

SENATE BILL NO. 138

INTRODUCED BY HAGER, NORMAN, WINSLOW

IN THE SENATE

JANUARY 19, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE & SAFETY.

FEBRUARY 3, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 4, 1987 PRINTING REPORT.

FEBRUARY 6, 1987 SECOND READING, DO PASS.

FEBRUARY 7, 1987 ENGROSSING REPORT.

ON MOTION, RECONSIDER ACTION.
BILL TAKEN FROM THIRD READING AND
RETURNED TO SECOND READING.

FEBRUARY 9, 1987 SECOND READING, DO PASS.

FEBRUARY 11, 1987 THIRD READING, PASSED.
AYES, 28; NOES, 19.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

MARCH 6, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 9, 1987 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 11, 1987 THIRD READING, CONCURRED IN.
AYES, 84; NOES, 14.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 20, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 ~~Senate~~ BILL NO. 138
2 INTRODUCED BY Hager Norman-Weeks
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH CRITERIA
5 AND PROCEDURES FOR ASSESSING PROPOSALS FOR NEW OCCUPATIONAL
6 AND PROFESSIONAL LICENSING BOARDS; PROVIDING FOR
7 CONSOLIDATION OF EXISTING BOARDS; ASSIGNING RESPONSIBILITY
8 FOR THESE FUNCTIONS TO THE LEGISLATIVE AUDIT COMMITTEE; AND
9 PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

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

12 Section 1. Purpose. (1) The legislature finds that the
13 number of licensed occupations and professions has increased
14 substantially and that occupational and professional
15 licensing boards occasionally have been established without
16 a determination that the police power of the state is
17 reasonably exercised by establishing them or a determination
18 that existing licensing boards could provide the necessary
19 regulation.

20 (2) It is the intent of the legislature to improve its
21 ability to evaluate the need for new licensing boards by
22 establishing criteria and procedures for reviewing proposed
23 new occupational and professional licensing boards. To this
24 end it is a purpose of this part to ensure that no new
25 licensing board is established unless:

1 (a) the unregulated practice of the profession or
2 occupation directly and immediately endangers the public
3 health, safety, or welfare;

4 (b) practice of the profession or occupation requires
5 specialized skill or training, and nationally recognized
6 standards of education and training exist;

7 (c) a substantial majority of the public lacks the
8 knowledge or experience to evaluate whether the practitioner
9 is competent; and

10 (d) the public is not protected effectively by other
11 means.

12 (3) It is also a purpose of this part to allow for the
13 smallest number of licensing boards consistent with adequate
14 regulation of appropriate occupations and professions.

15 Section 2. Definitions. In [sections 2 through 7], the
16 following definitions apply:

17 (1) "Applicant" means the persons or organization
18 proposing state licensing for an occupation or profession.

19 (2) "Committee" means the legislative audit committee.

20 (3) "License" means a permit, certificate, approval,
21 registration, charter, or other form of permission required
22 by law as a condition of practicing a profession or
23 occupation.

24 (4) "Licensing" means a regulatory process that
25 includes but is not limited to the grant, denial, renewal,

1 revocation, suspension, annulment, withdrawal, limitation,
2 transfer, or amendment of a license.

3 (5) "Licensing board" means an office, position,
4 commission, or any other entity or instrumentality of the
5 executive branch of state government that is responsible for
6 licensing members of an occupation or profession.

7 Section 3. Committee review and report. (1) The
8 committee shall review and assess the merits of any proposal
9 to:

- 10 (a) establish a new licensing board;
11 (b) initiate a legislative or executive department
12 study of the need for a new licensing board; or
13 (c) add to the duties of an existing licensing board
14 responsibility for licensing another occupation or
15 profession.

16 (2) Any proposal subject to review under subsection
17 (1) must be submitted, in the form of a legislative
18 proposal, to the committee at least 90 days before the first
19 day of the next regular legislative session.

20 (3) The committee shall conduct the review required by
21 subsection (1) only if the proposal includes:

- 22 (a) a written request by a senator whose term will not
23 expire before the next regular legislative session or by a
24 senator or representative who is not opposed in the next
25 general election;

1 (b) the information required by [section 4(1)]; and

2 (c) a completed application as provided in [section
3 5].

4 (4) Within 60 days after the proposal is received, the
5 committee shall prepare a report to the legislature for its
6 next regular session. The report must include but is not
7 limited to:

8 (a) the committee's findings with respect to each of
9 the criteria in [section 4];

10 (b) an estimate of the cost to the state of licensing
11 the occupation or profession and a proposed schedule of fees
12 that will recover the cost of the licensing program as
13 required by 37-1-134; and

14 (c) the committee's recommendation as to whether the
15 profession or occupation should be licensed by the state.

16 (5) If the volume of requests makes it impossible to
17 prepare all the required reports within 60 days, the
18 committee may extend the time for preparation of a report to
19 a maximum of 90 days from the date a request is received.

