

*Final Report of a Study
Required by HB 525 in
the 2011 Session and
carried out by the 2011-
2012 and 2013-2014
Economic Affairs Interim
Committees*

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LICENSED TO BILL:

How Licensing Boards Function with Government Endorsement

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Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Economic Affairs Interim Committee [EAIC], like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included to comply with the law in 2-15-155, MCA.

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Backdrop

House Bill No. 525, enacted in the 2011 legislative session, directed an 8-year review during four interims of professional and occupational licensing boards with the intent of determining whether they remain necessary to protect public health, safety, or welfare. The legislation, enacted as 37-1-142, MCA, directed that one-half of the 33 licensing boards be reviewed in the first interim and the remainder in the second interim, with the oldest boards reviewed first. A bill in the 2013 session reduced the review to one complete cycle over two interims (4 years).

Summary

All of the licensing boards reviewed in both the 2011-2012 interim and the 2013-2014 interim received support for continuing in existence. The review was more detailed in the 2011-2012 interim with members of licensing boards selected for review at that time appearing before the Economic Affairs Interim Committee (EAIC) at least once and sometimes more than once. Based on concerns that these appearances wasted the time of board members when the board that they represented appeared necessary for public health, welfare, or safety, the 2011-2012 EAIC recommended a shorter process for the 2013-2014 interim review.

The 2013-2014 review included appearances by some board members, but instead of specific appearances by reviewed boards' representatives, the EAIC relied on summary information provided by boards and EAIC staff at the beginning of the interim. Based on that information, the 2013-2014 EAIC voted to retain all the remaining boards that had not yet been reviewed and spent part of the time reserved for the licensing board study on examining licensing boards with financial troubles. Reviewing those licensing boards also is part of the EAIC's duties, as provided in 37-1-101(9)(a) and (c).

The intense focus sought by HB 525 ended up providing for at least some of the licensing boards an opportunity for licensees and nonlicensees to comment on how the boards operate and how different professions that might be on the same board interact with one another. Boards that had financial troubles had a way to appeal to legislators to retain their licensure statutes and propose ways to meet financial soundness. Boards that had jurisdictional disputes had opportunities to paint their rosy or grim options, depending on the circumstances.

Findings

- Budgeting
- Complaints
- Licensure by the state

Components of the HB 525 Reviews

The Department of Labor and Industry (the Department) serves 33 administratively attached licensing boards and two programs. A list of the licensing boards is in Table 1, along with the date of review and whether there were issues brought before the EAIC. Of the two programs,¹ the Athletics Program had an opportunity to discuss with the EAIC the problems related to financial shortages that have left a shell of a licensure program in which people may be licensed but the income from licensing and from boxing events (a portion of the ticket sales) is insufficient for the Department to provide full event services. The opportunity to discuss issues was one component of the HB 525 reviews, which also included a survey of licensees and nonlicensees as well as background briefing papers on the boards, questionnaires sent to board members on their view of the board's purpose, among other related questions, and information on how the Department budgeted for the boards.

Survey -- As part of the HB 525 review process, the EAIC in 2011-2012 authorized a survey that was intended for both licensees and nonlicensees. The survey asked questions of licensees related to their concerns and satisfactions with their board. Nonlicensees (as well as licensees) could answer questions about whether they thought any particular board served a public purpose by protecting public health, safety, or welfare.

Questions posed to the 2013-2014 EAIC prior to beginning the interim review included:

- Are there alternatives to having a state license to operate?
- Does federal law or insurance reimbursement require a license?
- Can complaints be handled through the Attorney General's Consumer Protection Office?
- What if public safety indicates a need for a board but there are too few licensees willing to pay a high licensing fee needed to cover the various costs of a board?
- Are some boards licensing professionals who otherwise would be vetted by employers who could determine if they had national certifications so that a specific licensing board duplicating the vetting work of these employers was not needed?
- Does the unregulated practice of the occupation or profession create a direct, immediate hazard to the public health, safety, or welfare?
- Is the scope of practice readily identifiable and distinguishable from the scope of practice of other professions and occupations?
- Does the occupation or profession require a specialized skill or training for which nationally recognized standards of education and training exist?
- Are qualifications for licensure justified?
- Does licensure provide a public benefit?
- Does licensure significantly increase the cost of service to the public?
- Is there public support for licensure?

