's residents AND THAT BENEFIT OUTWEIGHS THE POTENTIAL INCREASED COST TO THE PUBLIC AND LIMITATION ON COMPETITION;

(2) recognize those professions or occupations that require specialized skill or training; and

(3) provide the public with a means to determine whether practitioners have met competency standards

and to complain if the competency is suspect.

**NEW SECTION. Section 2. Intent to create new board.** (1) A bill draft request to create a licensing board must include a letter of intent not exceeding 1,000 words that addresses the criteria in subsections (2) and (3).

(2) The letter of intent must contain the following descriptions:

(a) how licensing would protect and benefit the public and, in particular, how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare or the common good;

(b) the extent of practitioners' autonomy, as indicated by the degree of independent judgment that a practitioner may exercise or the extent of skill or experience required in making the independent judgment;

(c) the distinguishable scope of practice;

(d) the overlap or shared practices with an existing, licensed profession or occupation;

(e) the degree, if any, to which licensing would restrict entry into the profession or occupation for reasons other than public health, safety, or welfare or the common good;

(f) the specialized skills or training required for the profession or occupation;

(g) the proposed qualifications for licensure;

(h) whether a licensure exception would be provided to existing practitioners and whether those eligible for the exception would be required to meet proposed qualifications at a certain time;

(i) a list of other states that license the profession or occupation;

(j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation; and

(k) previous efforts, if any, to regulate the profession or occupation.

(3) In order to help in the determination of licensing costs, the letter of intent must contain a good faith effort to provide answers to the following questions:

(a) how many licensees are anticipated, including the number of practitioners in Montana;

(b) what is the proposed makeup of the licensing board; and

(c) what are the projected annual licensing fees based on information from the department of labor and industry for all costs associated with a board of the projected size.

(4) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of labor and industry shall assist those developing the letter of intent under [section 3] or this section with the responses to subsection (3)(c) of this section.

(5) For the purposes of this section, a letter of intent is a public record.

**NEW SECTION. Section 3. Intent to combine profession or occupation with existing board. (1)**

A bill draft request that proposes to license a profession or occupation by combining that profession or occupation with an existing board must contain a letter of intent if one of the following conditions applies:

(a) the profession or occupation to be licensed falls under the supervisory authority of a profession or occupation with an existing board; or

(b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure with a profession or occupation under an existing board.

(2) A letter of intent to combine with an existing board must contain responses to the questions provided in [section 2].

(3) A letter of intent under this section is a public record.

**NEW SECTION. Section 4. Interim committee review of licensing boards and programs -- criteria -- repeal -- consolidation. (1)** (a) Before January 1 of each even-numbered year, a legislative interim committee responsible for monitoring licensing boards and programs shall notify the department to which licensing boards or programs are administratively attached if the committee plans to review one or more licensing boards or programs to determine the need for a board or a program and the financial solvency or appropriate administrative attachment of the board or program.

(b) A review under subsection (1)(a) is separate from a performance audit conducted by the legislative audit committee.

(2) The focus of a review under subsection (1)(a) is:

(a) to determine whether a board or program continues to be needed to protect public health, safety, or welfare or the common good by addressing the following questions:

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

(ii) does the practice of the profession or occupation require specific training or skills that make evaluation of competency difficult for the consumer; or

(b) to assess the financial solvency of the board or program and the impact on consumers and on licensees if higher fees are projected for the next biennium.

(3) After the review, the legislative interim committee may draft legislation to:

(a) repeal the board or program if the board or program is no longer needed for public health, safety, or welfare or the common good; or

(b) combine a board with other licensing boards if a board meets the criteria in subsection (2)(a) but has one of the following criteria:

(i) is expected to have higher fees than if the board operates in combination with another board with similar interests;

(ii) has fewer than 200 licensees; or

(iii) has no or a limited number of complaints each year.

(4) The legislative interim committee, after a review of the administrative attachment of a board or program, may propose legislation to administratively attach the board or program to a department that has responsibilities related to the board or program.

**NEW SECTION. Section 5. Repeal of licensing board or program law -- deposit of fees.** (1) If the legislature repeals a licensing board or program law, the department of labor and industry may collect only delinquent licensing fees or fines, if provided by law, on behalf of the repealed licensing board or program. Continuing education and other requirements for maintaining a license cease with the effective date of the repeal.

(2) (a) Fees collected on behalf of a board or program that is proposed to be repealed must be deposited in the state special revenue fund for the use of the board or program.

(b) Fees that are not needed for satisfying debt obligations of the board or program may be used by the department to offset the costs to the department of all boards and programs.

**NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 5].

**NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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