

## SJR 35 Survey Preliminary Results

The study plan for Senate Joint Resolution 35 proposed a survey of licensees, board members, staff at the Department of Labor and Industry that work with boards, and other interested persons to determine their perceptions of various aspects of boards.

The questions in the survey related directly, or sometimes indirectly, to the SJR 35 requests for an interim study of professional and occupational licensing boards that would:

- "examine the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety" and
- "study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety".

The study also is to:

- address jurisdictional disputes between boards and propose ways to resolve the disputes;
- review board membership regarding the balance of public and professional and occupational membership and the impact of membership on public protection;
- address the role of a board's rulemaking authority and rulemaking oversight to determine if changes are needed to better implement legislative intent and the extent that boards, rather than the department, handle rulemaking;
- provide policy considerations for the Legislature to use in considering whether to create new boards; and
- involve interested parties.

The survey addressed boards, licensing and regulation in general rather than having questions on specific boards. There were problems with the survey. For example, an attempt to provide different sections for board members, licensees, and interested parties may have created some confusion because the directions may have led some people to skip sections. The number of responses to each section, however, indicates that many people responded as they saw fit regardless of directions. See Appendix I for a copy of the survey, Appendix II for the overall responses, Appendix III for specific responses to the question asking respondents to list up to three issues they wanted to be addressed in the SJR 35 study, and Appendix IV for explanations on methodology and discrepancies. A majority of the 928 respondents answered Section A. Section B(1) was for board officers. Section B(2) was for licensees. Section C was for all respondents.

Approximately 65,000 licensees were notified of the survey by postcard. Other potential respondents were informed by public service announcements on community television or by radio, newsletters, and word of mouth. Given the broad reach of the survey and the impossibility of knowing the base of potential respondents, the survey cannot be used for scientific or statistically significant purposes. The number of responses, in terms of contacts made, was a low 928. The low number of responses may have been, in part, because people were asked to give their names, phone numbers, and locations as a way of determining if people submitted

more than one survey or made-up names. Typically, responses increase with anonymity. Why people did not participate is unknown. Also, some people had concerns about survey questions being overly broad and black and white (in terms of yes-and-no questions) and exhibiting what they perceived as bias. It is not clear if some people did not return the survey based on those types of concerns. Similarly puzzling is the less than one-third return by the 33 people who were willing to send in a self-addressed, stamped envelope to obtain a survey but then did not return the survey. (Only 10 of the 33 people who sent envelopes returned the survey.)

Getting feedback from those who said they "rarely to never" provided feedback to a board was a positive result, given that a plurality answered that way. One respondent noted that he doesn't respond unless asked. In this respect, the survey apparently provided a way for some licensees to give input when they said that they seldom do or seldom are asked. This comment also highlighted for further review the responsiveness of boards and department to the public. See comments under Public Information /Input in Appendix III.

Tallied, unanalyzed results are available in Appendix II with the caveat that the responses are a snapshot of viewpoints, with debatable significance. Despite qualifications about the survey, some results appear significant and are reviewed below under "Survey findings". These cover:

- the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety, and
- whether consolidating boards and providing subgroups within boards would increase the cost efficiencies and governance efficiencies while protecting the public safety.

Other intents of the survey were less clear or less constructive, either because the questions did not relate directly or because answers were difficult to quantify. Components will be addressed under the heading "Survey Intent".

### **Survey findings**

As stated above, the directions on the survey may have confused some people. With that caveat, the survey still provided some clear consensus. Those where opinion differed the most were:

- whether a public member is needed as part of the disciplinary review panel;
- whether a multispecialty board requires more than one representative per specialty;
- whether regulation of the title (not the practice) of a profession protects the public;
- whether a scope of practice should be set by statute or by rule;
- whether a single specialty board should be merged with another specialty if a multispecialty board resulted in lower fees; and
- whether some other criteria than "sunset" laws should be used to dissolve a board.

The strongest response in the survey (more than 90% of all respondents) was to the question: "should everyone in a discipline be licensed?" The resounding "yes" reflected 91.04% of the big

board<sup>1</sup> respondees, 95.29% of the small board respondees, and 90.83% of the interested parties that responded. Several people who submitted additional comments urged that more professions and occupations be licensed. One person disliked the survey because she felt there was an inherent bias toward licensing, which she felt is unnecessary.

The following findings are not in the order of the survey but are presented as they relate to the survey's study areas. Findings are differentiated by group (big or small board or interested party), with top responses shaded for each. The percentage reflects the percentage of respondents within each group (not the total number of respondents). The total number of big board responses was 670. Small board responses numbered 170. Interested party responses were 218.

