

# Licensing Reform Task Force

## Sunset Subcommittee

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### RECOMMENDATIONS FOR OCCUPATIONAL LICENSING SUNSET REVIEW PROCESS

## Memorandum

**To:** Sunset Subcommittee, Montana Licensing Reform Task Force

**From:** Office of Legal Services / Policy Support

**Date:** June 19, 2026

**Re:** Options for Occupational Licensing Sunset Review

## Executive Summary

The survey results and May 22 subcommittee discussion suggest support for a **structured periodic review** of occupational licensing, rather than a strict automatic sunset. The strongest emerging approach is a **two-tier review process**: standardized information gathering first, followed by legislative review and public discussion.

### Key themes:

- Avoid a hard sunset that could terminate licenses or boards through inaction.
- Use a predictable review schedule to create accountability and certainty.
- Review both the **continued need for licensure** and **how boards operate in practice**.
- Keep final policy decisions with the Legislature.
- Consider cost and workload because licensing board operations are generally funded through license fees.

## Montana Statutory Framework

Existing Montana law already provides several tools that could support a scheduled licensing review process:

- **Economic Affairs Interim Committee oversight.** The **Economic Affairs Interim Committee** has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the **Department of Labor & Industry** and entities attached to it for administrative purposes.<sup>1</sup>
- **Existing licensing board review authority.** A legislative interim committee responsible for monitoring licensing boards and programs may review boards or programs to determine whether they remain

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<sup>1</sup> 5-5-223, MCA

needed and whether they are financially solvent or appropriately attached administratively. The review focuses on whether the board or program continues to be needed to protect public health, safety, or welfare or the common good, and whether fee or solvency issues warrant action.<sup>2</sup>

- **Biennial board reporting.** The Department, in cooperation with each licensing board, must prepare a biennial report covering board activities, goals, revenues and expenditures, licensing statistics, complaints, discipline, legislative or court action, and other relevant information. The report is submitted to the **Economic Affairs Interim Committee**.<sup>3</sup>
- **Legislative Audit Division authority.** The **Legislative Auditor** is required to conduct compliance audits or audits of the financial affairs and transactions of state agencies at intervals determined by the Legislative Auditor, considering agency operations, risk, fiscal complexity, and prior audit findings. The Legislative Auditor may also conduct audits when necessary to meet statutory audit standards and objectives.<sup>4</sup> Those audit objectives include determining whether an agency is carrying out authorized activities efficiently, effectively, and in accordance with legislative intent; whether expenditures and revenues are properly handled; whether assets are safeguarded and used efficiently; and whether reports provide a proper basis for evaluating agency operations.<sup>5</sup>
- **Periodic agency evaluation / sunset framework.** Montana law also contains a separate periodic agency evaluation framework under which the Legislative Audit Committee may review agencies or programs scheduled for termination, including through a performance audit and recommendations for continuation, modification, or termination.<sup>6</sup>

**Drafting takeaway:** The subcommittee could build on existing statutes rather than create a fully new system. The most direct statutory anchors appear to be 2-8-404, MCA, 5-5-223, MCA, and 37-1-106, MCA, with Legislative Audit involvement requiring coordination under Title 5, chapter 13, MCA.

## Survey Results in Brief

Issue	Main Takeaway
Scope of review	Strongest support was for reviewing <b>board practices and administration</b> (9 of 10) and the <b>license as a whole</b> (8 of 10).
Burden of proof	No majority. Responses leaned toward requiring some affirmative justification for licensing requirements.
Review structure	No majority. Discussion favored independence, legislative involvement, and not relying solely on board self-review.
Frequency	Support clustered between <b>4 and 12 years</b> , with discussion focusing on <b>6, 8, 10, or 12 years</b> .

<sup>2</sup> 2-8-404, MCA

<sup>3</sup> 37-1-106, MCA

<sup>4</sup> 5-13-304, MCA

<sup>5</sup> 5-13-308, MCA

<sup>6</sup> 2-8-112, MCA

# Potential Recommendations for Discussion

## 1. Use a Review Model, Not a Hard Sunset

**Potential recommendation:** Establish a scheduled licensing review process that does not automatically terminate a license or board.

### Options:

- **Review only:** Require periodic review and public findings, with any changes made through ordinary legislation.
- **Review plus legislative response:** Require the reviewing committee to decide whether to recommend no change, request more information, draft legislation, or refer the issue for deeper review.
- **Soft escalation:** Require deeper review only when defined red flags appear, such as fee increases, disciplinary backlogs, failure to meet, complaint trends, or major workforce concerns.

