



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2009 Sunset Review:

Forestry Advisory Board

**High Technology Scholarship Program Advisory
Committee**

Wildlife Habitat Stamp Committee

October 15, 2009





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2009

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluations of the Forestry Advisory Board, the High Technology Scholarship Program Advisory Committee, and the Wildlife Habitat Stamp Committee. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committees of reference. The report is submitted pursuant to section 2-3-1203(2)(b)(III), Colorado Revised Statutes, which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section. The department of regulatory agencies shall submit a report to the office of legislative legal services by October 15 of the year preceding the date established for termination.

The report discusses the effectiveness of the committees in carrying out the intention of the statutes and makes recommendations as to whether the advisory committees should be continued.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

**2009 Sunset Review:
Forestry Advisory Board
High Technology Scholarship Program Advisory Committee
Wildlife Habitat Stamp Committee**

Summary

Sunset the Forestry Advisory Board.

The Forestry Advisory Board (Board) has been inactive for most of its existence. In 2008, Governor Ritter created the Colorado Forest Health Advisory Council (Council), which has far broader stakeholder representation and more power to shape policy than the Board.

Sunset the High Technology Scholarship Program Advisory Committee.

The General Assembly created the High Technology Scholarship Program Advisory Committee (Committee) to help develop guidelines for the High Technology Scholarship Program (Program), which was to provide scholarships to Colorado students seeking degrees in high technology fields. The scholarships were to be funded by private donations from individuals, high technology companies, and others. According to the Department of Higher Education, no such donations were ever received, so the Program was never created. Therefore, the General Assembly should sunset the Committee.

Continue the Wildlife Habitat Stamp Committee until 2013.

During the 2009 legislative session the General Assembly passed Senate Bill 09-235 (SB 235), which extended the repeal date of the Wildlife Habitat Stamp Committee (Committee) for three years, until December 31, 2013. In light of this, it is reasonable to assume that the General Assembly did not intend for DORA to conduct a sunset review of the Committee this year. Based upon this assumption, DORA did not review the Committee this year, but will do so in 2012 pursuant to Section 7 of SB 235.

Where Do I Get the Full Report?

The full sunset review can be found on the Internet at: www.dora.state.co.us/opr/oprpublications.htm.

Major Contacts Made During These Reviews

Colorado Department of Natural Resources
Colorado Division of Wildlife
Colorado Department of Higher Education

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The Forestry Advisory Board, the High Technology Scholarship Program Advisory Committee, and the Wildlife Habitat Stamp Committee shall terminate on July 1, 2010, unless continued by the General Assembly. It is the duty of DORA to conduct an analysis and evaluation of these advisory committees pursuant to section 2-3-1203, Colorado Revised Statutes.

The purpose of this review is to determine whether these committees should be continued for the protection of the public and to evaluate their performance. DORA's findings and recommendations are submitted via this report to the legislative committees of reference of the Colorado General Assembly.

As part of the sunset review process, an advisory committee that is scheduled to repeal must submit to DORA, on or before July 1 of the year preceding the year in which the advisory committee is scheduled to repeal:²

- The names of current members of the advisory committee;
- All revenues and all expenditures, including advisory committee expenses, per diem paid to members, and any travel expenses;
- The dates all advisory committee meetings were held and the number of members attending the meetings;
- A listing of all advisory proposals made by the advisory committee, together with an indication as to whether each proposal was acted upon, implemented or enacted into statute; and
- The reasons why the advisory committee should be continued.

² §§ 2-3-1203(2)(b)(I) and (II), C.R.S.

Forestry Advisory Board

Creation, Mission and Make-Up

In 2000, the General Assembly passed House Bill 00-1460, creating within the Department of Natural Resources (DNR) the Division of Forestry (Division) and the Forestry Advisory Board (Board) to help the newly created Division, the Governor, and the Executive Director of the DNR establish forest policy.³

Representation on the seven-member Board is as follows:⁴

- The Executive Director of DNR or his or her designee;
- The President of Colorado State University (CSU) or his or her designee;
- The Commissioner of Agriculture or his or her designee; and
- Four members appointed by the Governor, to include:
 - One representative of local government;
 - One private landowner owning forest land in Colorado;
 - One representative of the forest products industry; and
 - One representative of an organization dedicated to forest and wildlife habit preservation.

The four Governor-appointed members serve three-year terms.⁵

Responsibilities of the Advisory Board

The Board's only statutory mandate is to assist in the establishment of Colorado forest policy.

Revenues and Expenditures

Board members may not receive compensation for their service, but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.⁶

There have been no meetings of the Board since shortly after its inception, therefore there are no revenues or expenditures to report.

³ § 24-33-202(1), C.R.S.

⁴ § 24-33-202(1), C.R.S.

⁵ § 24-33-202(1), C.R.S.

⁶ § 24-33-202(2), C.R.S.

Meetings of the Board

There have been no meetings of the Board since approximately 2002.

Proposals and Their Status

The Board has made no proposals and provided no guidance to the DNR, the Division, or the Governor since it was established.