**I. An examination of "the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety"**

**(A) -- Question A(1)**

| <b>What are the main benefits of a licensing board?<br/>(More than one answer can be marked.)</b>  | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|--|------------------|--------------------|-------------------------|
| credentialing  | 63.13%           | 61.76%             | 69.27%                  |
| discipline   | 52.39%           | 42.94%             | 67.43%                  |
| knowledgeable assistance for continuing education  | 32.84%           | 28.82%             | 41.28%                  |
| limitations on competition   | 7.01%            | 5.88%              | 9.17%                   |
| protection of public health and safety   | 65.07%           | 55.29%             | 75.69%                  |
| consumer protection  | 58.51%           | 51.76%             | 65.60%                  |
| other  | 5.67%            | 5.88%              | 10.09%                  |
| <b>Summary of Question A(1)</b><br>Protection of public health and safety dominated responses on the question of the appropriate role of boards in general, although small board respondents emphasized credentialing, which were close seconds for other respondents. |                  |                    |                         |

**(B) -- Question A(2)**

| <b>Do you think licensure, in general, limits competition inappropriately</b> | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|---|------------------|--------------------|-------------------------|
| Yes   | 5.22%            | 4.71%              | 10.09%                  |
| No  | 73.73%           | 68.82%             | 77.52%                  |

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<sup>1</sup>Staff arbitrarily separated boards or programs into "big boards" if they had 1,000 or more licensees or "small boards", those with less than 1,000 licensees. See the last page of the survey results (Appendix II) for the division of large and small boards/programs.

**Summary of Question A(2)**

A majority said licensure did not limit competition inappropriately. Compare the "yes" answers to this question and the responses to Question (A)(1) above and note that a slightly larger percentage saw limiting competition as a role of boards.

**(C) -- Question A(3)**

| Do you think a board's activities, in general, help to ensure public health or safety? | Big Board | Small Board | Interested Party |
|--|-----------|-------------|------------------|
| Yes  | 74.03%    | 67.06%      | 81.65%           |
| No   | 5.52%     | 5.29%       | 5.96%            |

**Summary of Question A(3)**

More people responded to this than answered the above question regarding main benefits of a board -- emphasizing ensuring public health or safety as a role of boards.

**(D) -- Question A(4)**

| Do you think licensure by a board enhances the credibility of a profession? | Big Board | Small Board | Interested Party |
|---|-----------|-------------|------------------|
| Yes   | 74.48%    | 67.06%      | 82.57%           |
| No  | 4.78%     | 5.88%       | 4.59%            |

**Summary of Question A(4)**

Credibility and credentialing have some similarities--and most respondents appeared to feel a board gives credibility to an occupation/profession.

**(E)(a) -- Question(C)(1)**

| Should everyone practicing in a given discipline be licensed if a licensing process exists for that discipline? | Big Board | Small Board | Interested Party |
|---|-----------|-------------|------------------|
| Yes   | 91.04%    | 95.29%      | 90.83%           |
| No  | 7.46%     | 4.12%       | 8.26%            |

See summary in (E)(b) below.

**(E)(b) -- Question(C)(2)**

| Does regulation of the use of a specific title protect public health and safety if people can engage in a practice associated with the title if they don't use the title? (see note below) | Big Board | Small Board | Interested Party |
|--|-----------|-------------|------------------|
| Yes  | 39.70%    | 36.47%      | 43.58%           |
| No   | 53.73%    | 55.88%      | 49.54%           |

**Summary of Questions C(1) and C(2)**

Question C(2) is related to C(1), which indicated overwhelming support for everyone in a discipline be licensed to practice of a licensing process exists. The question in C(2) indicates that most respondents feel regulation of a title, not the practice, does not protect public health and safety. The relatively split responses to C(2) suggest that the answers to this question are difficult to assess.

**Note:** Some people had problems with the wording of question C(2), which seeks to differentiate between regulation of the use of a title and regulation of a profession through licensing. One of the few boards that requires a license mainly for the use of a title is the Board of Landscape Architects. People who call themselves landscape designers might do the same type of work as a landscape architect, but they may not use the title of landscape architect without being licensed by the board.

**II. Study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety.**

Asked of all respondents were the following questions related to board consolidation. As noted by some respondents, the questions do not propose other alternatives to consolidation.