20 Section 4. Criteria for committee assessment. (1) The
21 applicant shall demonstrate to the committee and if
22 necessary furnish additional information requested by the
23 committee to show that:

24 (a) the unregulated practice of the occupation or
25 profession creates a direct, immediate hazard to the public

1 health, safety, or welfare;

2 (b) the scope of practice is readily identified and
3 easily distinguished from the scope of practice of other
4 professions and occupations;

5 (c) the occupational or professional group has an
6 established code of ethics, a voluntary certification
7 program, or other measures to ensure a minimum quality of
8 service;

9 (d) practice of the occupation or profession requires
10 specialized skill or training, and nationally recognized
11 standards of education and training exist;

12 (e) the proposed qualifications for obtaining a
13 license are justified;

14 (f) the public will benefit from the proposed
15 regulation of the occupation or profession;

16 (g) public support for the proposed licensure exists;

17 (h) licensing will not significantly increase the cost
18 of services to the public; and

19 (i) no other board licenses a similar or closely
20 related occupation or profession.

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

25 (a) the number of existing practitioners and the

1 approximate number of people who would be licensed in the
2 future;

3 (b) the number of people who are likely to use the
4 services of the occupation or profession;

5 (c) the manner and degree of improved quality of
6 service;

7 (d) the degree to which licensing will facilitate
8 clients' access to reimbursement for government assistance
9 programs;

10 (e) whether a substantial majority of the public has
11 the knowledge or experience to evaluate the practitioner's
12 competence;

13 (f) whether the public can effectively be protected by
14 other means; and

15 (g) whether licensing will:

16 (i) significantly increase the cost of goods and
17 services provided by the occupation or profession;

18 (ii) adversely affect the scope of practice of other
19 professions and occupations, whether regulated or not; or

20 (iii) exclude existing practitioners or otherwise
21 reduce the number of practitioners in Montana.

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

1 Section 5. Procedure. (1) The committee shall adopt an
2 appropriate form for use by applicants, containing a copy of
3 [sections 1 through 6] and requiring applicants to list:

- 4 (a) proposed qualifications of licensed practitioners;
- 5 (b) disciplinary procedures that would be applied to
6 practitioners;
- 7 (c) proposed requirements for continuing education, if
8 any; and
- 9 (d) the information required by [section 4].

10 (2) After the committee has initiated its review under
11 [section 3], it may request any additional information it
12 considers necessary to complete its assessment of the
13 proposal.

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

16 (4) At least 10 days before its final report is
17 presented to the legislature, the committee shall provide an
18 opportunity for the applicant to review a preliminary draft
19 of the report and prepare a response. The committee shall
20 consider all responses in preparing its final report.

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

24 Section 6. Consolidation of existing boards. Any
25 person or organization may propose consolidation of two or

1 more existing boards. The provisions of [sections 2 through
2 5] apply to such a proposal, except that:

3 (1) the committee shall designate a representative of
4 each of the occupations or professions regulated by the
5 licensing boards proposed for consolidation, and each
6 representative must be treated as an applicant for purposes
7 of [sections 2 through 5]; and

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

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

16 Section 7. Boards or licensing functions instituted by
17 initiative. (1) If an initiative to establish a new
18 licensing board or to add a new licensing responsibility to
19 the duties of an existing licensing board is approved by the
20 electorate, the committee shall:

- 21 (a) review the initiative to assess the degree to
22 which it meets the criteria in [section 4(1)];
- 23 (b) request sufficient information from practitioners
24 or other persons to make the determinations required by
25 [section 4(2)]; and

1 (c) evaluate the initiative in terms of:
 2 (i) clarity and conciseness;
 3 (ii) conformity to existing statutes and principles of
 4 administrative law; and
 5 (iii) specificity of the delegation of authority to
 6 promulgate rules and set fees.

7 (2) The committee shall prepare a report to the next
 8 session of the legislature. The report must include:
 9 (a) the committee's findings with respect to each of
 10 the criteria in [section 4];
 11 (b) an estimate of the cost to the state of licensing
 12 the occupation or profession and a proposed schedule of fees
 13 that will cover the cost of the licensing program as
 14 required by 37-1-134;
 15 (c) the committee's recommendation as to whether the
 16 initiative should be amended; and
 17 (d) if amendments are recommended, a legislative
 18 proposal.

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

23 Section 8. Legislative audit committee report required
 24 with licensing bills. A legislative audit committee report
 25 provided for in [section 3] must be attached to any bill

1 reported out of a committee of the legislature that proposes
 2 to:
 3 (1) establish a new occupational or professional
 4 licensing board as defined in [section 2];
 5 (2) initiate a legislative or executive department
 6 study of the need for a new occupational or professional
 7 licensing board;
 8 (3) add a new licensing responsibility to the duties
 9 of an existing licensing board; or
 10 (4) consolidate two or more existing licensing boards.

11 Section 9. Codification instruction. (1) Sections 1
 12 through 7 are intended to be codified as an integral part of
 13 Title 2, chapter 8, and the provisions of Title 2, chapter
 14 8, apply to sections 1 through 7.

15 (2) Section 8 is intended to be codified as an
 16 integral part of Title 5, chapter 4, and the provisions of
 17 Title 5, chapter 4, apply to section 8.

