

1 *Senate* BILL NO. *162*
 2 INTRODUCED BY *Hans Thissen, Olga Albert, Robert*
 3 *Goodover, Brown, Roberts, Markin, Four*

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LEGISLATIVE
 5 REVIEW OF AGENCIES WHICH REGULATE A PROFESSION, OCCUPATION,
 6 BUSINESS, INDUSTRY, OR OTHER ENDEAVOR; PROVIDING FOR
 7 ABOLISHMENT OF AGENCIES; AND PROVIDING FOR PERIODIC
 8 LEGISLATIVE REVIEW, MODIFICATION, AND REESTABLISHMENT OF
 9 AGENCIES."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Purpose. (1) The legislature finds state
 13 government actions have produced a substantial increase in
 14 numbers of agencies, growth of programs, and proliferation
 15 of rules. The legislature questions whether conditions
 16 causing the establishment of these agencies, programs, and
 17 rules have not changed to such an extent as to remove the
 18 need for some or all of the agencies, programs, and rules.

19 (2) It is the intent of the legislature, by
 20 establishing a system of periodic evaluation of the need for
 21 and the performance of agencies preparatory to termination,
 22 modification, or reestablishment, to be in a better position
 23 to ensure as follows:

24 (a) The executive department is responsive to the
 25 needs of all of the people of the state.

1 (b) No agency, program, or rule exists which is not
 2 responsive to those needs.

3 (c) No profession, occupation, business, industry, or
 4 other endeavor are subject to the state's regulatory power
 5 unless the exercise of such power is necessary to protect
 6 the public health, safety, or welfare from significant and
 7 discernible harm or damage. The exercise of the state's
 8 police power shall be done only to the extent necessary for
 9 that purpose.

10 (d) The state may not regulate a profession,
 11 occupation, industry, business, or other endeavor in a
 12 manner which will unreasonably adversely affect the
 13 competitive market.

14 (e) There exists a systematic legislative review of
 15 the need for and public benefits derived from a program or
 16 function which licenses or otherwise regulates a profession,
 17 occupation, business, industry, or other endeavor by a
 18 periodic review and termination, modification, or
 19 reestablishment of such programs and functions.

20 Section 2. Definitions. As used in this act, the
 21 following definitions apply:

22 (1) "Agency" means an office, position, commission,
 23 committee, board, department, council, division, bureau,
 24 section, or any other entity or instrumentality of the
 25 executive department of state government.

1 (2) "Performance audit" means an examination of the
 2 effectiveness of administration and its efficiency and
 3 adequacy in terms of the program of a state agency
 4 authorized by law to be performed and the conformance of
 5 expenditures with legislative intent in the appropriation.
 6 Audits conducted shall include an analysis of the operation
 7 of the agency with special regard to the duplication of
 8 efforts between the audited agency and other agencies, and
 9 the quality of service being rendered.

10 Section 3. Agencies to terminate. (1) The following
 11 agencies shall terminate on January 1, 1979:

12 (a) board of abstracters, department of professional
 13 and occupational licensing, created by 82A-1602.1;

14 (b) board of public accountants, department of
 15 professional and occupational licensing, created by
 16 82A-1602.2;

17 (c) board of architects, department of professional
 18 and occupational licensing, created by 82A-1602.3;

19 (d) state banking board, department of business
 20 regulation, created by 82A-407;

21 (e) state electrical board, department of professional
 22 and occupational licensing, created by 82A-1602.10;

23 (f) board of professional engineers and land
 24 surveyors, department of professional and occupational
 25 licensing, created by 82A-1602.11;

1 (g) office of commissioner of insurance and the
 2 insurance department, state auditor's office, created by
 3 40-2701 and 40-2702;

4 (h) office of the investment commissioner, state
 5 auditor's office, created by 15-2001;

6 (i) board of landscape architects, department of
 7 professional and occupational licensing, created by
 8 82A-1602.30;

9 (j) board of county printing, department of
 10 administration, created by 82A-904;

11 (k) board of plumbers, department of professional and
 12 occupational licensing, created by 82A-1602.22;

13 (l) board of real estate, department of professional
 14 and occupational licensing, created by 82A-1602.23;

15 (m) state board of warm air heating, ventilation, and
 16 air conditioning, department of professional and
 17 occupational licensing, created by 82A-1602.29.

18 (2) The following agencies shall terminate on January
 19 1, 1981:

20 (a) commission for human rights, department of labor
 21 and industry, created by 82A-1015;

22 (b) board of athletics, department of professional and
 23 occupational licensing, created by 82A-1602.4;

24 (c) board of barbers, department of professional and
 25 occupational licensing, created by 82A-1602.5;

1 (d) board of chiropractors, department of professional
2 and occupational licensing, created by 82A-1602.7;

3 (e) board of cosmetologists, department of
4 professional and occupational licensing, created by
5 82A-1602.8;

6 (f) board of dentists, department of professional and
7 occupational licensing, created by 82A-1602.9;

8 (g) board of hearing aid dispensers, department of
9 professional and occupational licensing, created by
10 82A-1602.12;

11 (h) board of massage therapists, department of
12 professional and occupational licensing, created by 82A-
13 1602.14;

14 (i) Montana state board of medical examiners,
15 department of professional and occupational licensing,
16 created by 82A-1602.15;

17 (j) board of morticians, department of professional
18 and occupational licensing, created by 82A-1602.16;

19 (k) board of nursing, department of professional and
20 occupational licensing, created by 82A-1602.18;

21 (l) board of nursing home administrators, department
22 of professional and occupational licensing, created by
23 82A-1602.17;