**(A) -- Question C(5)**

| <b>If a single specialization board resulted in higher application/licensing fees, would you prefer a multispecialization board if that would lower fees?</b> | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|---|------------------|--------------------|-------------------------|
| Yes   | 48.66%           | 46.47%             | 47.71%                  |
| No  | 48.51%           | 51.76%             | 49.08%                  |
| <b>Summary of Question C(5):</b><br>The closeness of the answers indicates no preference for a multispecialization board just to lower fees.                  |                  |                    |                         |

**(B) -- Question C(6)**

| <b>Should there be a process for combining boards based on: (may mark more than one)</b>   | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|--|------------------|--------------------|-------------------------|
| similarities of function   | 64.18%           | 67.06%             | 66.97%                  |
| cost efficiencies  | 26.42%           | 25.29%             | 32.57%                  |
| dual licensing (overlapping scope of practice)   | 58.36%           | 62.94%             | 58.26%                  |
| line of authority or supervision by one discipline of another  | 28.81%           | 22.35%             | 31.19%                  |
| <b>Summary of Question C(6):</b><br>The responses to this question indicate there might be more willingness to combine boards if functions are similar or if there is dual licensing or overlapping scopes of practice than just for cost-savings as implied by. |                  |                    |                         |
| This question also addressed one of the related SJR 35 requests:   |                  |                    |                         |
| <ul style="list-style-type: none"> <li>to determine criteria for whether two or more professions' interests could be handled by a joint board.</li> </ul>  |                  |                    |                         |

### III. Survey intent

The stated intent of the survey, in addition to examining the appropriate role of boards and attitudes toward consolidation--both discussed in the previous section, included determining:

- criteria for professionals currently not represented by a board for creating a board or some other mechanism to handle licensing and discipline;
- the expected role of the department to which a board is administratively attached; and
- other key issues as proposed by respondents.

As mentioned above, the design of the survey resulted in most people answering Section A, which referred to general attitudes about the benefits of a board. Either through emails or in the "key issues" section at the end of the survey, various respondents criticized the survey for being biased toward retaining boards. These criticisms are reflected, in part, in the summary of philosophical questions listed in Appendix III. The philosophical questions asked, for example, whether licensing boards actually protect public health, safety, and welfare, or whether their economic impact adversely affects poor people (by limiting competition, for example) or violate economic freedom (to practice an occupation if licensing is mandatory).

#### ***Criteria for creating or retaining a board or other mechanism for licensing/discipline***

The philosophical questions asked in the "key issues" part of the survey echo past "sunrise" and "sunset" questions intended to determine board viability. As stated in the now-repealed 2-8-204, MCA, these include--in order to create or retain a board--a demonstration that:

- the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;
- the scope of practice is readily identifiable and easily distinguished from the scope of practice of other professions and occupations;
- the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
- practice of the occupation or profession requires specialized skill or training, and national recognized standards of education and training exist;
- the proposed qualifications for obtaining a license are justified;
- the public will benefit from the proposed regulation of the occupation or profession;
- public support for the proposed licensure exists;
- licensing will not significantly increase the cost of services to the public; and
- no other board licenses a similar or closely related occupation or profession.

Survey responses regarding criteria most important for creating a board yielded an emphasis on the importance of a board for addressing public health and safety through licensing. Consumer protection, sometimes considered equivalent to public welfare, drew a majority of responses in terms of licensing but not disciplinary regulations. Also drawing a majority of responses for all but small boards was the criteria for addressing public health and safety through disciplinary

measures. Several people felt that the licensing and discipline questions should be combined. Respondents could select only three choices.

**(A) Questions (C) (7 through 13)**

| <b>What criteria are most important to meet when legislatively creating a board (mark three 'yes' at most)</b> | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|--|------------------|--------------------|-------------------------|
| 7) --addresses public health or safety through licensing?  | 83.73%           | 76.47%             | 79.36%                  |
| 8) --addresses public health or safety through disciplinary regulation?  | 54.33%           | 40.59%             | 54.13%                  |
| 9) --addresses consumer protection through licensing?  | 58.36%           | 62.94%             | 54.13%                  |
| 10) --addresses consumer protection through disciplinary regulation?   | 26.12%           | 24.12%             | 22.94%                  |
| 11) --provides practitioner with credentials, for example, to bill through insurance?                          | 18.21%           | 24.12%             | 22.94%                  |
| 12) --provides practitioner with means to regulate the profession or occupation?                               | 38.66%           | 45.88%             | 37.61%                  |
| 13) --other? (Please provide short description in space provided)*   | 2.69%            | 4.71%              | 3.21%                   |

\*Among the responses to "other" were a comment by one person who clicked only that answer and said private organizations are already providing protection so that licensing is not needed. Another person put "quality control" is most important for assuring licensees are qualified. Another said "Protect public and licensee by not allowing just anyone noneducated to do specific tasks in a field". Another said "public input". Another noted "all of the above". One said that a board provides a hiring facility with the means to check on an applicant's credentials and history.