18 Section 10. Applicability. This act applies to
 19 proposals for new licensing boards or consolidation of
 20 licensing boards considered by the legislature after June
 21 30, 1987.

22 Section 11. Effective date. This act is effective July
 23 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB138, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish criteria and procedures for assessing proposals for new occupational and professional licensing boards; providing for consolidation of existing boards; assigning responsibility for these functions to the Legislative Audit committee.

ASSUMPTIONS:

1. The cost of "sunrise" audit will be \$6,587; half the cost of a sunset audit.
2. Six proposals for new boards will be made prior to the 1989 Legislative session.
3. Proposals will be made in the second year of the biennium.

FISCAL IMPACT:

	<u>FY88</u>	<u>FY89</u>
<u>Expenditures:</u>		
Personal Services	\$ 0	\$31,222
Operating Expenses	0	8,300
TOTAL	\$ 0	\$39,522
<u>Funding:</u>		
General Fund	\$ 0	\$39,522

Revenues:

N/A

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

1. Section 3(4) The 60 day time frame is unrealistic. Audit work will require a 45 day time period. Scheduling a committee meeting, finishing and distributing the reports can add 30 days. Rewriting the report to reflect outside comments requires 15 days for a total of 90 days under the best conditions. This assumes surveys and similar techniques are not used.
2. Section 5(4) Ten days is an unrealistic time period to recognize comments and go through the printing process. This period must also permit mailing the report to the committee for their review prior to the meeting.

David L. Hunter

DATE 1/20/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Tom Hager

DATE 1-20-87

TOM HAGER, PRIMARY SPONSOR

Fiscal Note for SB138, as introduced.

SB 138

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 138

INTRODUCED BY HAGER, NORMAN, WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH CRITERIA AND PROCEDURES FOR ASSESSING PROPOSALS FOR NEW OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS; PROVIDING FOR CONSOLIDATION OF EXISTING BOARDS; ASSIGNING RESPONSIBILITY FOR THESE FUNCTIONS TO THE LEGISLATIVE AUDIT COMMITTEE; PROVIDING FOR AN APPLICATION FEE; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

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

Section 1. Purpose. (1) The legislature finds that the number of licensed occupations and professions has increased substantially and that occupational and professional licensing boards occasionally have been established without a determination that the police power of the state is reasonably exercised by establishing them or a determination that existing licensing boards could provide the necessary regulation.

(2) It is the intent of the legislature to improve its ability to evaluate the need for new licensing boards by establishing criteria and procedures for reviewing proposed new occupational and professional licensing boards. To this end it is a purpose of this part to ensure that no new

licensing board is established unless:

(a) the unregulated practice of the profession or occupation directly and immediately endangers the public health, safety, or welfare;

(b) practice of the profession or occupation requires specialized skill or training, and nationally recognized standards of education and training exist;

(c) a substantial majority of the public lacks the knowledge or experience to evaluate whether the practitioner is competent; and

(d) the public is not protected effectively by other means.

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Section 2. Definitions. In [sections 2 through 7 8], the following definitions apply:

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1 includes but is not limited to the grant, denial, renewal,
2 revocation, suspension, annulment, withdrawal, limitation,
3 transfer, or amendment of a license.

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5 commission, or any other entity or instrumentality of the
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7 licensing members of an occupation or profession.

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9 committee shall review and assess the merits of any proposal
10 to:

11 (a) establish a new licensing board;

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13 study of the need for a new licensing board; or

14 (c) add to the duties of an existing licensing board
15 responsibility for licensing another occupation or
16 profession.

17 (2) Any proposal subject to review under subsection
18 (1) must be submitted, in the form of a legislative
19 proposal, to the committee at least 90 180 days before the
20 first day of the next regular legislative session.

21 (3) The committee shall conduct the review required by
22 subsection (1) only if the proposal includes:

23 (a) a written request by a senator whose term will not
24 expire before the next regular legislative session or by a
25 senator or representative who is not opposed in the next

1 general election;

2 (b) the information required by [section 4(1)]; and

3 (c) a completed application as provided in [section
4 5].

5 (4) Within ~~60~~ 90 days after the proposal is received,
6 the committee shall prepare a DRAFT report to the
7 legislature for its next regular session. The report must
8 include but is not limited to:

9 (a) the committee's findings with respect to each of
10 the criteria in [section 4];

11 (b) an estimate of the cost to the state of licensing
12 the occupation or profession and a proposed schedule of fees
13 that will recover the cost of the licensing program as
14 required by 37-1-134; and

15 (c) the committee's recommendation as to whether the
16 profession or occupation should be licensed by the state.

17 (5) If the volume of requests makes it impossible to
18 prepare all the required reports within ~~60~~ 90 days, the
19 committee may extend the time for preparation of a report to
20 a maximum of ~~90~~ 120 days from the date a request is
21 received.