24 (m) board of optometrists, department of professional
25 and occupational licensing, created by 82A-1602.19;

1 (n) board of osteopathic physicians, department of
2 professional and occupational licensing, created by
3 82A-1602.20;

4 (o) board of pharmacists, department of professional
5 and occupational licensing, created by 82A-1602.21;

6 (p) board of podiatry examiners, department of
7 professional and occupational licensing, created by
8 82A-1602.6;

9 (q) board of psychologists, department of professional
10 and occupational licensing, created by 82A-1602.27;

11 (r) board of radiologic technologists, department of
12 professional and occupational licensing, created by
13 82A-1602.28;

14 (s) board of speech pathologists and audiologists,
15 department of professional and occupational licensing,
16 created by 82A-1602.31;

17 (t) board of veterinarians, department of professional
18 and occupational licensing, created by 82A-1602.24;

19 (u) board of veterans' affairs, department of
20 professional and occupational licensing, created by
21 82A-1905.

22 (3) The following units of state government shall
23 terminate on January 1, 1983:

24 (a) board of aeronautics, department of community
25 affairs, created by 82A-905;

1 (b) state board of hail insurance, department of
2 agriculture, created by 82-1501;

3 (c) board of horse racing, department of professional
4 and occupational licensing, created by 82A-1602.13;

5 (d) board of livestock, department of livestock,
6 created by 82A-1303;

7 (e) board of milk control, department of business
8 regulation, created by 82A-406;

9 (f) board of oil and gas conservation, department of
10 natural resources and conservation, created by 82A-1508;

11 (g) Montana outfitters council, department of fish and
12 game, created by 82A-2005;

13 (h) public service commission, department of public
14 service regulation, created by 70-101;

15 (i) board of sanitarians, department of professional
16 and occupational licensing, created by 69-3412;

17 (j) board of water and waste water operators,
18 department of health and environmental sciences, created by
19 82A-612;

20 (k) board of water well contractors, department of
21 professional and occupational licensing, created by
22 82A-1602.26.

23 Section 4. Legislative audit committee review. (1) The
24 legislative audit committee is responsible for having
25 conducted a review of each agency scheduled for termination

1 by [section 3]. The review shall be completed at least 3
2 months prior to the date set for termination.

3 (2) The review conducted shall include a performance
4 audit of the agency and a thorough examination of the
5 following:

6 (a) Would the absence of regulation significantly harm
7 or endanger the public health, safety, or welfare?

8 (b) Is there a reasonable relationship between the
9 exercise of the state's police power and the protection of
10 the public health, safety, or welfare?

11 (c) Is there another less restrictive method of
12 regulation available which could adequately protect the
13 public?

14 (d) Does the regulation have the effect of directly or
15 indirectly increasing the costs of any goods or services
16 involved and, if so, to what degree?

17 (e) Is the increase in cost more harmful to the public
18 than the harm which could result from the absence of
19 regulation?

20 (f) Are all facets of the regulatory process designed
21 solely for the purpose of and have as their primary effect
22 the protection of the public?

23 (3) The legislative audit committee shall assist in
24 the implementation of the provisions of this act and shall
25 establish administrative procedures which facilitate the

1 review and evaluation as required in this act.

2 (4) Upon completion of its review, the legislative
3 audit committee shall make a report of its recommendations
4 for continuation, modification, or termination and submit a
5 proposed bill for distribution to the legislators prior to
6 the ensuing legislative session. If termination is
7 recommended, the bill should repeal or otherwise deal with
8 all statutes and parts of statutes for which the agency
9 reviewed is responsible.

10 Section 5. Prereview agency responsibilities. An
11 agency designated by [section 3 or section 9] for
12 termination shall by 1 year preceding the date set for
13 termination:

14 (1) delineate goals of programs for which they are
15 responsible, which goals reflect the state's constitution,
16 statutes, and authoritative judicial, legislative, and
17 executive decisions or pronouncements;

18 (2) delineate objectives of programs and layout
19 clearly enough to be tested, the logic in the assumptions
20 linking expenditures to implementation of intervention,
21 intervention to outcome anticipated, outcome anticipated to
22 objectives, and objectives to impact on problems addressed
23 in goals.

24 Section 6. Hearings by standing committee — criteria
25 for termination. (1) Prior to abolishment of an agency

1 terminated by [section 3 or section 9], a standing committee
2 in each house of the legislature or a joint committee of
3 both houses composed of members of the standing committee
4 assigned to conduct the hearing shall hold a public hearing,
5 receiving testimony from the public and the department head
6 of the department to which the agency involved is attached,
7 the head of the agency involved, and persons who conducted
8 the review.

9 (2) In the event termination is recommended by the
10 legislative audit committee, the agency has the burden of
11 demonstrating a public need for its continued existence and
12 the extent to which a change in the composition, structure,
13 and operation of the agency would increase the protection of
14 the public health, safety, or welfare from harm or damage or
15 decrease the adverse effect on the competitive market.

16 (3) In determining whether to reestablish an agency,
17 the legislature shall consider the performance audit and
18 review conducted by the legislative audit committee, the
19 public testimony responsive to the questions set forth in
20 subsection (2) of [section 4], and other matters considered
21 relevant by the committee.

22 Section 7. Effect of termination. Upon termination
23 each agency or unit shall continue in existence until
24 January 1 of the next succeeding year for the purpose of
25 winding up its affairs. During the windup period,

1 termination does not reduce or otherwise limit the powers or
 2 authority of each respective agency except that no action
 3 may be taken which would continue in effect beyond the 1
 4 year windup period. Upon the expiration of the 1 year after
 5 termination, each agency not modified or reestablished shall
 6 be abolished and all unexpended balances of appropriations,
 7 allocations, or other funds shall revert to the fund from
 8 which they were appropriated or, if that fund is abolished,
 9 to the general fund.