***Expected role of the department to which the board is administratively attached***

No definitive analysis is possible for this objective (based on questions (2) through (5) in Section B-2), whether because the questions were unclear or because many of the respondents were not clear about responsibilities of the department vis-a-vis the board. Several persons who filled out paper copies, when contacted regarding reasons they didn't respond to questions on whether the board or the department should handle licensing or discipline, noted the difficulty of responding generally. One licensee said he has had no problem renewing his license and was unsure whether the department or the board handles that.

The answers to Section B-1, asked of board members, cannot be considered definitive. For example, there were a number of "interested party" responses in Section B-1, when in theory no interested party would be a "member of a board". Among the responses from big boards and small boards to questions regarding the frequency of meetings and the frequency of rule review, there was a Goldilocks "just right" feel. However, questions regarding board attorneys-- questions B-1 (3 through 5)--indicated a possible need for further study. The "key aspects" fill in the blank question at the end of the survey also yielded comments regarding board attorneys. For example, both under Board/Department Issues in Appendix III and "Other", were comments

about board attorneys helping and not hindering enforcement, encouraging permission for boards to hire attorneys and questions about the quality of legal representation of the boards. Among the issues that might underlie the responses is a concern that board attorneys are hired by the department and are not seen as working for the board. Whether that makes any difference also should be considered if this issue receives further study.

**Other survey objectives**

The survey also indicated the need for criteria to determine whether two or more professions' interests could be represented by a joint board and "key issues" perceived by licensees and others that should be included in the SJR 35 study. The study itself also is intended to:

- address jurisdictional disputes between boards and propose ways to resolve the disputes;
- review board membership regarding the balance of public and professional and occupational membership and the impact of membership on public protection;
- address the role of a board's rulemaking authority and rulemaking oversight to determine if changes are needed to better implement legislative intent and the extent that boards, rather than the department, handle rulemaking;
- provide policy considerations for the Legislature to use in considering whether to create new boards; and
- involve interested parties.

**Cross-jurisdictional issues**

Several responses (outside of the survey) indicated a desire to look at cross-jurisdictional issues in relation to scope of practice. The parts of the survey related to cross-jurisdictional issues give no clear indication of ways to resolve disputes or that disputes are even a problem, most likely because the questions are not appropriate or specific. The questions dealing with the issue are those asked of board members in Section B-1 regarding subjects overlapping with another board and questions for all licensees and board members in Section B-2 regarding types of representation on multispecialty boards. The few responses in Section B-1 offered no clear approach to dealing with overlapping subject areas. The responses in Section B-2 to questions on representation on multispecialty boards are interesting for the varied responses from big boards and small boards, with small boards strongly voicing a need for each specialty to be represented on a board and not favoring a limit of 1 per specialty per board. The interested party response is not significant in this area because respondents were directed to Section C; section B-2 was intended just for current licensees. For that reason, interested party responses are not included in the analysis.

**(B) Questions (B2) (13 through 15)\***

| 13) If a board represents several specializations, does a representative of each specialization need to be on a board? | Big Board | Small Board |
|--|-----------|-------------|
| Yes  | 56.57%    | 71.18%      |
| No   | 10.15%    | 7.06%       |



|   |        |        |
|---|--------|--------|
| <b>14) If a board represents several specializations, should the board's structure or membership prohibit more than one representative of each specialization?</b>  |        |        |
| Yes   | 14.93% | 21.18% |
| No  | 51.79% | 56.47% |
| <b>15) If a board represents several specializations, should the board's structure or membership require more than one representative of each specialization?</b>   |        |        |
| Yes   | 25.82% | 31.18% |
| No  | 39.70% | 45.29% |
| <p><b>Summary of Questions (B2)(13 through 15)</b><br/> Small board respondents emphasized the importance of having one member of each specialty on a multispecialization board. Neither respondents for big or small boards favored limiting a specialization to more than one representative. Question (15) did not generate much enthusiasm pro or con for mandating more than one representative. The strong preference indicated here is for at least one representative of each specialization.</p> |        |        |

\*As mentioned above, Interested Parties are not represented here because the directions in the survey sent them to Section C. Although some did respond, no answer received 50% or more of all interested party respondents.