22 Section 4. Criteria for committee assessment. (1) The
23 applicant shall demonstrate to the committee and if
24 necessary furnish additional information requested by the
25 committee to show that:

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2 profession creates a direct, immediate hazard to the public
3 health, safety, or welfare;

4 (b) the scope of practice is readily identified and
5 easily distinguished from the scope of practice of other
6 professions and occupations;

7 (c) the occupational or professional group has an
8 established code of ethics, a voluntary certification
9 program, or other measures to ensure a minimum quality of
10 service;

11 (d) practice of the occupation or profession requires
12 specialized skill or training, and nationally recognized
13 standards of education and training exist;

14 (e) the proposed qualifications for obtaining a
15 license are justified;

16 (f) the public will benefit from the proposed
17 regulation of the occupation or profession;

18 (g) public support for the proposed licensure exists;

19 (h) licensing will not significantly increase the cost
20 of services to the public; and

21 (i) no other board licenses a similar or closely
22 related occupation or profession.

23 (2) In assessing the merits of the proposal for a new
24 licensing board, the committee shall evaluate the
25 applicant's information for each of the factors listed in

1 subsection (1) and in addition determine:

2 (a) the number of existing practitioners and the
3 approximate number of people who would be licensed in the
4 future;

5 (b) the number of people who are likely to use the
6 services of the occupation or profession;

7 (c) the manner and degree of improved quality of
8 service;

9 (d) the degree to which licensing will facilitate
10 clients' access to reimbursement for government assistance
11 programs;

12 (e) whether a substantial majority of the public has
13 the knowledge or experience to evaluate the practitioner's
14 competence;

15 (f) whether the public can effectively be protected by
16 other means; and

17 (g) whether licensing will:

18 (i) significantly increase the cost of goods and
19 services provided by the occupation or profession;

20 (ii) adversely affect the scope of practice of other
21 professions and occupations, whether regulated or not; or

22 (iii) exclude existing practitioners or otherwise
23 reduce the number of practitioners in Montana.

24 (3) The committee shall consider in its assessment
25 each of the factors in subsections (1) and (2) and shall

1 include in its final report specific findings with respect
2 to each of those factors.

3 Section 5. Procedure. (1) The committee shall adopt an
4 appropriate form for use by applicants, containing a copy of
5 [sections 1 through 6 7] and requiring applicants to list:

- 6 (a) proposed qualifications of licensed practitioners;
- 7 (b) disciplinary procedures that would be applied to
8 practitioners;
- 9 (c) proposed requirements for continuing education, if
10 any; and
- 11 (d) the information required by [section 4].

12 (2) After the committee has initiated its review under
13 [section 3], it may request any additional information it
14 considers necessary to complete its assessment of the
15 proposal.

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

18 (4) At least ~~10~~ 21 days before its final report is
19 presented to the legislature, the committee shall provide an
20 opportunity for the applicant to review a preliminary draft
21 of the report and prepare a response. The committee shall
22 consider all responses in preparing its final report.

23 (5) At least one copy of the final report must be kept
24 on file with the legislative council ~~and~~ AUDITOR and made
25 available for public inspection.

1 SECTION 6. APPLICATION FEE. AN APPLICATION FOR REVIEW
2 UNDER [SECTION 3] MUST INCLUDE AN APPLICATION FEE
3 ESTABLISHED BY THE COMMITTEE IN AN AMOUNT NOT TO EXCEED
4 \$6,500. THE FEE MUST BE USED BY THE COMMITTEE TO PAY THE
5 COST OF THE REVIEW, AND ANY UNUSED PORTION MUST BE REFUNDED
6 TO THE APPLICANT.

7 Section 7. Consolidation of existing boards. Any
8 person or organization may propose consolidation of two or
9 more existing boards. The provisions of [sections 2 through
10 5 6] apply to such a proposal, except that:

11 (1) the committee shall designate a representative of
12 each of the occupations or professions regulated by the
13 licensing boards proposed for consolidation, and each
14 representative must be treated as an applicant for purposes
15 of [sections 2 through 5 6]; and

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

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

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25 initiative. (1) If an initiative to establish a new

1 licensing board or to add a new licensing responsibility to
 2 the duties of an existing licensing board is approved by the
 3 electorate, the committee shall:

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 5 which it meets the criteria in [section 4(1)];

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 7 or other persons to make the determinations required by
 8 [section 4(2)]; and

9 (c) evaluate the initiative in terms of:

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 12 administrative law; and

13 (iii) specificity of the delegation of authority to
 14 promulgate rules and set fees.

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

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 18 the criteria in [section 4];

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 20 the occupation or profession and a proposed schedule of fees
 21 that will cover the cost of the licensing program as
 22 required by 37-1-134;

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 24 initiative should be amended; and

25 (d) if amendments are recommended, a legislative

1 proposal.

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 3 initiative must be incorporated in a bill introduced during
 4 the next session of the legislature by request of the
 5 committee.

6 Section 9. Legislative audit committee report required
 7 with licensing bills. A legislative audit committee report
 8 provided for in [section 3] must be attached to any bill
 9 reported out of a committee of the legislature that proposes
 10 to:

11 (1) establish a new occupational or professional
 12 licensing board as defined in [section 2];

13 (2) initiate a legislative or executive department
 14 study of the need for a new occupational or professional
 15 licensing board;

16 (3) add a-new-licensing-responsibility to the duties
 17 of an existing licensing board RESPONSIBILITY FOR LICENSING
 18 ANOTHER OCCUPATION OR PROFESSION; or

19 (4) consolidate two or more existing licensing boards.