10 Section 8. Reestablishment. (1) Any agency scheduled
 11 for termination under this act or any subsequent act may be
 12 reestablished by the legislature for any period of time
 13 specified by law, not to exceed 6 years, at the end of which
 14 time the legislature shall again review the agency pursuant
 15 to [section 4] and may again reestablish, modify, or allow
 16 the termination of the agency pursuant to this section.

17 (2) No more than one agency may be continued or
 18 reestablished in any bill for an act, and the agency shall
 19 be mentioned in the bill's title.

20 Section 9. Future regulatory agencies subject to act.
 21 Any agency or program created in part to regulate any
 22 profession, occupation, business, industry, or other
 23 endeavor by law enacted after the effective date of this act
 24 shall be reviewed by the legislature, as required in
 25 [section 4], beginning not later than 60 months after the

1 law authorizing the regulation becomes law, and such review
 2 shall be completed not later than 69 months after the
 3 effective date of such law.

4 Section 10. Saving clause. This act shall not affect
 5 the right to institute or prosecute any cause of action by
 6 or against an agency terminated pursuant to this act if the
 7 cause of action accrued prior to the date the agency was
 8 terminated. Any causes of action pending on the date the
 9 agency is terminated, or instituted thereafter, shall be
 10 prosecuted or defended in the name of the state by the
 11 department of justice.

12 Section 11. Severability. If a part of this act is
 13 invalid, all valid parts that are severable from the invalid
 14 part remain in effect. If a part of this act is invalid in
 15 one or more of its applications, the part remains in effect
 16 in all valid applications that are severable from the
 17 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 137-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 162 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 162 is a "Sunset" law covering regulatory agencies.

ASSUMPTIONS:

1. The agencies to be audited will be able to comply with Section 5 without additional staff.
2. The budgets of the standing committees are sufficient to pay for the meetings required.
3. Audits could be done with current and budgeted staff increases. This would necessitate a diversion of the audit staff from the otherwise discretionary audit plan of the Legislative Audit Committee.
4. Audits could commence at a time prior to the agency pre-review function, this being necessary to allow sufficient time to complete the audits, particularly in the first cycle.
5. Audits required by Section 4 will address the operations and need for the regulatory program as well as the specific agency or board.
6. No unusual audit problems will arise.

FISCAL IMPACT:

Funding above that requested for the 1979 biennium by the Legislative Auditor and reflected in the Executive Budget is not required.

Richard L. Drury
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-77

Approved by Committee
on State Administration

SENATE BILL NO. 162

INTRODUCED BY HINSL, THIESSEN, OLSON, ABER,
KOLSTAD, GOODOVER, BROWN, ROBERTS, MATHERS, LOWE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LEGISLATIVE
REVIEW OF AGENCIES WHICH REGULATE A PROFESSION, OCCUPATION,
BUSINESS, INDUSTRY, OR OTHER ENDEAVOR; PROVIDING FOR
ABOLISHMENT OF AGENCIES; AND PROVIDING FOR PERIODIC
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) It is the intent of the legislature, by
establishing a system of periodic evaluation of the need for
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to ensure as follows:

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needs of all of the people of the state.

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responsive to those needs.

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other endeavor are subject to the state's regulatory power
unless the exercise of such power is necessary to protect
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discernible harm or damage. The exercise of the state's
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that purpose.

(d) The state may not regulate a profession,
occupation, industry, business, or other endeavor in a
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competitive market.

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following definitions apply:

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committee, board, department, council, division, bureau,
section, or any other entity or instrumentality of the

1 executive department of state government.

2 (2) "Performance audit" means an examination of the
3 effectiveness of administration and its efficiency and
4 adequacy in terms of the program of a state agency
5 authorized by law to be performed and the conformance of
6 expenditures with legislative intent ~~in the appropriation.~~
7 Audits conducted shall include an analysis of the operation
8 of the agency with special regard to the duplication of
9 efforts between the audited agency and other agencies, and
10 the quality of service being rendered.

11 Section 3. Agencies to terminate. (1) The following
12 agencies shall terminate on ~~January~~ JULY 1, 1979:

13 (a) board of abstracters, department of professional
14 and occupational licensing, created by 82A-1602.1;

15 (b) board of public accountants, department of
16 professional and occupational licensing, created by
17 82A-1602.2;

18 (c) board of architects, department of professional
19 and occupational licensing, created by 82A-1602.3;

20 (d) state banking board, department of business
21 regulation, created by 82A-407;

22 (e) state electrical board, department of professional
23 and occupational licensing, created by 82A-1602.10;

24 (f) board of professional engineers and land
25 surveyors, department of professional and occupational

1 licensing, created by 82A-1602.11;

2 (g) office of commissioner of insurance and the
3 insurance department, state auditor's office, created by
4 40-2701 and 40-2702;

5 (h) office of the investment commissioner, state
6 auditor's office, created by 15-2001;

7 (i) board of landscape architects, department of
8 professional and occupational licensing, created by
9 82A-1602.30;

10 (j) board of county printing, department of
11 ~~administration~~ COMMUNITY AFFAIRS, created by 82A-904;

12 (k) board of plumbers, department of professional and
13 occupational licensing, created by 82A-1602.22;

14 (l) board of real estate, department of professional
15 and occupational licensing, created by 82A-1602.23;

16 (m) state board of warm air heating, ventilation, and
17 air conditioning, department of professional and
18 occupational licensing, created by 82A-1602.29-;

19 (N) BOARD OF INSTITUTIONS, DEPARTMENT OF INSTITUTIONS,
20 CREATED BY 82A-806.