Under the "key issues" responses, suggestions for dealing with cross-jurisdictional disputes included an exploration of the history of "turf" problems and the use of creative solutions that revolve around the consumer's right of access to services. One critique of the survey from the Business League for Massage Therapy & Bodywork (BLMTB) suggested that the turf issue needs to be examined in relation to scope of practice issues. The letter from BLMTB referenced a 1995 report by the Pew Health Professions Commission and said "granting some professions broader scope while limiting others causes those with the broad scope to protect their turf".<sup>2</sup> Other "key issues" responses regarding scope of practice suggested considering national scope of practice guidelines and reviewing the potential for boards to "creep" into other fields of practice if they set scope of practice by rule instead of statute defining it.

**Board membership, including public membership**

Survey questions regarding the balance of public to professional and occupational membership were in two places under Section B-2. The first, which asked about having public members on disciplinary panels, did not generate more than 50% responses by any group either for or against. In fact, the responses were nearly even for big board members who voted 34.78% in favor of public members on disciplinary panels and 32.09% not in favor. For small boards, the percentage in favor was 45.88% compared to 31.76% not in favor. The public board member generally sits on either a screening panel or the disciplinary panel or both to represent the consumer. The lack of enthusiasm, and a concern expressed by some respondents that the public member is not involved in the profession or occupation, raises a question of whether

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<sup>2</sup>Letter from the Business League for Massage Therapy & Bodywork to the Economic Affairs Committee, August 16, 2005.

boards make clear the role of the public member or how boards perceive that they are addressing consumer protection or public health, safety, or welfare.

A question more specifically aimed at the ratio of public members to specialists on boards yielded a definite preference for boards in which specialists outnumbered the public members. Given that interested parties were asked to skip to Section C, their responses are not included here but can be viewed in Appendix II.

**(C) Question B2(11)**

| 11) Should the equivalent ratio of public members to specialized members be (mark one):  | Big Board | Small Board |
|--|-----------|-------------|
| 1 to 1   | 3.73%     | 2.35%       |
| 1 public member to 2 or 3 specialists  | 55.82%    | 67.06%      |
| 2 or 3 public members to 1 specialist  | 3.43%     | 4.71%       |
| <b>Summary of Question (B2)(11)</b><br>Both big and small boards showed a definite preference for specialists outnumbering public members on boards. |           |             |

There were two questions (B2 Questions 9 and 10) that would suggest a limit to the size of boards based on whether there should be a maximum number of board members and whether there should be a link between the number of licensees and the number of board members. Majorities of respondents favored a maximum number of board members--62.84% of big board respondents, 70.59% of small board respondents, and 52.29% of interested party respondents. The question regarding the relationship between board size and licensee numbers yielded no majority "yes" or "no" response, although those not in favor of a relationship outnumbered those in favor. If board consolidation is a factor, board size could impact the ratio of public members to specialists.

A rather unrelated question, except as it pertains to the question of why any person (not just a public member) might be interested in sitting on what basically is a volunteer board, is whether budgeted travel by a board member is justified (for example to a national meeting of specialists). A majority of both big and small board respondents said "yes".

**Rulemaking authority and oversight**

The two questions related to rulemaking generally sought to distinguish between statutes and rules, but a spot check of respondents indicated problems with the questions. "It depends" was apparently a preferred answer. Those who called to determine the intent of the questions were told that they related to whether statutes should be general or specific as to licensing criteria and scope of practice. Statutes, as set by the Legislature, often are more difficult to change than rules. Statutes provide the authority for board action and can be either general or specific. Rules are somewhat easier to change but are subject to board interpretation that may go beyond legislative intent. The survey did not address how the boards--rather than the

department--handle rulemaking, although the issue may be addressed under the policy choices related to administrative attachment by boards and the questions raised about board attorneys' roles.

**(D) Questions C(3 and 4)**

| <b>3) Which do you prefer: licensing criteria set by statute and further defined by a board or licensing criteria set by rule and not in statute?</b>   | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|---|------------------|--------------------|-------------------------|
| Statute and Rule  | 74.18%           | 67.65%             | 77.52%                  |
| Rule not Statute  | 22.39%           | 22.35%             | 18.81%                  |
| <b>4) Should scope of practice be set by statute or by rule?</b>  |                  |                    |                         |
| Statute   | 51.49%           | 41.18%             | 51.38%                  |
| Rule  | 43.13%           | 47.65%             | 42.20%                  |
| <p><b>Summary of Questions (C)(3 and 4)</b><br/>           All respondents favored licensing criteria being set by statute and further defined by rule, which is generally what happens now. As for scope of practice being set by statute or by rule, comments were mixed. Definition sections in statutes generally define the practice of x, y, or z, with other statutes providing boards more authority for specifics.</p> |                  |                    |                         |

**Policy considerations for new boards**

The survey in general incorporates policy considerations for new boards with questions regarding the main benefits of licensing boards and board membership. However, the survey does not deal with issues related to whether a board is appropriate for all disciplines or whether licensing and discipline by the department may be more appropriate. The "key issues" section of the survey provides some insight into policy issues that might be considered in relation to new boards.