20 Section 10. Codification instruction. (1) Sections 1
 21 through 7 8 are intended to be codified as an integral part
 22 of Title 2, chapter 8, and the provisions of Title 2,
 23 chapter 8, apply to sections 1 through 7 8.

24 (2) Section 8 9 is intended to be codified as an
 25 integral part of Title 5, chapter 4, and the provisions of

1 Title 5, chapter 4, apply to section 8 9.

2 Section 11. Applicability. This act applies to
3 proposals for new licensing boards or consolidation of
4 licensing boards considered by the legislature after June
5 30, 1987.

6 Section 12. Effective date. This act is effective July
7 1, 1987.

-End-

SENATE BILL NO. 138

INTRODUCED BY HAGER, NORMAN, WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH CRITERIA AND PROCEDURES FOR ASSESSING PROPOSALS FOR NEW OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS; PROVIDING FOR CONSOLIDATION OF EXISTING BOARDS; ASSIGNING RESPONSIBILITY FOR THESE FUNCTIONS TO THE LEGISLATIVE AUDIT COMMITTEE; PROVIDING FOR AN APPLICATION FEE; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

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licensing board is established unless:

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16 profession.

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20 first day of the next regular legislative session.

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24 expire before the next regular legislative session or by a
25 senator or representative who is not opposed in the next

1 general election;

2 (b) the information required by [section 4(1)]; and

3 (c) a completed application as provided in [section
4 5].

5 (4) Within 60 90 days after the proposal is received,
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7 legislature for its next regular session. The report must
8 include but is not limited to:

- 9 (a) the committee's findings with respect to each of
10 the criteria in [section 4];
11 (b) an estimate of the cost to the state of licensing
12 the occupation or profession and a proposed schedule of fees
13 that will recover the cost of the licensing program as
14 required by 37-1-134; and
15 (c) the committee's recommendation as to whether the
16 profession or occupation should be licensed by the state.

17 (5) If the volume of requests makes it impossible to
18 prepare all the required reports within 60 90 days, the
19 committee may extend the time for preparation of a report to
20 a maximum of 90 120 days from the date a request is
21 received.

22 Section 4. Criteria for committee assessment. (1) The
23 applicant shall demonstrate to the committee and if
24 necessary furnish additional information requested by the
25 committee to show that:

1 (a) the unregulated practice of the occupation or
2 profession creates a direct, immediate hazard to the public
3 health, safety, or welfare;

4 (b) the scope of practice is readily identified and
5 easily distinguished from the scope of practice of other
6 professions and occupations;

7 (c) the occupational or professional group has an
8 established code of ethics, a voluntary certification
9 program, or other measures to ensure a minimum quality of
10 service;

11 (d) practice of the occupation or profession requires
12 specialized skill or training, and nationally recognized
13 standards of education and training exist;

14 (e) the proposed qualifications for obtaining a
15 license are justified;

16 (f) the public will benefit from the proposed
17 regulation of the occupation or profession;

18 (g) public support for the proposed licensure exists;

19 (h) licensing will not significantly increase the cost
20 of services to the public; and

21 (i) no other board licenses a similar or closely
22 related occupation or profession.

23 (2) In assessing the merits of the proposal for a new
24 licensing board, the committee shall evaluate the
25 applicant's information for each of the factors listed in

1 subsection (1) and in addition determine:

2 (a) the number of existing practitioners and the
3 approximate number of people who would be licensed in the
4 future;

5 (b) the number of people who are likely to use the
6 services of the occupation or profession;

7 (c) the manner and degree of improved quality of
8 service;

9 (d) the degree to which licensing will facilitate
10 clients' access to reimbursement for government assistance
11 programs;

12 (e) whether a substantial majority of the public has
13 the knowledge or experience to evaluate the practitioner's
14 competence;

15 (f) whether the public can effectively be protected by
16 other means; and

17 (g) whether licensing will:

18 (i) significantly increase the cost of goods and
19 services provided by the occupation or profession;

20 (ii) adversely affect the scope of practice of other
21 professions and occupations, whether regulated or not; or

22 (iii) exclude existing practitioners or otherwise
23 reduce the number of practitioners in Montana.

24 (3) The committee shall consider in its assessment
25 each of the factors in subsections (1) and (2) and shall

1 include in its final report specific findings with respect
2 to each of those factors.

3 Section 5. Procedure. (1) The committee shall adopt an
4 appropriate form for use by applicants, containing a copy of
5 [sections 1 through 6 7] and requiring applicants to list:

6 (a) proposed qualifications of licensed practitioners;

7 (b) disciplinary procedures that would be applied to
8 practitioners;

9 (c) proposed requirements for continuing education, if
10 any; and

11 (d) the information required by [section 4].

12 (2) After the committee has initiated its review under
13 [section 3], it may request any additional information it
14 considers necessary to complete its assessment of the
15 proposal.

