

April 13, 2016

Representative Ryan Lynch, Chair
Economic Affairs Interim Committee
Montana Legislative Services Division
Helena, Montana 59620-1706

RE: SB390 —Interim Study of Department of Labor and Industry Fees

Dear Chairman Lynch and Members of the Economic Affairs Interim Committee:

I am writing to provide comment in regard to SB390 – Interim Study of Department of Labor and Industry Fees. Please accept the following comments:

CONSIDERATIONS FOR PROVIDING BASE FUNDING FOR THE BOARD OF SANITARIANS:

1. The Montana Legislature has determined it is in the public interest that sanitarians be licensed.

The Montana Legislature has determined that the sanitarian profession is to be licensed for public health and safety reasons. The legislature has placed the full cost of this professional licensing upon the licensees, with no general fund monies allocated to support this public protection. Just because a profession is small in number does not mean that the legislature's decision to require licensure is less valuable.

Licensing of sanitarians is in the interest of public health and safety. Registered sanitarians are part of the state's public health system. Licensing of this workforce is certainly in the best interest of public health and safety as a means to provide both an educational and ethical standard. A more complete discussion of this topic was provided to the Montana Department of Labor and Industry (DLI) during board review under the 2013 Legislature's HB 525.

2. The Department of Labor and Industry's method of determining and assigning charges for licensing boards is as fair and equitable as possible but has financial consequences for small boards.

The Department of Labor and Industry has provided testimony at your December 2015 meeting on why the current method to assign fees charged for board services, both direct and indirect, is the best possible method to fairly and equitably distribute the cost of professional licensing. I believe this is a reasonable effort to assure that fees are commensurate with services. However, as with any system, there are unforeseen and unintended consequences such as the high impact on small boards due to lack of economies of scale.

3. Licensed Sanitarians cannot simply increase business activity or increase charges to cover increases in license fees.

Licensed Sanitarians work primarily for local government and have modest salaries. Licensing fees are either paid by the individual sanitarian or by their government employers. Unlike many

professions, neither the sanitarian nor his/her employer has the ability to solicit additional business or increase charges for services in order to cover licensing fee increases.

4. The Board of Sanitarians has done everything possible at this time to address its weak financial position and maintain its licensing under current Montana law.

The Board of Sanitarians, as a very small group of 185* licenses and annual revenues of \$43,000, is struggling financially to maintain its professional licensing program. As a means to address its financial situation, the board has completed the following actions as advised by DLI staff:

- a. The Board increased its fees for 2016 from \$170/year to \$270/year. The Board was advised that this increase, the largest of the fee options presented by DLI staff to the Board, was projected to be adequate for a five-year period and would result in an ample reserve fund to provide for unanticipated expenses such as legal issues.
- b. At its December 2016 meeting, the Board voted to approve a policy as a means to allow DLI staff to process more license applications routinely without the Board meeting for this purpose. The goal of this policy is to both provide faster processing of applications and save the cost of additional Board meetings.

The Board revised its rules in order to increase licensing fees resulting in higher indirect costs. When the Board revised its rules in order to increase licensing fees, it paid for the direct cost of DLI attorney and staff time to facilitate the rule revision. This is understood and expected. However, such direct costs also increase the Board's percentage of indirect costs during a lookback period. While such increase in indirect costs is inconsequential for large boards, for small boards, such as the Board of Sanitarians, these charges have real negative impact in our financial projections.

5. Rule changes to update professional standards create a financial burden for small boards. All boards should be encouraged to periodically update their specific rules as a means to better protect public health and safety. Rule revisions are expensive, however, and are rarely undertaken without serious consideration of cost. Unfortunately, for small boards, not only are the direct costs of rule revisions high, but the resulting percentage of indirect costs adds to the cost burden of rule revision. Boards should have adequate financial support to keep their rules updated without overburdening the licensees.

6. Legislative mandates impact small licensing groups such as the Board of Sanitarians.

In spite of substantially increasing licensing fees for 2016, the Board of Sanitarians learned at its December 2016 meeting that its financial report was not entirely optimistic. The Board was charged by DLI for expenses unanticipated in our fee increase calculation. These expenses were due to attorney fees necessary to respond to a legislative mandate to update the rules governing DLI professional licensing programs. These were "indirect costs" based upon the overall services the department provided to our board.

While the actual cost amounts discussed above are inconsequential to many boards, to the Board of Sanitarians, the amounts are substantial expenditures that adversely impact our financial goal of having an annual licensing fee that will bring the board into a positive financial condition that will last five years and provide a reserve.

7. Addressing unprofessional conduct complaints is essential to licensing.

Such complaints can create serious financial burdens for small boards. A key purpose of licensing is to provide the public a means to address unprofessional practice. For small boards that have critical funding issues, such complaints can be financially crippling as they involved additional administrative and legal fees. While boards assess licensing fees that fund the cost of some complaints, complex cases can create a real hardship for small boards. If the board cannot afford the cost of the complaint, state laws allow for the license holders to be charged additionally beyond the annual licensing fee to cover legal costs.

It is critical small boards be adequately funded such that they are fully prepared to address complaints from the public regarding its license holders.

8. Combining licensing or licensing without a board is not in the best interest of public health.

The Department's report indicates that the economies of scale regarding licensing costs work well for large licensing groups to minimize costs. Taken to its logical conclusion, economies of scale would provide the greatest financial benefit if all 97,000 professional licenses were grouped together, charged one standard licensing fee, and oversighted by one entity.

However, such mega-structure does not serve the public health and safety of Montana. Specific professional licensing boards are the best means to manage the specific standards of each profession. This is true whether the board has 22,000+ licenses such as the Board of Nursing or whether the board is small such as the Board of Sanitarians with its 185 licenses. Only the individual board has the expertise to address the standards and performance of its licensees in an optimal way. Therefore, the option of combining of boards that are unrelated or licensing administration without a board only to improve a board's finances does not serve the public health and safety of Montana.

In comparison with the licensed professionals we most closely associate with, our fees at \$270.00 are very high. Nurses (22,000+ licenses) pay \$100/2years; professional engineers and land surveyors (2,000+ licenses) pay \$50.00/2 years.

As your committee concludes its work, I urge you to recommend to the 2017 Montana Legislative Session that base funding be made available to the Montana Board of Sanitarians in a formula and amount that will establish and maintain a licensing fee that is more comparable with our professional colleagues.

Thank you for your consideration of the above comments and for your work on this interim study.

 - Josh Juarez, RS

Josh Juarez, RS
Billings, MT