Among the philosophical questions relating to creation of new boards are:

- when is a board needed or not needed;
- who best performs the licensing function;
- how to avoid limits on the profession with licensing/regulation; and
- how to address overlapping roles of professionals?

The following issues reflected in Appendix III, key issues, pertain to new boards as well as existing boards:

- various questions related to board budgets;
- costs of licensing;
- staffing;
- board functions and board authority;
- validity and value of public members on boards;
- autonomy of board members;
- board interactions with the public and with licensees.

Two of the questions in the survey relate to the interaction with licensees by boards and the department to which boards are administratively attached. As noted in the first part of this report, a plurality of those answering "rarely to never" provided feedback frequency. The numbers were 38.66% for big board respondents, 38.24% for small board respondents, and 24.77% for interested parties. Highlighting the difficulty of determining the best method of communication were the low percentages for most forms of communications, except for newsletters. Respondents could select only one option, and newsletters--the first on the list--had the most responses with 36.27% of big board respondents, 23.53% of small board respondents, and 20.18% of interested parties. The questions are relevant for determining policies and criteria for new boards in that they indirectly address the role of boards and how much boards interact with licensees. For further policies related to new boards, see the report *Board ABCs*, published by the Legislative Services Division in draft form, August 2005.

**Policy considerations for dissolving boards**

Not included within the objectives of the survey but serving as a bookend to board creation were questions related to dissolution of boards. A majority of respondents generally saw no reason to dissolve a board based on failure to set fees adequate for budgets or lack of complaints or other indications that the public is at risk because of the way a profession or occupation is practiced. They generally favored sunset provisions, although respondents from small boards had no clear preference for sunset provisions. Given a choice of choosing criteria other than a sunset provision, slightly more than one-third of respondents in each group said "no", perhaps indicating that no dissolution is preferred.

**(E) Questions C(14 through 16)**

|   | <b>Big Board</b> | <b>Small Board</b> | <b>Interested Party</b> |
|---|------------------|--------------------|-------------------------|
| <b>14) Should there be a process for dissolution of a board based on board failure to set fees that are adequate to meet budgets?</b>                                   |                  |                    |                         |
| Yes   | 23.13%           | 19.41%             | 23.39%                  |
| No  | 57.31%           | 60.00%             | 56.88%                  |
| <b>15) Should there be a process for dissolution of a board based on no complaints or other indication that public safety is at risk?</b>                               |                  |                    |                         |
| Yes   | 33.28%           | 22.35%             | 33.94%                  |
| No  | 51.49%           | 60.00%             | 51.83%                  |
| <b>15) Should there be a process for dissolution of a board based on a sunset provision (requiring periodic review to determine if certain criteria are being met)?</b> |                  |                    |                         |
| Yes   | 61.19%           | 48.24%             | 58.72%                  |
| No  | 28.51%           | 37.65%             | 34.12%                  |

**Summary of Questions (C)(14 through 16)**

Only one choice, among those given, found favor as a process to dissolve a board and that was the use of a sunset provision. A majority of big board and interested party respondents but only a plurality of small board respondents found a sunset provision to be acceptable for dissolving a board.

**Involving interested parties**

Interested parties to date have included either people with legislation that failed to pass in the 2005 Legislature and who had been on email lists related to the legislation or people who learned about the survey from various sources. The survey included 218 interested parties, among them staff in the Department of Labor and Industry as well as potential licensees. The survey is only one aspect of involving interested parties. SJR 35 also has a work group of 155 people interested in the study. The work group will be asked to develop more detail on any policy approaches of interest to the Economic Affairs Interim Committee.

## **Appendix I: Survey for SJR 35 Study of Professional and Licensing Boards**

The Legislative Council assigned to the Economic Affairs Interim Committee a study of professional and licensing boards, requested in Senate Joint Resolution 35. The draft study plan calls for a survey of interested parties to determine:

- criteria for professionals currently not represented by a board for creating a board or some other mechanism to handle licensing and discipline;
- the expected role of a board as a state-endorsed entity that serves professionals and other citizens by licensing and providing disciplinary action as a way of protecting citizens and the profession;
- the expected role of a department to which a board is administratively attached;
- criteria for determining whether two or more professions' interests could be handled by a joint board; and
- key issues that the study and Economic Affairs Interim Committee need to address from the perspective of board members and interested parties.