Background Briefing Papers – All of the licensing boards in the 2011-2012 Interim had briefing papers prepared for the meeting at which board members were asked to appear to support continuation of the board or provide information related to issues that arose about the board. For the 2013-2014 interim, the background briefing papers were all provided at the June

¹ The other program is the Addiction Counselors Program, which the EAIC did not include in the HB 525 reviews because the language of HB 525 was to review licensing boards, not programs.

2013 EAIC meeting. These briefing papers contained board member information, the scope of practice for the professions or occupations licensed by the board, and board budget and complaint information whenever that was available. A list of the background materials, which also includes the board responses to the questionnaires, and results of the survey are posted on the HB 525 pages for the respective interims, with the 2011-2012 website² providing background for all the licensing boards.

Questionnaires -- In addition, the EAIC sent a questionnaire to all boards on related questions. The board members themselves did not always answer the questions but in some cases Department of Labor and Industry staff provided uniform responses to the questions. In other cases, board members divided up the questions among themselves and provided thorough responses. The material is available in Appendix A.

Department Budgeting Information -- A frequently heard complaint among licensees and some board members has been that they have little control over board costs if they want to minimize these costs. Under 37-1-134, a board must set fees that are commensurate with costs (not set costs commensurate with fees). The Legislative Fiscal Division provided background information in both the 2011-2012 and 2013-2014 interims regarding how the Department allocated costs among the licensing boards. Key to the budget numbers are two primary factors: 1) the number of licensees associated with the Board, and 2) the costs associated with the Board's administration.

Two examples of frustrations with the Department-allocated costs arose in relation to the Board of Funeral Services and the Athletics Program. When the Board of Funeral Services first came before the 2011-2012 EAIC, financial concerns were a topic. One comment was that the Board had had several short-term program managers, who all had to be brought up to speed about board issues, which meant that more costs were allocated against that board than some boards for whom the Department had retained consistency among managers. (The Department under 2-15-121, MCA, the statute that describes administrative attachment, is responsible for hiring personnel unless a board is specifically exempt from that provision.) For the Athletics Program, the frustration about administrative costs were, in part, due to not being able to make certain that time allocated by support personnel truly was spent for the program or that the lowest paid person who was able to do the work was assigned to the work. (A program manager attended one of the boxing events, for example, and those associated with the program asked whether that level of expertise was necessary.)

From the Department's standpoint, the fees commensurate with costs issue was a problem in that flexibility was not part of 37-1-134, which reads:

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative

²See <http://leg.mt.gov/css/Committees/Interim/2011-2012/Economic-Affairs/Assigned-Studies/HB525/HB525.asp>.

service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

A financial audit of the Department of Labor and Industry criticized the excess revenues retained by some of the licensing boards, which violated another statute, 17-2-302, MCA, that says the accounts may not maintain a cash balance of more than twice the annual appropriation authority. The Financial Compliance Audit³ for the Department released in October 2013 suggested that some boards may be overcharging their licensees. The Department has suggested a bill draft that would allow a contingency within the “fees commensurate with costs” statute. The contingency is broad and is not limited to legal fees and investigations, which may be one way to narrow the approach to areas acknowledged to be problematic for budgeting because they are not predictable. Budgeting discussions are in the 2013-2014 EAIC’s final report and were a theme during the 2011-2012 interim as well.

Table 1: Licensing boards along with the dates of their review and whether issues were raised

| Licensing Board | Date of Review | Issues? |
|--|---|---|
| Board of Alternative Health Care | Material provided for June 2013 meeting. Given OK en masse at May 2014 meeting. | None discussed |
| Board of Athletic Trainers | Material provided for June 2013 meeting. Given OK en masse at May 2014 meeting. | None discussed |
| Board of Architects and Landscape Architects | Material provided for June 2013 meeting. Given OK en masse at May 2014 meeting. | None discussed |
| Board of Barbers and Cosmetologists | Material provided for June 2013 meeting. Given OK en masse at May 2014 meeting. | None discussed |
| Board of Chiropractors | 8/24/2011 | None discussed |
| Board of Clinical Laboratory Science Practitioners | | None discussed |
| Board of Dentistry | 8/23/2011 | Concerns voiced among 3 entities covered by the board. Comments made in 3 meetings. |
| Electrical Board | 4/20/2012 | The board had a negative fund balance as of June 30, 2012, but was solvent by November. |
| Board of Funeral Services | 10/6/2011 | Comments made at 2 meetings. Some dissension among funeral directors/crematoria. |
| Board of Hearing Aid Dispensers | 10/5/2011 | Budget not in balance, in part due to a loss of audiologist licensees who prior to 2011 had been dually |