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

18 (4) At least ~~10~~ 21 days before its final report is
19 presented to the legislature, the committee shall provide an
20 opportunity for the applicant to review a preliminary draft
21 of the report and prepare a response. The committee shall
22 consider all responses in preparing its final report.

23 (5) At least one copy of the final report must be kept
24 on file with the legislative council; AUDITOR and made
25 available for public inspection.

1 SECTION 6. APPLICATION FEE. AN APPLICATION FOR REVIEW
2 UNDER [SECTION 3] MUST INCLUDE AN APPLICATION FEE
3 ESTABLISHED BY THE COMMITTEE IN AN AMOUNT NOT TO EXCEED
4 \$6,500. THE FEE MUST BE USED BY THE COMMITTEE TO PAY THE
5 COST OF THE REVIEW, AND ANY UNUSED PORTION MUST BE REFUNDED
6 TO THE APPLICANT.

7 Section 7. Consolidation of existing boards. Any
8 person or organization may propose consolidation of two or
9 more existing boards. The provisions of [sections 2 through
10 5 6] apply to such a proposal, except that:

11 (1) the committee shall designate a representative of
12 each of the occupations or professions regulated by the
13 licensing boards proposed for consolidation, and each
14 representative must be treated as an applicant for purposes
15 of [sections 2 through 5 6]; and

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

21 (a) the proposed consolidation;

22 (b) continuation of the existing licensing boards; or

23 (c) a modification of the proposed consolidation.

24 Section 8. Boards or licensing functions instituted by
25 initiative. (1) If an initiative to establish a new

1 licensing board or to add a new licensing responsibility to
2 the duties of an existing licensing board is approved by the
3 electorate, the committee shall:

4 (a) review the initiative to assess the degree to
5 which it meets the criteria in [section 4(1)];

6 (b) request sufficient information from practitioners
7 or other persons to make the determinations required by
8 [section 4(2)]; and

9 (c) evaluate the initiative in terms of:

10 (i) clarity and conciseness;

11 (ii) conformity to existing statutes and principles of
12 administrative law; and

13 (iii) specificity of the delegation of authority to
14 promulgate rules and set fees.

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

17 (a) the committee's findings with respect to each of
18 the criteria in [section 4];

19 (b) an estimate of the cost to the state of licensing
20 the occupation or profession and a proposed schedule of fees
21 that will cover the cost of the licensing program as
22 required by 37-1-134;

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

25 (d) if amendments are recommended, a legislative

1 proposal.

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

6 Section 9. Legislative audit committee report required
7 with licensing bills. A legislative audit committee report
8 provided for in [section 3] must be attached to any bill
9 reported out of a committee of the legislature that proposes
10 to:

11 (1) establish a new occupational or professional
12 licensing board as defined in [section 2];

13 (2) initiate a legislative or executive department
14 study of the need for a new occupational or professional
15 licensing board;

16 (3) add a-new-licensing-responsibility to the duties
17 of an existing licensing board RESPONSIBILITY FOR LICENSING
18 ANOTHER OCCUPATION OR PROFESSION; or

19 (4) consolidate two or more existing licensing boards.

20 Section 10. Codification instruction. (1) Sections 1
21 through 7 8 are intended to be codified as an integral part
22 of Title 2, chapter 8, and the provisions of Title 2,
23 chapter 8, apply to sections 1 through 7 8.

24 (2) Section 8 9 is intended to be codified as an
25 integral part of Title 5, chapter 4, and the provisions of

1 Title 5, chapter 4, apply to section 9.

2 Section 11. Applicability. This act applies to
3 proposals for new licensing boards or consolidation of
4 licensing boards considered by the legislature after June
5 30, 1987.

6 Section 12. Effective date. This act is effective July
7 1, 1987.

-End-

1 SENATE BILL NO. 138

2 INTRODUCED BY HAGER, NORMAN, WINSLOW

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH CRITERIA
5 AND PROCEDURES FOR ASSESSING PROPOSALS FOR NEW OCCUPATIONAL
6 AND PROFESSIONAL LICENSING BOARDS; PROVIDING FOR
7 CONSOLIDATION OF EXISTING BOARDS; ASSIGNING RESPONSIBILITY
8 FOR THESE FUNCTIONS TO THE LEGISLATIVE AUDIT COMMITTEE;
9 PROVIDING FOR AN APPLICATION FEE; AND PROVIDING AN A
10 RETROACTIVE APPLICABILITY DATE AND-AN-EFFECTIVE-DATE."

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

13 Section 1. Purpose. (1) The legislature finds that the
14 number of licensed occupations and professions has increased
15 substantially and that occupational and professional
16 licensing boards occasionally have been established without
17 a determination that the police power of the state is
18 reasonably exercised by establishing them or a determination
19 that existing licensing boards could provide the necessary
20 regulation.