Approximately 90,000 people are represented or licensed by boards in Montana. The Economic Affairs Interim Committee would like to hear from licensees and others through this survey.

We ask that you give your first and last names, the city and state in which you live, and board-related information or other area of interest. The reason for this information is to prevent as far as possible one person from answering the survey more than once and to use the survey to determine which issues are most relevant for the various groups. Responses from non-Montanans will not be compiled. Name, address, and phone number are for verification only and will not be stored with survey data.

**Please fill in the personal information requested below:** (\*denotes required information)

\*Name (First and Last):

\*City:

\*State:

Work, Home or Cell Phone (10 digits e.g. XXX-XXX-XXXX):

If you are currently licensed by a board or a program, please use the pull-down list to specify which one.

If you are an interested party, please use the pull-down list to specify your interest area.

**Please answer the following questions.**

Answer the following questions as appropriate. Some are for professionals not currently regulated by a board. Some are specific to board members. Some are for board members and all licensees.

**Are you a current or a former board member of a professional, occupational, or licensing board?**

Y N If you answer "Y" to this question, skip to Section B.

**Section A**

**For members of a profession or occupation not licensed by a board:**

What are the main benefits of a licensing board? (more than one can be marked)

- .... credentialing
- .... discipline
- .... knowledgeable assistance for continuing education
- .... limitations on competition
- .... protection of public health or safety
- .... consumer protection
- .... other \_\_\_\_\_

Do you think licensure by a board, in general, limits competition inappropriately? Y

N

Do you think a board's activities, in general, help to ensure public health or safety? Y

N

Do you think licensure by a board enhances the credibility of a profession? Y

N

***Please go to Section C.***

**Section B**

**(1) For persons who were or are a board member:**

In your opinion, does your board meet (mark one)

- .... too frequently
- .... as necessary
- .... too little?

How often does the board on which you serve review administrative rules?

- .... once a year
- .... more than once a year
- .... board does not adopt rules
- .... on a fixed schedule throughout the year

Does the attorney who serves as board counsel seem to have a good familiarity with the subject matter within the purview of the board? Y N

Does the board modify its position to address concerns of board counsel?  
.... always .... sometimes ....rarely to never

If the board has an attorney on the board, how frequently does the attorney-board member disagree with the board counsel? .... always .... sometimes .... rarely to never

Does the subject matter for the board on which you serve overlap with the subject matter of another board? Y N

**(If you answered "No" to the above question, skip to Subsection B2.)**

If there is overlap, do you feel the overlap could be handled better with a combined board? Y N

If there is overlap, do you feel the overlap could be better handled with more precise legislation? Y N

**(2) For board members and licensees:**

Do you think budgeted travel by board members to national meetings is justified? Y N

Do you think the board needs to review each licensee's application? Y N

Do you think the department's license review staff adequately handles routine applications? Y N

Should the department routinely handle disciplinary action for:

-- minor infractions (minor as defined by board)? Y N

-- major infractions (major as defined by board)? Y N

Should a public member of the board who is not involved in the field of specialization be included on a disciplinary panel? Y N

If you are not a board member, how often do you provide feedback to the board?  
.... always .... sometimes ....rarely to never

If you are not a board member, how do you stay informed about board activities?  
....newsletters  
....Internet  
....annual meetings  
....word of mouth  
....generally don't care  
....other



Should there be a maximum number of board members? Y N

Should there be a relationship between the number of board members and the number of licensees? Y N

Should the equivalent ratio of public members to specialized members be (mark one):

....1 to 1

....1 public member to 2 or 3 specialists

....3 or 2 public members to 1 specialist?

Should a limit be placed on a board member's term? Y N

If a board represents several specializations, does a representative of each specialization need to be on the board? Y N

If a board represents several specializations, should the board's structure or membership prohibit more than one representative of each specialization? Y N

If a board represents several specializations, should the board's structure or membership require more than one representative of each specialization? Y N

**Section C -- for all respondents:**

Should everyone practicing in a given discipline be licensed if a licensing process exists for that discipline? Y N

Does regulation of the use of a specific title protect public health and safety if people can engage in a practice associated with the title if they don't use the title? Y N

Which do you prefer: licensing criteria set by statute and further defined by a board or licensing criteria set by rule and not in statute? \_\_\_ Statute and rule \_\_\_ Rule not statute

Should scope of practice be set by statute or by rule? \_\_\_\_\_ Statute \_\_\_ Rule