³ See <http://leg.mt.gov/content/Publications/Audit/Summary/13-15-summary.pdf>.

| | | |
|---|---|---|
| | | licensed under their own board and this board. Board levied a \$1,000 licensing fee but is still having financial problems. |
| Board of Massage Therapy | Material provided for June 2013 meeting. Given OK en masse at May 2014 meeting. | None discussed |
| Board of Medical Examiners | 10/6/2011 | No concerns about existence of board. Concerns voiced about licensing process |
| Board of Nursing | 1/20/2012 | None discussed |
| Board of Nursing Home Administrators | 10/5/2011 | None discussed |
| Board of Occupational Therapy Practice | | |
| Board of Optometry | 1/20/2012 | None discussed |
| Board of Outfitters | 1/19/2012 | None discussed |
| Board of Pharmacy | 8/23/2011 | None discussed |
| Board of Physical Therapy Examiners | | |
| Board of Plumbers | 4/20/2012 | None discussed |
| Board of Professional Engineers and Professional Land Surveyors | 4/20/2012 | None discussed |
| Board of Private Alternative Adolescent Residential or Outdoor Programs | | |
| Board of Private Security | | |
| Board of Psychologists | 6/12/2012 | None discussed |
| Board of Public Accountants | 1/19/2012 | None discussed |
| Board of Radiologic Technologists | | |
| Board of Real Estate Appraisers | | |
| Board of Realty Regulation | | |
| Board of Respiratory Care Practitioners | | |
| Board of Sanitarians | | |
| Board of Social Work Examiners & Professional Counselors | | |
| Board of Speech Language Pathologists & Audiologists | | |
| Board of Veterinary Medicine | 8/24/2011 | None discussed |

Budgeting and Complaint Information

Table 2 provides information on the licensing boards regarding the average number of complaints and the cost of legal fees for the board, plus the cost of renewing licenses.

Table 2: Licensing Boards, Budgeting Status, Complaints, and License Renewal Costs

| Boards Reviewed in 2013-2014 | Revenues Exceed Expenditures x of y years | Complaints (average) plus FY 2012 legal costs indicating contested complaints | License renewal fees as of 2013 |
|---|---|---|---------------------------------|
| Alternative Health Care Board | 4 of 4 years | 13.5 / \$10,188 | \$550 |
| Board of Architects and Landscape Architects | 2 of 4 years | 28.75 / \$11,018 | A = \$55 LA = \$250 |
| Board of Athletic Trainers | 2 of 4 years | 0.75 / \$1,992 | \$175 |
| Board of Barbers and Cosmetologists | 1 of 4 years | 196 / \$37,848 | \$75 to \$220 |
| Board of Clinical Laboratory Science Practitioners | 3 of 4 years | 2.75 / \$3,030 | \$60 |
| Board of Massage Therapy | 2 of 3 years | 8.33 / \$11,350 | \$140 |
| Board of Occupational Therapy Practice | 3 of 4 years | 2 / \$1,660 | \$110 |
| Board of Physical Therapy Examiners | 3 of 4 years | 11 / \$19,318 | \$60 |
| Board of Private Alternative Adolescent Residential or Outdoor Programs | 2 of 4 years | 8.5 / \$21,139 | from \$1,688 to \$13,313 |
| Board of Private Security | 2 of 4 years | 34.25 / \$34,487 | \$100 to \$175 |
| Board of Radiologic Technologists | 0 of 4 years | 6 / \$5,623 | \$50 |
| Board of Real Estate Appraisers | 2 of 4 years | 46 / \$69,690 | \$475* to \$3,000 |
| Board of Realty Regulation | 1 of 4 years | 168 / \$186,704 | \$35 to \$100 |
| Board of Respiratory Care Practitioners | 2 of 4 years | 2.75 / \$1,349 | \$75 |
| Board of Sanitarians | 3 of 4 years | 0.5 / \$2,739 | \$180 |
| Board of Social Work Examiners & Professional Counselors | 0 of 4 years <i>not in balance</i> | 41 / \$56,718 | \$175 |
| Board of Speech Language Pathologists & Audiologists | 3 of 4 years | 0.25 / \$2,988 | \$100 |
| * The renewal fee for Real Estate Appraisers does not include a \$40 cost of a national registration fee. | | | |

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