SB 1171 (Negrete McLeod)- Regulatory Boards: Operations

Introduced February 18, 2010, Amended in Senate April 5, 2010

This bill creates Revises and recasts sunset review law to remove the provision that a board automatically by operation of law become a bureau under Department of Consumer Affairs if the board sunsets, and instead provides for the removal of a board's members, and appointment of a new successor board upon the sunset date. Removes references to the Joint Committee for Boards, Commissions and Consumer Protection, and instead authorizes the appropriate standing policy committees of the Legislature to carry out the sunset review functions. Terminates the terms of office of each board member and bureau chief within the Department upon an unspecified sunset date, and authorizes successor board members and bureau chiefs to be appointed, as specified.

This bill is sponsored by the Author to update and streamline the sunset review process. The Author states that the bill revises the sunset process in two significant ways: First, by providing that when a professional licensing board in the Department of Consumer Affairs becomes inoperative or is repealed, a successor board is created to succeed to, and be vested with all of the duties, powers, purposes, responsibilities, and jurisdiction of the prior board. In effect, this bill makes reconstitution of a licensing board automatic, rather than having the board transform into a bureau under the Department.; Second, by providing that the standing policy committees of the Legislature may conduct sunset review hearings, and removing references to the Joint Committee on Boards Commissions and Consumer Protection.

The current law regarding what happens when a licensing board sunsets is part of what has been referred to as the "Sunset Review" process. That law provides for the periodic oversight review of the need for continued state licensing and regulation of a profession and the effectiveness of the administration of the licensing law by the licensing board. These provisions were enacted in 1994. It was the intent of the Legislature at that time that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review on a four-year cycle, unless circumstances warranted a longer or shorter interval with respect to a given board.

The sunset review process relating to the sunset of a licensing board is in part built on an assumption in law, that if a board is operating poorly, and lesser measures have been or appear to be ineffective in rectifying the problems, the board should be allowed to sunset and the administration of the licensing act would be done more efficiently and effectively if the board becomes a bureau under the Department.

However, public input, accountability, and transparency are all potentially lost through a bureau governance structure instead of a board governance structure.

Under a bureau, the bureau chief is in charge and reports to the Director of the Department. In bureaus, many decisions are made through a closed-door administrative management structure.

Under a board governance structure, on the other hand, board members are appointed and hold public meetings. The board members appoint an executive officer who manages the operations of the board and reports to the board members in public. Some boards have members that are subject to confirmation by the Senate. This process is deemed to be more accountable and transparent, and offers the public more opportunity to participate.

Reconstitution Rather than Elimination. In recent years, when problems have been identified with a variety of boards, the most effective means of achieving resolution and change has been by reconstitution of the board. This essentially creates a new board by allowing appointing authorities to appoint new members to replace problem members and to reappoint effective members. The new board may then replace the executive officer if the executive officer has been ineffective in managing the operations. This has happened with the Dental Board, the Board of Optometry, the Acupuncture Board, and the Athletic Commission in recent years and has proven to be an effective method for initiating needed changes

The Author believes that the Legislature will be able to effectively make changes to a licensing board through reconstitution of the membership of the board. This bill would make reconstitution automatic when a board becomes inoperative.

The bill also transfers the responsibilities for Sunset Review from the Joint Committee to the standing policy Committees of the Legislature and removes references to the Joint Committee. This is in part a cost-savings measure which would eliminate the costs for an additional legislative committee. Furthermore, over the years, the sunset review process has relied heavily upon the expertise and staffing of the standing legislative committees for much of the sunset review work that the Joint Committee performs.

The Author believes that transferring the responsibilities to the policy committees is an appropriate alternative if the Joint Committee is eliminated and an appropriate next step in the maturation of the Sunset Review process.

The bill also reflects efforts recently announced by the Assembly Speaker and Senate President pro Tem to re-invigorate the Sunset Review process to evaluate the effectiveness of boards and commissions and provide continued oversight of these agencies.

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL No. 1171

Introduced by Senator Negrete McLeod

February 18, 2010

An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy

committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, the Tax Education Council, ~~and~~ the Naturopathic Medical Committee, *and the certification of common interest development managers and massage therapists* to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if its annual report contains certain information, to post that report on its Internet Web site. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 22 of the Business and Professions Code is amended to read:

22. "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

SEC. 2. Section 101.1 of the Business and Professions Code is repealed.