If a single specialization board resulted in higher application/licensing fees, would you prefer a multi-specialization board if that would lower fees? Y N

Should there be a process for combining boards based on (may mark more than one):

-- similarities of function? Y N

-- cost efficiencies Y N

-- dual licensing (overlapping scope of practice) Y N

-- line of authority or supervision by one discipline of another? Y N

Which criteria are most important to meet when legislatively creating a board (mark three at most):

- addresses public health or safety through licensing? Y N
- addresses public health or safety through disciplinary regulation? Y N
- addresses consumer protection through licensing? Y N
- addresses consumer protection through disciplinary regulation? Y N
- provides practitioner with credentials, for example, to bill through insurance? Y N
- provides practitioner with means to regulate the profession or occupation? Y N
- other? please provide short description in space provided \_\_\_\_\_

Should there be a process for dissolution of a board based on:

- board failure to set fees that are adequate to meet budgets? Y N
- no complaints or other indication that public safety is at risk? Y N
- a sunset provision (requiring periodic review to determine if certain criteria are being met)? Y N
- other criteria determined by legislation, excluding a sunset provision? Y N
- other? (please provide short description in space provided) \_\_\_\_\_

What 3 issues do you want the interim legislative study to address? Please summarize each issue in 25 words or less.

- 1)
- 2)
- 3)

- - -

Thank you for your participation in this survey. The results of the survey will be used to identify areas of concern for the study.

If you are concerned about the direction of the questions or if you think answers need more explanation, please consider participating in stakeholder discussions on issues related to the above questions and the intent of the study. To be informed about stakeholder discussions, please sign up for the automatic e-mail service for the SJR 35 study under the Economic Affairs Interim Committee at the following link:  
[http://leg.mt.gov/css/email\\_logon.asp](http://leg.mt.gov/css/email_logon.asp).

If you do not have email and would like to participate in stakeholder discussions, then please contact staff at the phone number or address below. Stakeholder discussions may include conference calls to enable people across Montana to participate. Stakeholder recommendations, if any, will be provided to the Economic Affairs Interim Committee for review.

If you have questions about the survey or want a paper copy, please contact:

Patricia Murdo  
 Legislative Services, Economic Affairs Interim Committee Staff  
 406-444-3594  
 pmurdo@mt.gov

Responses will be compiled by August 24, 2005.

**Appendix II -- In separate document**

**Appendix III -- In separate document**

### **Appendix IV - Methodology and Discrepancies**

**Methodology** -- As indicated in the report, notification about the survey went by postcard to approximately 65,000 licensees provided by the Department of Labor and Industry. These licensees were listed as living in Montana. Approximately 25,000 other licensees live out of state. The Department of Labor and Industry covered the costs of mailing by assigning the cost for each board's postcard postage to the respective board. The Economic Affairs Committee budget covered the cost of printing the postcards and labels. Other notification included notices in Department of Labor and Industry board newsletters. Committee and department staff also informed boards at random about the survey. Committee staff also sent out news releases and public service announcements (put in community television stations and various radio outlets). Word of mouth also helped spread news of the survey. The postcards requested people to go to the online survey or to call Economic Affairs Committee staff for a survey.

Of the 65,000 postcards distributed, approximately 450 were returned with address problems. Approximately 80 people called to request paper copies of surveys. Staff asked the people who called if they would mind sending a self-addressed, stamped envelope or if they were interested in having the survey faxed to them. On certain occasions, staff guided the callers through the Internet to the survey. Of those who called about the survey approximately 30% returned it.

**Discrepancies** -- The survey had three main sections after a first question asking whether someone was a board member. That first section could have been interpreted to mean a licensee or the actual member of the board. Respondents answering "no" initially were directed to Section C, the section for all respondents. However, a licensee who answered "no" might have missed the second half of section B (B-2). Similarly, the directions for Section A noted (until someone pointed out the above problem) that this section (A) was for "members of a profession or occupation not licensed by a board". Roughly three-fourths of all respondents answered Section A.

Halfway through the survey, directions for online respondents were modified. Those who responded by paper prior to mid-July were contacted by phone to answer questions for sections they had skipped. Based on overall responses, most people who answered the survey answered all sections, not necessarily following directions. "Interested parties" who answered Section B-1, which was intended for members of a board (directors) skewed results of those questions.

The general analysis of the survey cannot give statistical significance to the answers both because the realm of respondents is unknown and because of problems with the survey. Accordingly, the analysis highlights those responses where there was a dominant response as well as those responses where there was very little variability between "yes" or "no" responses.