21 (2) The following agencies shall terminate on ~~January~~
22 JULY 1, 1981:

23 (a) commission for human rights, department of labor
24 and industry, created by 82A-1015;

25 (b) board of athletics, department of professional and

1 occupational licensing, created by 82A-1602.4;
 2 (c) board of barbers, department of professional and
 3 occupational licensing, created by 82A-1602.5;
 4 (d) board of chiropractors, department of professional
 5 and occupational licensing, created by 82A-1602.7;
 6 (e) board of cosmetologists, department of
 7 professional and occupational licensing, created by
 8 82A-1602.8;
 9 (f) board of dentists, department of professional and
 10 occupational licensing, created by 82A-1602.9;
 11 (g) board of hearing aid dispensers, department of
 12 professional and occupational licensing, created by
 13 82A-1602.12;
 14 (h) board of massage therapists, department of
 15 professional and occupational licensing, created by 82A-
 16 1602.14;
 17 (i) Montana state board of medical examiners,
 18 department of professional and occupational licensing,
 19 created by 82A-1602.15;
 20 (j) board of morticians, department of professional
 21 and occupational licensing, created by 82A-1602.16;
 22 (k) board of nursing, department of professional and
 23 occupational licensing, created by 82A-1602.18;
 24 (l) board of nursing home administrators, department
 25 of professional and occupational licensing, created by

1 82A-1602.17;
 2 (m) board of optometrists, department of professional
 3 and occupational licensing, created by 82A-1602.19;
 4 (n) board of osteopathic physicians, department of
 5 professional and occupational licensing, created by
 6 82A-1602.20;
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 8 and occupational licensing, created by 82A-1602.21;
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 12 (q) board of psychologists, department of professional
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 15 professional and occupational licensing, created by
 16 82A-1602.28;
 17 (s) board of speech pathologists and audiologists,
 18 department of professional and occupational licensing,
 19 created by 82A-1602.31;
 20 (t) board of veterinarians, department of professional
 21 and occupational licensing, created by 82A-1602.24;
 22 (u) board of veterans' affairs, department of
 23 ~~professional and occupational licensing~~ SOCIAL AND
 24 REHABILITATION SERVICES, created by 82A-1905.
 25 (3) The following units of state government shall

1 terminate on ~~January~~ JULY 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 82A-905;

4 (b) state board of hail insurance, department of
5 agriculture, created by 82-1501;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 82A-1602.13;

8 (d) board of livestock, department of livestock,
9 created by 82A-1303;

10 (e) board of milk control, department of business
11 regulation, created by 82A-406;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 82A-1508;

14 (g) Montana outfitters council, department of fish and
15 game, created by 82A-2005;

16 (h) public service commission, department of public
17 service regulation, created by 70-101;

18 (i) board of sanitarians, department of professional
19 and occupational licensing, created by 69-3412;

20 (j) board of water and waste water operators,
21 department of health and environmental sciences, created by
22 82A-612;

23 (k) board of water well contractors, department of
24 professional and occupational licensing, created by
25 82A-1602.26.

1 Section 4. Legislative audit committee review. (1) The
2 legislative audit committee is responsible for having
3 conducted a review of each agency scheduled for termination
4 by [section 3]. The review shall be completed at least ~~3~~
5 ~~months~~ 1 MONTH prior to the date set for termination.

6 (2) The review conducted shall include a performance
7 audit of the agency and a thorough examination of the
8 following:

9 (a) Would the absence of regulation significantly harm
10 or endanger the public health, safety, or welfare?

11 (b) Is there a reasonable relationship between the
12 exercise of the state's police power and the protection of
13 the public health, safety, or welfare?

14 (c) Is there another less restrictive method of
15 regulation available which could adequately protect the
16 public?

17 (d) Does the regulation have the effect of directly or
18 indirectly increasing the costs of any goods or services
19 involved and, if so, to what degree?

20 (e) Is the increase in cost more harmful to the public
21 than the harm which could result from the absence of
22 regulation?

23 (f) Are all facets of the regulatory process designed
24 solely for the purpose of and have as their primary effect
25 the protection of the public?

1 (3) The legislative audit committee shall assist in
2 the implementation of the provisions of this act and shall
3 establish administrative procedures which facilitate the
4 review and evaluation as required in this act.

5 (4) Upon completion of its review, the legislative
6 audit committee shall make a report of its recommendations
7 for continuation, modification, or termination and submit a
8 proposed bill for ~~distribution to the legislators prior to~~
9 the ensuing legislative session. If termination is
10 recommended, the bill should repeal or otherwise deal with
11 all statutes and parts of statutes for which the agency
12 reviewed is responsible.

13 Section 5. Prereview agency responsibilities. An
14 agency designated by [section 3 or section 9] for
15 termination shall by ~~4-year~~ 15 MONTHS preceding the date set
16 for termination:

17 (1) delineate goals of programs for which they are
18 responsible, which goals reflect the state's constitution,
19 statutes, and authoritative judicial, legislative, and
20 executive decisions or pronouncements;

21 (2) delineate objectives of programs and layout
22 clearly enough to be tested, the logic in the assumptions
23 linking expenditures ~~to implementation of intervention,~~
24 ~~intervention~~ to outcome anticipated, outcome anticipated to
25 objectives, and objectives to impact on problems addressed

1 in goals.