## 2. Use a Two-Tier Review Structure

**Potential recommendation:** Separate neutral information gathering from legislative policy decisions.

### Options:

- **Tier 1:** Department and board prepare standardized data; legislative staff, audit staff, or another neutral reviewer summarizes or validates the information.
- **Tier 2:** The **Economic Affairs Interim Committee** or other appropriate legislative committee reviews the information, takes public comment, and decides whether to recommend action.
- **Hybrid option:** Department prepares the baseline packet; Legislative Audit Division or legislative staff assists with independent review where authorized and feasible; Legislature retains final decision-making authority.

## 3. Define a Focused Review Scope

**Potential recommendation:** Require each review to answer whether licensure remains necessary and whether the board is operating efficiently, fairly, and consistently with workforce access.

### Core review topics:

- Continued need for the license or board;
- Public health, safety, welfare, or common-good rationale;
- Board practices, meeting frequency, vacancies, and administration;
- Licensing volume, timelines, denials, and exam pass rates;
- Complaints, discipline, ethics issues, and resolution timelines;
- Fees, revenues, expenditures, and fund balance;
- Entry requirements and continuing education requirements;
- Reciprocity, interstate compacts, and mobility barriers; and
- Practice act modernization opportunities.

## 4. Use a Middle-Ground Burden Standard

**Potential recommendation:** Avoid an all-or-nothing burden rule. Require stronger justification for more restrictive licensing requirements.

### Options:

- **Stronger rules need stronger proof:** Education-hour mandates, experience requirements, exams, supervision requirements, morality clauses, and scope restrictions should receive closer scrutiny.

- **Both sides make their case:** Boards, DLI, licensees, consumers, employers, and other stakeholders may submit evidence and recommendations.
- **No automatic repeal:** Existing licenses continue unless the Legislature acts, but boards should identify ways to reduce unnecessary burden.

## 5. Adopt a Predictable Review Schedule

**Potential recommendation:** Use a base review cycle with flexibility for earlier review when problems arise.

### Options:

- **8-year cycle:** More frequent oversight; higher workload.
- **10-year cycle:** Middle-ground option discussed favorably by several members.
- **12-year cycle:** Lower burden; better if review is comprehensive.
- **Risk-based trigger:** Permit earlier review for defined issues, including significant fee increases, repeated complaints, discipline backlogs, board inactivity, workforce barriers, or legislative request.

**Working option:** A 10-year base cycle with defined triggers for earlier review.

## Recommended Working Framework

For discussion, the subcommittee could consider the following framework:

- Montana should establish a **mandatory periodic occupational licensing review process**.
- The process should be framed as a **review or practice act modernization process**, not an automatic termination mechanism.
- DLI and each board should prepare a **standardized review packet** using existing biennial report data where possible.
- Legislative Audit Division involvement should be considered only after confirming authority, scope, staffing, and cost.
- The **Economic Affairs Interim Committee** should be the default reviewing committee for DLI licensing boards, with referral or consultation available for subject-matter committees when appropriate.
- The review should include public participation and written findings.
- More restrictive licensing requirements should receive closer scrutiny.
- Statutory changes should proceed through the ordinary legislative process.

## Key Decisions for the Next Meeting

The subcommittee may wish to focus on the following questions:

1. Should the recommendation expressly reject a hard sunset model?
2. Should the review be housed primarily with the **Economic Affairs Interim Committee**?
3. Should the process use a **two-tier structure**?
4. Should Legislative Audit Division involvement be requested, optional, or left for further study?
5. Should the base review cycle be **8, 10, or 12 years**?
6. What metrics should trigger earlier or deeper review?
7. What information should be required in the standardized review packet?
8. How should review costs and staff time be addressed?

## Follow-Up Items

Before finalizing a recommendation, staff should gather information on:

- Legislative Audit Division authority, capacity, and cost for limited-scope or performance-style review;
- whether Legislative Audit Division work would be billed to DLI, boards, or absorbed within legislative audit resources;
- how much of the review packet can be built from the existing 37-1-106, MCA, biennial report;
- how many boards or license categories would be reviewed each interim under 8-, 10-, and 12-year cycles;
- estimated DLI and board staff time; and
- whether review should occur by board, license type, or practice act.

## Bottom Line

The most workable recommendation appears to be a **scheduled, two-tier review process** that uses existing legislative oversight and board reporting structures, adds clearer performance and public-protection metrics, and leaves final policy choices to the Legislature. This approach advances licensing reform while reducing the risk, cost, and uncertainty of a hard sunset model.