21 (2) It is the intent of the legislature to improve its
22 ability to evaluate the need for new licensing boards by
23 establishing criteria and procedures for reviewing proposed
24 new occupational and professional licensing boards. To this
25 end it is a purpose of this part to ensure that no new

1 licensing board is established unless:

2 (a) the unregulated practice of the profession or
3 occupation directly and immediately endangers the public
4 health, safety, or welfare;

5 (b) practice of the profession or occupation requires
6 specialized skill or training, and nationally recognized
7 standards of education and training exist;

8 (c) a substantial majority of the public lacks the
9 knowledge or experience to evaluate whether the practitioner
10 is competent; and

11 (d) the public is not protected effectively by other
12 means.

13 (3) It is also a purpose of this part to allow for the
14 smallest number of licensing boards consistent with adequate
15 regulation of appropriate occupations and professions.

16 Section 2. Definitions. In [sections 2 through 7 8],
17 the following definitions apply:

18 (1) "Applicant" means the persons or organization
19 proposing state licensing for an occupation or profession.

20 (2) "Committee" means the legislative audit committee.

21 (3) "License" means a permit, certificate, approval,
22 registration, charter, or other form of permission required
23 by law as a condition of practicing a profession or
24 occupation.

25 (4) "Licensing" means a regulatory process that

1 includes but is not limited to the grant, denial, renewal,
2 revocation, suspension, annulment, withdrawal, limitation,
3 transfer, or amendment of a license.

4 (5) "Licensing board" means an office, position,
5 commission, or any other entity or instrumentality of the
6 executive branch of state government that is responsible for
7 licensing members of an occupation or profession.

8 Section 3. Committee review and report. (1) The
9 committee shall review and assess the merits of any proposal
10 to:

- 11 (a) establish a new licensing board;
12 (b) initiate a legislative or executive department
13 study of the need for a new licensing board; or
14 (c) add to the duties of an existing licensing board
15 responsibility for licensing another occupation or
16 profession.

17 (2) Any proposal subject to review under subsection
18 (1) must be submitted, in the form of a legislative
19 proposal, to the committee at least 90 180 days before the
20 first day of the next regular legislative session.

21 (3) The committee shall conduct the review required by
22 subsection (1) only if the proposal includes:

- 23 (a) a written request by a senator whose term will not
24 expire before the next regular legislative session or by a
25 senator or representative who is not opposed in the next

1 general election;

- 2 (b) the information required by [section 4(1)]; and
3 (c) a completed application as provided in [section
4 5].

5 (4) Within ~~60~~ 90 days after the proposal is received,
6 the committee shall prepare a DRAFT report to the
7 legislature for its next regular session. The report must
8 include but is not limited to:

- 9 (a) the committee's findings with respect to each of
10 the criteria in [section 4];
11 (b) an estimate of the cost to the state of licensing
12 the occupation or profession and a proposed schedule of fees
13 that will recover the cost of the licensing program as
14 required by 37-1-134; and

15 (c) the committee's recommendation as to whether the
16 profession or occupation should be licensed by the state.

17 (5) If the volume of requests makes it impossible to
18 prepare all the required reports within ~~60~~ 90 days, the
19 committee may extend the time for preparation of a report to
20 a maximum of 90 120 days from the date a request is
21 received.

22 Section 4. Criteria for committee assessment. (1) The
23 applicant shall demonstrate to the committee and if
24 necessary furnish additional information requested by the
25 committee to show that:

1 (a) the unregulated practice of the occupation or
2 profession creates a direct, immediate hazard to the public
3 health, safety, or welfare;

4 (b) the scope of practice is readily identified and
5 easily distinguished from the scope of practice of other
6 professions and occupations;

7 (c) the occupational or professional group has an
8 established code of ethics, a voluntary certification
9 program, or other measures to ensure a minimum quality of
10 service;

11 (d) practice of the occupation or profession requires
12 specialized skill or training, and nationally recognized
13 standards of education and training exist;

14 (e) the proposed qualifications for obtaining a
15 license are justified;

16 (f) the public will benefit from the proposed
17 regulation of the occupation or profession;

18 (g) public support for the proposed licensure exists;

19 (h) licensing will not significantly increase the cost
20 of services to the public; and

21 (i) no other board licenses a similar or closely
22 related occupation or profession.

23 (2) In assessing the merits of the proposal for a new
24 licensing board, the committee shall evaluate the
25 applicant's information for each of the factors listed in

1 subsection (1) and in addition determine:

2 (a) the number of existing practitioners and the
3 approximate number of people who would be licensed in the
4 future;

5 (b) the number of people who are likely to use the
6 services of the occupation or profession;

7 (c) the manner and degree of improved quality of
8 service;

9 (d) the degree to which licensing will facilitate
10 clients' access to reimbursement for government assistance
11 programs;

12 (e) whether a substantial majority of the public has
13 the knowledge or experience to evaluate the practitioner's
14 competence;

15 (f) whether the public can effectively be protected by
16 other means; and

17 (g) whether licensing will:

18 (i) significantly increase the cost of goods and
19 services provided by the occupation or profession;

20 (ii) adversely affect the scope of practice of other
21 professions and occupations, whether regulated or not; or

22 (iii) exclude existing practitioners or otherwise
23 reduce the number of practitioners in Montana.