2 Section 6. Hearings by standing committee — criteria
3 for termination. (1) Prior to abolishment of an agency
4 terminated by [section 3 or section 9], a THE APPROPRIATE
5 standing committee in each house of the legislature or a
6 joint committee of both houses composed of members of the
7 standing committee assigned to conduct the hearing shall
8 hold a public hearing, receiving testimony from the public
9 and the ~~department~~ head of the department to which the
10 agency involved is attached, the head of the agency
11 involved, and persons who conducted the review.

12 (2) In the event termination is recommended by the
13 legislative audit committee, the agency has the burden of
14 demonstrating a public need for its continued existence and
15 the extent to which a change in the composition, structure,
16 and operation of the agency would increase the protection of
17 the public health, safety, or welfare from harm or damage or
18 decrease the adverse effect on the competitive market.

19 (3) In determining whether to reestablish an agency,
20 the legislature shall consider the performance audit and
21 review conducted by the legislative audit committee, the
22 public testimony responsive to the questions set forth in
23 subsection (2) of [section 4], and other matters considered
24 relevant by the committee.

25 Section 7. Effect of termination. Upon termination

1 each agency or unit shall continue in existence until
 2 ~~January~~ JULY 1 of the next succeeding year for the purpose
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 4 termination does not reduce or otherwise limit the powers or
 5 authority of each respective agency except that no action
 6 may be taken which would continue in effect beyond the 1
 7 year windup period. Upon the expiration of the 1 year after
 8 termination, each agency not modified or reestablished shall
 9 be abolished and all unexpended balances of appropriations,
 10 allocations, or other funds shall revert to the fund from
 11 which they were appropriated or, if that fund is abolished,
 12 to the general fund.

13 Section 8. Reestablishment. (1) Any agency scheduled
 14 for termination under this act or any subsequent act may be
 15 reestablished by the legislature for any period of time
 16 specified by law, not to exceed 6 years, at the end of which
 17 time the legislature shall again review the agency pursuant
 18 to [section 4] and may again reestablish, modify, or allow
 19 the termination of the agency pursuant to this section.

20 (2) No more than one agency may be continued or
 21 reestablished in any bill for an act, and the agency shall
 22 be mentioned in the bill's title.

23 ~~Section 9. Future regulatory agencies subject to act.~~
 24 ~~Any agency or program created in part to regulate any~~
 25 ~~profession, occupation, business, industry, or other~~

1 ~~endeavor by law enacted after the effective date of this act~~
 2 ~~shall be reviewed by the legislature, as required in~~
 3 ~~[section 4], beginning not later than 60 months after the~~
 4 ~~law authorizing the regulation becomes law, and such review~~
 5 ~~shall be completed not later than 60 months after the~~
 6 ~~effective date of such law.~~

7 SECTION 9. FUTURE REGULATORY AGENCIES SUBJECT TO ACT.
 8 ANY AGENCY OR PROGRAM CREATED IN PART TO REGULATE ANY
 9 PROFESSION, OCCUPATION, BUSINESS, OR OTHER ENDEAVOR BY LAW
 10 ENACTED AFTER JANUARY 1, 1977, SHALL TERMINATE ON JULY 1 OF
 11 THE YEAR OF THE THIRD REGULAR BIENNIAL LEGISLATIVE SESSION
 12 FOLLOWING ENACTMENT OF SUCH LAW. ANY SUCH AGENCY OR PROGRAM
 13 SHALL BE REVIEWED AS REQUIRED IN (SECTIONS 4-8), AND SUCH
 14 REVIEW SHALL BE COMPLETED 1 MONTH PRIOR TO THE CONVENING OF
 15 THE THIRD REGULAR BIENNIAL LEGISLATIVE SESSION FOLLOWING
 16 ENACTMENT OF SUCH LAW.

17 Section 10. Saving clause. This act shall not affect
 18 the right to institute or prosecute any cause of action by
 19 or against an agency terminated pursuant to this act if the
 20 cause of action accrued prior to the date the agency was
 21 terminated. Any causes of action pending on the date the
 22 agency is terminated, or instituted thereafter, shall be
 23 prosecuted or defended in the name of the state by the
 24 department of justice.

25 Section 11. Severability. If a part of this act is

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1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

-End-

SENATE BILL NO. 162

INTRODUCED BY HINSL, THIESSEN, OLSON, ABER,
KOLSTAD, GOODOVER, BROWN, ROBERTS, MATHERS, LOWE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LEGISLATIVE
REVIEW OF AGENCIES WHICH REGULATE A PROFESSION, OCCUPATION,
BUSINESS, INDUSTRY, OR OTHER ENDEAVOR; PROVIDING FOR
ABOLISHMENT OF AGENCIES; AND PROVIDING FOR PERIODIC
LEGISLATIVE REVIEW, MODIFICATION, AND REESTABLISHMENT OF
AGENCIES."

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

Section 1. Purpose. (1) The legislature finds state
government actions have produced a substantial increase in
numbers of agencies, growth of programs, and proliferation
of rules. The legislature questions whether conditions
causing the establishment of these agencies, programs, and
rules have not changed to such an extent as to remove the
need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by
establishing a system of periodic evaluation of the need for
and the performance of agencies preparatory to termination,
modification, or reestablishment, to be in a better position
to ensure as follows:

(a) The executive department is responsive to the

needs of all of the people of the state.

(b) No agency, program, or rule exists which is not
responsive to those needs.

(c) No profession, occupation, business, industry, or
other endeavor are subject to the state's regulatory power
unless the exercise of such power is necessary to protect
the public health, safety, or welfare from significant and
discernible harm or damage. The exercise of the state's
police power shall be done only to the extent necessary for
that purpose.