SEC. 3. Section 101.1 is added to the Business and Professions Code, to read:

101.1. (a) Notwithstanding any other provision of law, if the terms of office of the members of a board are terminated in accordance with the act that added this section or by subsequent acts, successor members shall be appointed that shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the members that they are succeeding. The successor

members shall be appointed by the same appointing authorities, for the remainder of the previous members' terms, and shall be subject to the same membership requirements as the members they are succeeding.

(b) Notwithstanding any other provision of law, if the term of office for a bureau chief is terminated in accordance with the act that added this section or by subsequent acts, a successor bureau chief shall be appointed who shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the bureau chief that he or she is succeeding. The successor bureau chief shall be appointed by the same appointing ~~authorities, for the remainder of the previous bureau chief's term,~~ *authority* and shall be subject to the same requirements as the bureau chief he or she is succeeding.

SEC. 4. Section 473 of the Business and Professions Code is repealed.

SEC. 5. Section 473 is added to the Business and Professions Code, to read:

473. Whenever the provisions of this code refer to the Joint Committee on Boards, Commissions, and Consumer Protection, the reference shall be construed to be a reference to the appropriate policy committees of the Legislature.

SEC. 6. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to have its membership reconstituted on a specified date as provided by subdivision (a) of Section 473.12.

(b) Every bureau that is named in subdivision (b) of Section 473.12.

(c) Every entity that is named in subdivision (c) of Section 473.12.

SEC. 7. Section 473.12 is added to the Business and Professions Code, to read:

473.12. (a) Notwithstanding any other provision of law, the term of office of each member of the following boards in the department shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that board, deletes or extends that date:

(1) The Dental Board of California: January 1, ____.
(2) The Medical Board of California: January 1, ____.
(3) The State Board of Optometry: January 1, ____.
(4) The California State Board of Pharmacy: January 1, ____.
(5) The Veterinary Medical Board: January 1, ____.
(6) The California Board of Accountancy: January 1, ____.
(7) The California Architects Board: January 1, ____.
(8) The State Board of Barbering and Cosmetology: January 1, ____.
(9) The Board for Professional Engineers and Land Surveyors: January 1, ____.
(10) The Contractors' State License Board: January 1, ____.
(11) The Board of Registered Nursing: January 1, ____.
(12) The Board of Behavioral Sciences: January 1, ____.
(13) The State Athletic Commission: January 1, ____.
(14) The State Board of Guide Dogs for the Blind: January 1, ____.
(15) The Court Reporters Board of California: January 1, ____.
(16) The Board of Vocational Nursing and Psychiatric Technicians: January 1, ____.
(17) The Landscape Architects Technical Committee: January 1, ____.
(18) The Respiratory Care Board of California: January 1, ____.
(19) The Acupuncture Board: January 1, ____.
(20) The Board of Psychology: January 1, ____.
(21) The California Board of Podiatric Medicine: January 1, ____.
(22) The Physical Therapy Board of California: January 1, ____.
(23) The Physician Assistant Committee of the Medical Board of California: January 1, ____.
(24) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board: January 1, ____.
(25) The California Board of Occupational Therapy: January 1, ____.
(26) The Dental Hygiene Committee of California: January 1, ____.

(b) Notwithstanding any other provision of law, the term of office for the bureau chief of each of the following bureaus shall terminate on the date listed, unless a later enacted statute, that is

enacted before the date listed for that bureau, deletes or extends that date:

(1) Arbitration Review Program: January 1, ____.

(2) Bureau for Private Postsecondary Education: January 1, ____.

(3) Bureau of Automotive Repair: January 1, ____.

(4) Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation: January 1, ____.

(5) Bureau of Security and Investigative Services: January 1, ____.

(6) Cemetery and Funeral Bureau: January 1, ____.

(7) Professional Fiduciaries Bureau: January 1, ____.

(8) Telephone Medical Advice Services Bureau: January 1, ____.

(9) Division of Investigation: January 1, ____.

(c) Notwithstanding any other provision of law, the following shall be subject to review under this chapter on the following dates:

(1) Interior design certification organizations: January 1, ____.

(2) State Board of Chiropractic Examiners pursuant to Section 473.15: January 1, ____.

(3) Osteopathic Medical Board of California pursuant to Section 473.15: January 1, ____.

(4) California Tax Education Council: January 1, ____.

(5) Naturopathic Medicine Committee, Osteopathic Medical Board of California: January 1, ____.

(6) Common interest development manager certification: January 1, ____.

(7) Massage therapy certification law: January 1, ____.

(d) Nothing in this section or in Section 101.1 shall be construed to preclude, prohibit, or in any manner alter the requirement of Senate confirmation of a board member, chief officer, or other appointee that is subject to confirmation by the Senate as otherwise required by law.