24 (3) The committee shall consider in its assessment
25 each of the factors in subsections (1) and (2) and shall

1 include in its final report specific findings with respect
2 to each of those factors.

3 Section 5. Procedure. (1) The committee shall adopt an
4 appropriate form for use by applicants, containing a copy of
5 [sections 1 through 6 7] and requiring applicants to list:

6 (a) proposed qualifications of licensed practitioners;

7 (b) disciplinary procedures that would be applied to
8 practitioners;

9 (c) proposed requirements for continuing education, if
10 any; and

11 (d) the information required by [section 4].

12 (2) After the committee has initiated its review under
13 [section 3], it may request any additional information it
14 considers necessary to complete its assessment of the
15 proposal.

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

18 (4) At least ~~10~~ 21 days before its final report is
19 presented to the legislature, the committee shall provide an
20 opportunity for the applicant to review a preliminary draft
21 of the report and prepare a response. The committee shall
22 consider all responses in preparing its final report.

23 (5) At least one copy of the final report must be kept
24 on file with the legislative council ~~and~~ AUDITOR and made
25 available for public inspection.

1 SECTION 6. APPLICATION FEE. AN APPLICATION FOR REVIEW
2 UNDER [SECTION 3] MUST INCLUDE AN APPLICATION FEE
3 ESTABLISHED BY THE COMMITTEE IN AN AMOUNT NOT TO EXCEED
4 \$6,500. THE FEE MUST BE USED BY THE COMMITTEE TO PAY THE
5 COST OF THE REVIEW, AND ANY UNUSED PORTION MUST BE REFUNDED
6 TO THE APPLICANT.

7 Section 7. Consolidation of existing boards. Any
8 person or organization may propose consolidation of two or
9 more existing boards. The provisions of [sections 2 through
10 5 6] apply to such a proposal, except that:

11 (1) the committee shall designate a representative of
12 each of the occupations or professions regulated by the
13 licensing boards proposed for consolidation, and each
14 representative must be treated as an applicant for purposes
15 of [sections 2 through 5 6]; and

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

21 (a) the proposed consolidation;

22 (b) continuation of the existing licensing boards; or

23 (c) a modification of the proposed consolidation.

24 Section 8. Boards or licensing functions instituted by
25 initiative. (1) If an initiative to establish a new

1 licensing board or to add a new licensing responsibility to
 2 the duties of an existing licensing board is approved by the
 3 electorate, the committee shall:

4 (a) review the initiative to assess the degree to
 5 which it meets the criteria in [section 4(1)];

6 (b) request sufficient information from practitioners
 7 or other persons to make the determinations required by
 8 [section 4(2)]; and

9 (c) evaluate the initiative in terms of:

10 (i) clarity and conciseness;

11 (ii) conformity to existing statutes and principles of
 12 administrative law; and

13 (iii) specificity of the delegation of authority to
 14 promulgate rules and set fees.

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

17 (a) the committee's findings with respect to each of
 18 the criteria in [section 4];

19 (b) an estimate of the cost to the state of licensing
 20 the occupation or profession and a proposed schedule of fees
 21 that will cover the cost of the licensing program as
 22 required by 37-1-134;

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

25 (d) if amendments are recommended, a legislative

1 proposal.

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

6 Section 9. Legislative audit committee report required
 7 with licensing bills. A legislative audit committee report
 8 provided for in [section 3] must be attached to any bill
 9 reported out of a committee of the legislature that proposes
 10 to:

11 (1) establish a new occupational or professional
 12 licensing board as defined in [section 2];

13 (2) initiate a legislative or executive department
 14 study of the need for a new occupational or professional
 15 licensing board;

16 (3) add ~~a new licensing responsibility~~ to the duties
 17 of an existing licensing board RESPONSIBILITY FOR LICENSING
 18 ANOTHER OCCUPATION OR PROFESSION; or

19 (4) consolidate two or more existing licensing boards.

20 Section 10. Codification instruction. (1) Sections 1
 21 through 7 8 are intended to be codified as an integral part
 22 of Title 2, chapter 8, and the provisions of Title 2,
 23 chapter 8, apply to sections 1 through 7 8.

24 (2) Section 8 9 is intended to be codified as an
 25 integral part of Title 5, chapter 4, and the provisions of

1 Title 5, chapter 4, apply to section 9.

2 Section 11. Applicability. This act applies
3 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, to proposals
4 for new licensing boards or consolidation of licensing
5 boards considered by the legislature after June 30, 1987.

6 ~~Section 12--Effective date--This act is effective~~
7 ~~July 17, 1987.~~

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 6

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 138

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

- 1) Title, line 10
Strike: "AND AN EFFECTIVE DATE"
- 2) Page 11, lines 6 and 7
Strike: section 12 in its entirety

MA

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-9-87
DATE

14:30
TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 138

3rd reading copy (blue) as follows:
Color

PASSED

1) Page 11, line 2.

Following: "applies"

Insert: "retroactively, within the meaning of 1-2-109,"

ADOPT

REJECT

391430T.CW

Les Kitelman

Rep. Kitelman