(d) The state may not regulate a profession,
occupation, industry, business, or other endeavor in a
manner which will unreasonably adversely affect the
competitive market.

(e) There exists a systematic legislative review of
the need for and public benefits derived from a program or
function which licenses or otherwise regulates a profession,
occupation, business, industry, or other endeavor by a
periodic review and termination, modification, or
reestablishment of such programs and functions.

Section 2. Definitions. As used in this act, the
following definitions apply:

(1) "Agency" means an office, position, commission,
committee, board, department, council, division, bureau,
section, or any other entity or instrumentality of the

1 executive department of state government.

2 (2) "Performance audit" means an examination of the
3 effectiveness of administration and its efficiency and
4 adequacy in terms of the program of a state agency
5 authorized by law to be performed and the conformance of
6 expenditures with legislative intent ~~in the appropriation~~.
7 Audits conducted shall include an analysis of the operation
8 of the agency with special regard to the duplication of
9 efforts between the audited agency and other agencies, and
10 the quality of service being rendered.

11 Section 3. Agencies to terminate. (1) The following
12 agencies shall terminate on ~~January~~ JULY 1, 1979:

13 (a) board of abstracters, department of professional
14 and occupational licensing, created by 82A-1602.1;

15 (b) board of public accountants, department of
16 professional and occupational licensing, created by
17 82A-1602.2;

18 (c) board of architects, department of professional
19 and occupational licensing, created by 82A-1602.3;

20 (d) state banking board, department of business
21 regulation, created by 82A-407;

22 (e) state electrical board, department of professional
23 and occupational licensing, created by 82A-1602.10;

24 (f) board of professional engineers and land
25 surveyors, department of professional and occupational

1 licensing, created by 82A-1602.11;

2 (g) office of commissioner of insurance and the
3 insurance department, state auditor's office, created by
4 40-2701 and 40-2702;

5 (h) office of the investment commissioner, state
6 auditor's office, created by 15-2001;

7 (i) board of landscape architects, department of
8 professional and occupational licensing, created by
9 82A-1602.30;

10 (j) board of county printing, department of
11 ~~administration~~ COMMUNITY AFFAIRS, created by 82A-904;

12 (k) board of plumbers, department of professional and
13 occupational licensing, created by 82A-1602.22;

14 (l) board of real estate, department of professional
15 and occupational licensing, created by 82A-1602.23;

16 (m) state board of warm air heating, ventilation, and
17 air conditioning, department of professional and
18 occupational licensing, created by 82A-1602.29;

19 (N) BOARD OF INSTITUTIONS, DEPARTMENT OF INSTITUTIONS,
20 CREATED BY 82A-806.

21 (2) The following agencies shall terminate on ~~January~~
22 JULY 1, 1981:

23 (a) commission for human rights, department of labor
24 and industry, created by 82A-1015;

25 (b) board of athletics, department of professional and

1. Amend page 8, section 4, subsection (1), line 5.

Following: "months"

Strike: "1 MONTH"

Insert: "6 months"

2. Amend page 9, section 5, line 15.

Following: "1-year"

Strike: "15"

Insert: "22"

3. Amend page 12, section 9, line 14.

Following: "COMPLETED"

Strike: "1 MONTH"

AS AMENDED

BE CONCURRED IN

1 SENATE BILL NO. 162
 2 INTRODUCED BY HIMSL, THIESSEN, OLSON, ABER,
 3 KOLSTAD, GOODOVER, BROWN, ROBERTS, MATHERS, LOWE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LEGISLATIVE
 6 REVIEW OF AGENCIES WHICH REGULATE A PROFESSION, OCCUPATION,
 7 BUSINESS, INDUSTRY, OR OTHER ENDEAVOR; PROVIDING FOR
 8 ABOLISHMENT OF AGENCIES; AND PROVIDING FOR PERIODIC
 9 LEGISLATIVE REVIEW, MODIFICATION, AND REESTABLISHMENT OF
 10 AGENCIES."

11
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 16 of rules. The legislature questions whether conditions
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 18 rules have not changed to such an extent as to remove the
 19 need for some or all of the agencies, programs, and rules.

20 (2) It is the intent of the legislature, by
 21 establishing a system of periodic evaluation of the need for
 22 and the performance of agencies preparatory to termination,
 23 modification, or reestablishment, to be in a better position
 24 to ensure as follows:

25 (a) The executive department is responsive to the

1 needs of all of the people of the state.

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 3 responsive to those needs.

4 (c) No profession, occupation, business, industry, or
 5 other endeavor are subject to the state's regulatory power
 6 unless the exercise of such power is necessary to protect
 7 the public health, safety, or welfare from significant and
 8 discernible harm or damage. The exercise of the state's
 9 police power shall be done only to the extent necessary for
 10 that purpose.

11 (d) The state may not regulate a profession,
 12 occupation, industry, business, or other endeavor in a
 13 manner which will unreasonably adversely affect the
 14 competitive market.

15 (e) There exists a systematic legislative review of
 16 the need for and public benefits derived from a program or
 17 function which licenses or otherwise regulates a profession,
 18 occupation, business, industry, or other endeavor by a
 19 periodic review and termination, modification, or
 20 reestablishment of such programs and functions.