(e) It is not the intent of the Legislature in enacting this section to amend the initiative measure that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 8. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The appropriate policy committees of the Legislature shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivision (a) of Section 473.2, to the appropriate policy committees of the Legislature on or before September 1, 2010.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivision (a), of Section 473.2, to the appropriate policy committees of the Legislature on or before September 1, 2011.

(d) The appropriate policy committees of the Legislature shall, during the interim recess of 2011, hold public hearings to receive testimony from the Director of Consumer Affairs, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the public, and the regulated industry. In those hearings, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The appropriate policy committees of the Legislature shall evaluate and make determinations pursuant to Section 473.4.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in enacting this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 9. Section 473.16 of the Business and Professions Code is repealed.

SEC. 10. Section 473.2 of the Business and Professions Code is amended to read:

473.2. (a) All boards or bureaus listed in Section 473.12 shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the appropriate policy committees of the Legislature no later than ~~22~~ *16* months before that board's membership or the bureau chief's term shall be terminated pursuant to Section 473.12. The analysis and report shall include, at a minimum, all of the following:

(1) The number of complaints it received per year, the number of complaints per year that proceeded to investigation, the number of accusations filed per year, and the number and kind of disciplinary actions taken, including, but not limited to, interim suspension orders, revocations, probations, and suspensions.

(2) The average amount of time per year that elapsed between receipt of a complaint and the complaint being closed or referred to investigation; the average amount of time per year elapsed between the commencement of an investigation and the complaint either being closed or an accusation being filed; the average amount of time elapsed per year between the filing of an accusation and a final decision, including appeals; and the average and median costs per case.

(3) The average amount of time per year between final disposition of a complaint and notice to the complainant.

(4) A copy of the enforcement priorities including criteria for seeking an interim suspension order.

(5) A brief description of the board's or bureau's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

(6) A brief description of the cost per year required to implement and administer its licensing examination, ownership of the license examination, the last assessment of the relevancy and validity of the licensing examination, the passage rate for each of the last four years, and areas of examination.

(7) A copy of sponsored legislation and a description of its budget change proposals.

(8) A brief assessment as to whether its licensing fees are sufficient, too high, or too low.

(9) A brief statement detailing how the board or bureau over the prior four years has improved its enforcement, public

disclosure, accessibility to the public, including, but not limited to, Internet Web casts of its proceedings, and fiscal condition.

(b) If an annual report contains information that is required by this section, a board or bureau may submit the annual report to the committees and shall post that report on the board's or bureau's Internet Web site.

SEC. 11. Section 473.3 of the Business and Professions Code is amended to read:

473.3. Prior to the termination of the terms of office of the membership of any board or the chief of any bureau described in Section 473.12, the appropriate policy committees of the Legislature, during the interim recess preceding the date upon which a board member's or bureau chief's term of office is to be terminated, may hold public hearings to receive and consider testimony from the Director of Consumer Affairs, the board or bureau involved, the Attorney General, members of the public, and representatives of the regulated industry regarding whether the board's or bureau's policies and practices, including enforcement, disclosure, licensing examination, and fee structure, are sufficient to protect consumers and are fair to licensees and prospective licensees, whether licensure of the profession is required to protect the public, and whether an enforcement monitor may be necessary to obtain further information on operations.

SEC. 12. Section 473.4 of the Business and Professions Code is amended to read:

473.4. (a) The appropriate policy committees of the Legislature may evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the regulatory program and for the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest,

considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry, or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

(b) Nothing in this section precludes any board from submitting other appropriate information to the appropriate policy committees of the Legislature.

SEC. 13. Section 473.5 of the Business and Professions Code is repealed.

SEC. 14. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to interim study review of any legislative issues or proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of

practice, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 15. Section 473.7 is added to the Business and Professions Code, to read:

473.7. The appropriate policy committees of the Legislature may, through their oversight function, investigate the operations of any entity to which this chapter applies and hold public hearings on any matter subject to public hearing under Section 473.3.

SEC. 16. Section 9882 of the Business and Professions Code is amended to read:

9882. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In 2003 and every four years thereafter, the appropriate policy committees of the Legislature may hold a public hearing to receive and consider testimony from the Director of Consumer Affairs, the bureau, the Attorney General, members of the public, and representatives of this industry regarding the bureau's policies and practices as specified in Section 473.3. The appropriate policy committees of the Legislature may evaluate and review the effectiveness and efficiency of the bureau based on factors and minimum standards of performance that are specified in Section 473.4. The bureau shall prepare an analysis and submit a report to the appropriate policy committees of the Legislature as specified in Section 473.2.

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