

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 IS ALLOCATED TO THE DEPARTMENT OF
6 LABOR AND INDUSTRY FOR PLANNING AND COORDINATION PURPOSES; EXEMPTING BOARD
7 EMPLOYEES FROM THE STATE PAY PLAN; REQUIRING THE BOARD TO COORDINATE WITH VARIOUS
8 ENTITIES ON ITS BIENNIAL BUDGET; CREATING A NEW SPECIAL REVENUE ACCOUNT THAT IS
9 STATUTORILY APPROPRIATED FOR THE BOARD'S USE; EXPANDING RULEMAKING AUTHORITY;
10 AMENDING SECTIONS 2-15-1756, 2-18-103, 17-7-502, 37-1-130, 37-1-134, 37-50-202, 37-50-204, 37-50-205,
11 AND 37-50-315, MCA; AND PROVIDING AN EFFECTIVE DATE."
12

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 2-15-124 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 may hire its own staff."
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10 **Section 2.** Section 2-18-103, MCA, is amended to read:

11 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
12 officers and employees in state government:

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

- 1 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
 2 (15) executive director of the Montana wheat and barley committee;
 3 (16) commissioner of banking and financial institutions;
 4 (17) training coordinator for county attorneys;
 5 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
 6 (19) chief information officer in the department of administration;
 7 (20) chief business development officer and six professional staff positions in the office of economic
 8 development provided for in 2-15-218;
 9 (21) chief public defender appointed by the public defender commission pursuant to the Montana Public
 10 Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed
 11 by the chief public defender; ~~and~~
 12 (22) chief appellate defender in the office of appellate defender; and
 13 (23) the executive director, legal counsel, and staff of the board of public accountants, as provided in
 14 [section 11]."
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16 **Section 3.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

25 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
 26 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;
 27 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;
 28 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;
 29 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;
 30 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;

1 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;
 2 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;
 3 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;
 4 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;
 5 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

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

25

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

27 **"37-1-130. Definitions.** As used in this part, the following definitions apply:

28 (1) "Administrative fee" means a fee established by the department to cover the cost of administrative
 29 services as provided for in 37-1-134.

30 (2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or

1 occupation and that is administratively attached to the department as provided in 2-15-121. Unless specifically
 2 excluded, the term means a licensing board that regulates a profession or occupation and that is attached to the
 3 department for planning and coordination purposes only and that contracts with the department or obtains
 4 services from the department under a specific agreement.

5 (3) "Board fee" means:

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

7 (b) any other legislatively prescribed fees specific to boards and department programs.

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

9 (5) "Department program" means a program administered by the department pursuant to this title and
 10 not affiliated with a board.

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

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

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

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

23 ~~(9)(10)~~ "Terminated license" means a license that is not renewed or reactivated within 2 years of the
 24 license lapsing."

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26 **Section 5.** Section 37-1-134, MCA, is amended to read:

27 "**37-1-134. Fees commensurate with costs.** (1) Each Except as provided in subsection (2), each board
 28 allocated to the department shall set board fees related to the respective program area that are commensurate
 29 with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and
 30 audits. A board may set an examination fee that must be commensurate with costs. A board that issues

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

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

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

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 20 **Section 6.** Section 37-50-202, MCA, is amended to read:
 21 **"37-50-202. Compensation of members -- expenses.** Each member of the board is entitled to receive
 22 compensation of \$50 for each day spent on official board business and travel expenses as provided for in
 23 37-4-133 2-18-501 through 2-18-503 for official board business. A board member who conducts official board
 24 business in the member's city of residence is entitled to receive a midday meal allowance as provided in
 25 2-18-502. Ex officio board members may not receive compensation but must receive travel expenses."

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 27 **Section 7.** Section 37-50-204, MCA, is amended to read:
 28 **"37-50-204. Rulemaking powers ~~relating to examinations~~.** The board may adopt rules for the
 29 following:

30 (1) the terms and conditions under which a candidate shall obtain credit for passing the required

1 examination or portions of the examination;
 2 (2) the period of time that candidates are allowed to apply for reexamination; ~~and~~
 3 (3) the fees to be charged each candidate for examinations and special examinations, which must be
 4 commensurate with costs; and
 5 (4) the terms and conditions under which the board is to contract or establish a specific agreement with
 6 the department to carry out the duties of a licensing board that is attached to the department for planning and
 7 coordination purposes."

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 9 **Section 8.** Section 37-50-205, MCA, is amended to read:
 10 **"37-50-205. Duties of the department.** The department shall:
 11 (1) assist the board in transactions of its business and keep a record of the board's official action; and
 12 (2) assess to the board by contract or specific agreement the reasonable costs of the department
 13 incurred in assisting the board. The board shall pay the contract or special agreement costs from funds in the
 14 special revenue account established in 37-50-315."

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 16 **Section 9.** Section 37-50-315, MCA, is amended to read:
 17 **"37-50-315. Deposit State special revenue account -- deposit of moneys money collected. (1)**
 18 There is established in the state special revenue fund an account for the use of the board. The account must be
 19 used to provide payment for the governance, management, and operation of the board in regulating the public
 20 accounting profession under the provisions of this chapter. Money in the account is statutorily appropriated as
 21 provided in 17-7-502.

22 (2) Money earned on the investment of funds in the account must be credited to the account annually.
 23 (3) When money is received by the board and there is no provision for the disposition or deposit of the
 24 money, the money must be deposited in the state special revenue fund for the use of the board.

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

27 (5) As a board that is exempt from the administrative attachment provisions in 2-15-121, except for
 28 2-15-121(1)(a), the board shall:

29 (a) annually prepare a budget and ensure that revenue and expenditures are necessary to carry out the
 30 provisions of this chapter;