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2 (2) "Performance audit" means an examination of the
3 effectiveness of administration and its efficiency and
4 adequacy in terms of the program of a state agency
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18 (c) board of architects, department of professional
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20 (d) state banking board, department of business
21 regulation, created by 82A-407;

22 (e) state electrical board, department of professional
23 and occupational licensing, created by 82A-1602.10;

24 (f) board of professional engineers and land
25 surveyors, department of professional and occupational

1 licensing, created by 82A-1602.11;

2 (g) office of commissioner of insurance and the
3 insurance department, state auditor's office, created by
4 40-2701 and 40-2702;

5 (h) office of the investment commissioner, state
6 auditor's office, created by 15-2001;

7 (i) board of landscape architects, department of
8 professional and occupational licensing, created by
9 82A-1602.30;

10 (j) board of county printing, department of
11 ~~administration~~ COMMUNITY AFFAIRS, created by 82A-904;

12 (k) board of plumbers, department of professional and
13 occupational licensing, created by 82A-1602.22;

14 (l) board of real estate, department of professional
15 and occupational licensing, created by 82A-1602.23;

16 (m) state board of warm air heating, ventilation, and
17 air conditioning, department of professional and
18 occupational licensing, created by 82A-1602.29~~1~~;

19 (N) BOARD OF INSTITUTIONS, DEPARTMENT OF INSTITUTIONS,
20 CREATED BY 82A-806.

21 (2) The following agencies shall terminate on ~~January~~
22 JULY 1, 1981:

23 (a) commission for human rights, department of labor
24 and industry, created by 82A-1015;

25 (b) board of athletics, department of professional and

1 occupational licensing, created by 82A-1602.4;
 2 (c) board of barbers, department of professional and
 3 occupational licensing, created by 82A-1602.5;
 4 (d) board of chiropractors, department of professional
 5 and occupational licensing, created by 82A-1602.7;
 6 (e) board of cosmetologists, department of
 7 professional and occupational licensing, created by
 8 82A-1602.8;
 9 (f) board of dentists, department of professional and
 10 occupational licensing, created by 82A-1602.9;
 11 (g) board of hearing aid dispensers, department of
 12 professional and occupational licensing, created by
 13 82A-1602.12;
 14 (h) board of massage therapists, department of
 15 professional and occupational licensing, created by 82A-
 16 1602.14;
 17 (i) Montana state board of medical examiners,
 18 department of professional and occupational licensing,
 19 created by 82A-1602.15;
 20 (j) board of morticians, department of professional
 21 and occupational licensing, created by 82A-1602.16;
 22 (k) board of nursing, department of professional and
 23 occupational licensing, created by 82A-1602.18;
 24 (l) board of nursing home administrators, department
 25 of professional and occupational licensing, created by

1 82A-1602.17;
 2 (m) board of optometrists, department of professional
 3 and occupational licensing, created by 82A-1602.19;
 4 (n) board of osteopathic physicians, department of
 5 professional and occupational licensing, created, by
 6 82A-1602.20;
 7 (o) board of pharmacists, department of professional
 8 and occupational licensing, created by 82A-1602.21;
 9 (p) board of podiatry examiners, department of
 10 professional and occupational licensing, created by
 11 82A-1602.6;
 12 (q) board of psychologists, department of professional
 13 and occupational licensing, created by 82A-1602.27;
 14 (r) board of radiologic technologists, department of
 15 professional and occupational licensing, created by
 16 82A-1602.28;
 17 (s) board of speech pathologists and audiologists,
 18 department of professional and occupational licensing,
 19 created by 82A-1602.31;
 20 (t) board of veterinarians, department of professional
 21 and occupational licensing, created by 82A-1602.24;
 22 (u) board of veterans' affairs, department of
 23 professional ~~and occupational licensing~~ SOCIAL AND
 24 REHABILITATION SERVICES, created by 82A-1905.
 25 (3) The following units of state government shall

1 terminate on January ~~JULY~~ 1, 1983:

2 (a) board of aeronautics, department of community

3 affairs, created by 82A-905;

4 (b) state board of hail insurance, department of

5 agriculture, created by 82-1501;

6 (c) board of horse racing, department of professional

7 and occupational licensing, created by 82A-1602.13;

8 (d) board of livestock, department of livestock,

9 created by 82A-1303;

10 (e) board of milk control, department of business

11 regulation, created by 82A-406;

12 (f) board of oil and gas conservation, department of

13 natural resources and conservation, created by 82A-15 '8;

14 (g) Montana outfitters council, department of fish and

15 game, created by 82A-2005;

16 (h) public service commission, department of public

17 service regulation, created by 70-101;

18 (i) board of sanitarians, department of professional

19 and occupational licensing, created by 69-3412;

20 (j) board of water and waste water operators,

21 department of health and environmental sciences, created by

22 82A-612;

23 (k) board of water well contractors, department of

24 professional and occupational licensing, created by

25 82A-1602.26.

1 Section 4. Legislative audit committee review. (1) The

2 legislative audit committee is responsible for having

3 conducted a review of each agency scheduled for termination

4 by [section 3]. The review shall be completed at least 3

5 months ~~1 MONTH~~ 6 MONTHS prior to the date set for

6 termination.

7 (2) The review conducted shall include a performance

8 audit of the agency and a thorough examination of the

9 following:

10 (a) Would the absence of regulation significantly harm

11 or endanger the public health, safety, or welfare?

12 (b) Is there a reasonable relationship between the

13 exercise of the state's police power and the protection of

14 the public health, safety, or welfare?

15 (c) Is there another less restrictive method of

16 regulation available which could adequately protect the

17 public?

18 (d) Does the regulation have the effect of directly or

19 indirectly increasing the costs of any goods or services

20 involved and, if so, to what degree?

21 (e) Is the increase in cost more harmful to the public

22 than the harm which could result from the absence of

23 regulation?

24 (f) Are all facets of the regulatory process designed

25 solely for the purpose of and have as their primary effect

1 the protection of the public?

2 (3) The legislative audit committee shall assist in
3 the implementation of the provisions of this act and shall
4 establish administrative procedures which facilitate the
5 review and evaluation as required in this act.

6 (4) Upon completion of its review, the legislative
7 audit committee shall make a report of its recommendations
8 for continuation, modification, or termination and submit a
9 proposed bill for ~~distribution to the legislators prior to~~
10 the ensuing legislative session. If termination is
11 recommended, the bill should repeal or otherwise deal with
12 all statutes and parts of statutes for which the agency
13 reviewed is responsible.

14 Section 5. Prereview agency responsibilities. An
15 agency designated by [section 3 or section 9] for
16 termination shall by ~~1-year~~ 15 22 MONTHS preceding the date
17 set for termination:

18 (1) delineate goals of programs for which they are
19 responsible, which goals reflect the state's constitution,
20 statutes, and authoritative judicial, legislative, and
21 executive decisions or pronouncements;

22 (2) delineate objectives of programs and layout
23 clearly enough to be tested, the logic in the assumptions
24 linking expenditures to ~~implementation of intervention~~
25 ~~intervention~~ to outcome anticipated, outcome anticipated to

1 objectives, and objectives to impact on problems addressed
2 in goals.

3 Section 6. Hearings by standing committee -- criteria
4 for termination. (1) Prior to abolishment of an agency
5 terminated by [section 3 or section 9], a THE APPROPRIATE
6 standing committee in each house of the legislature or a
7 joint committee of both houses composed of members of the
8 standing committee assigned to conduct the hearing shall
9 hold a public hearing, receiving testimony from the public
10 and the ~~department~~ head of the department to which the
11 agency involved is attached, the head of the agency
12 involved, and persons who conducted the review.

13 (2) In the event termination is recommended by the
14 legislative audit committee, the agency has the burden of
15 demonstrating a public need for its continued existence and
16 the extent to which a change in the composition, structure,
17 and operation of the agency would increase the protection of
18 the public health, safety, or welfare from harm or damage or
19 decrease the adverse effect on the competitive market.

20 (3) In determining whether to reestablish an agency,
21 the legislature shall consider the performance audit and
22 review conducted by the legislative audit committee, the
23 public testimony responsive to the questions set forth in
24 subsection (2) of [section 4], and other matters considered
25 relevant by the committee.

1 Section 7. Effect of termination. Upon termination
 2 each agency or unit shall continue in existence until
 3 January ~~JULY~~ 1 of the next succeeding year for the purpose
 4 of winding up its affairs. During the windup period,
 5 termination does not reduce or otherwise limit the powers or
 6 authority of each respective agency except that no action
 7 may be taken which would continue in effect beyond the 1
 8 year windup period. Upon the expiration of the 1 year after
 9 termination, each agency not modified or reestablished shall
 10 be abolished and all unexpended balances of appropriations,
 11 allocations, or other funds shall revert to the fund from
 12 which they were appropriated or, if that fund is abolished,
 13 to the general fund.

14 Section 8. Reestablishment. (1) Any agency scheduled
 15 for termination under this act or any subsequent act may be
 16 reestablished by the legislature for any period of time
 17 specified by law, not to exceed 6 years, at the end of which
 18 time the legislature shall again review the agency pursuant
 19 to [section 4] and may again reestablish, modify, or allow
 20 the termination of the agency pursuant to this section.

21 (2) No more than one agency may be continued or
 22 reestablished in any bill for an act, and the agency shall
 23 be mentioned in the bill's title.

24 ~~Section 9. Future regulatory agencies subject to acts~~
 25 ~~Any agency or program created in part to regulate any~~

1 ~~profession, occupation, business, industry, or other~~
 2 ~~endeavor by law enacted after the effective date of this act~~
 3 ~~shall be reviewed by the legislature as required in~~
 4 ~~[section 4], beginning not later than 60 months after the~~
 5 ~~law authorizing the regulation becomes law, and such review~~
 6 ~~shall be completed not later than 69 months after the~~
 7 ~~effective date of such law.~~

8 SECTION 9. FUTURE REGULATORY AGENCIES SUBJECT TO ACT.
 9 ANY AGENCY OR PROGRAM CREATED IN PART TO REGULATE ANY
 10 PROFESSION, OCCUPATION, BUSINESS, OR OTHER ENDEAVOR BY LAW
 11 ENACTED AFTER JANUARY 1, 1977, SHALL TERMINATE ON JULY 1 OF
 12 THE YEAR OF THE THIRD REGULAR BIENNIAL LEGISLATIVE SESSION
 13 FOLLOWING ENACTMENT OF SUCH LAW. ANY SUCH AGENCY OR PROGRAM
 14 SHALL BE REVIEWED AS REQUIRED IN (SECTIONS 4-8), AND SUCH
 15 REVIEW SHALL BE COMPLETED 3 MONTH PRIOR TO THE CONVENING OF
 16 THE THIRD REGULAR BIENNIAL LEGISLATIVE SESSION FOLLOWING
 17 ENACTMENT OF SUCH LAW.

18 Section 10. Saving clause. This act shall not affect
 19 the right to institute or prosecute any cause of action by
 20 or against an agency terminated pursuant to this act if the
 21 cause of action accrued prior to the date the agency was
 22 terminated. Any causes of action pending on the date the
 23 agency is terminated, or instituted thereafter, shall be
 24 prosecuted or defended in the name of the state by the
 25 department of justice.

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2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

-End-