Reasons to Sunset the Advisory Board

The Board has been inactive for the past seven years. It has not convened during that time, and there has been no movement to fill vacancies on the Board. In the meantime, in 2008, Governor Ritter signed Executive Order B 004-08, creating the Colorado Forest Health Advisory Council (Council). The 24-member Council provides a means for a broad array of stakeholders to provide input and guidance on Colorado forest policy. In essence, the Council is serving the same purpose the Board was intended to have served. Therefore, the General Assembly should sunset the Board.

Analysis and Recommendation

The General Assembly created the Board to bring different perspectives and expertise to the development of Colorado forest policy. This is a worthy objective, but the Board has been inactive for most of its existence. In 2008, Governor Ritter re-established forest policy as a priority with the creation of the Council, which has far broader stakeholder representation and more power to shape policy than the Board. The Executive Order also mandates that the Council accomplish specific tasks, such as the development of short-term and long-term action plans for forest management and the presentation of periodic progress reports to the General Assembly. These requirements help assure that the Council fulfills its stated mission.

Because the Board has been inactive for so many years and the Council has effectively replaced it, the General Assembly should sunset the Board.

High Technology Scholarship Program Advisory Committee

Creation, Mission and Make-Up

With the passage of House Bill 00-1355 in 2000, the General Assembly created the Colorado High Technology Scholarship Program (Program) to promote the development of Colorado's high-technology workforce by awarding scholarships to Colorado students seeking certificates or degrees in high-technology fields. The bill created the High Technology Scholarship Program Advisory Committee (Committee) to advise the Colorado Department of Higher Education (Department) in the development of the Program.

Representation on the seven-member Committee is as follows:⁷

- The Chief Information Officer of the Office of Information and Technology, or his or her designee;
- The Executive Director of the Colorado Department of Higher Education, or his or her designee; and
- Five members appointed by the Governor, with the consent of the Senate, to include:⁸
 - A member of the Governor's Commission on Science and Technology; and
 - At least one member selected from a list of nominees submitted by the American Electronics Association.

The Governor-appointed members must be Colorado residents with expertise in high technology who represent different geographic areas of the state.⁹ These members may serve no more than two consecutive two-year terms.¹⁰

Responsibilities of the Committee

The Committee's sole mandate is to establish general guidelines for the Department to use in awarding scholarships via the Program.¹¹

⁷ § 23-17-105(1)(a), C.R.S.

⁸ § 23-17-105(1)(c), C.R.S.

⁹ § 23-17-105(1)(b), C.R.S.

¹⁰ § 23-17-105(2), C.R.S.

¹¹ § 23-17-105(1)(a), C.R.S.

Revenues and Expenditures

Committee members may not receive compensation for their service, but are entitled to reimbursement for actual and necessary expenses incurred in the course of official business.¹²

According to the Department, the Program was never created, so the Committee was never formed. Consequently, there are no revenues or expenditures associated with the Committee.

Meetings of the Committee

Statute requires the Committee to meet as often as necessary but at least once a year.¹³ Since the Program was never created, however, the Committee was never formed.

Proposals and Their Status

The Committee was never formed, and therefore made no proposals.

Reasons to Sunset the Committee

Because the Program was never created, there is no reason to keep the Committee in statute.

Analysis and Recommendation

The General Assembly authorized the creation of the Program in response to the low number of students pursuing degrees in high technology-related areas and a perceived lack of qualified Colorado applicants for high-technology jobs. The intent of the Program was to cultivate an in-state high-technology workforce by providing scholarships for Colorado students seeking degrees or certificates in high technology fields.

The scholarships were to be funded by private donations from individuals, high technology companies, and others. According to the Department, no such donations were ever received, so the Program was never created.

Because the Committee's stated purpose was to develop eligibility guidelines for the Program, and the Program does not exist, the General Assembly should sunset the Committee.

¹² § 23-17-105(4), C.R.S

¹³ § 23-17-105(3), C.R.S

Wildlife Habitat Stamp Committee

With the passage of House Bill 05-1266, the General Assembly created the wildlife habitat stamp, which individuals were to purchase when obtaining a hunting or fishing license and under other defined circumstances. The bill directed that all proceeds from the sale of these stamps be used for projects benefiting wildlife habitat, and established the Wildlife Habitat Stamp Committee (Committee) to review proposals for such projects and make recommendations to the Wildlife Commission and the Director of the Division of Wildlife. The Committee was given a repeal date of December 31, 2010.

During the 2009 legislative session, however, the General Assembly passed Senate Bill 09-235 (SB 235), which made significant changes to the provisions relating to wildlife habitat stamps and extended the repeal date of the Committee for three years, until December 31, 2013. This would seem to remove the need for the Department of Regulatory Agencies (DORA) to conduct its review in 2009, but the pertinent section of SB 235 does not take effect until July 1, 2010. In other words, current law still requires DORA to conduct a sunset review of the Committee to be published on or before October 15, 2009.

To conduct the sunset review and introduce a bill based upon such review during the 2010 legislative session seems unnecessary, however, given that the General Assembly has already determined to extend the repeal date for the Committee until 2013.

It is reasonable to assume that the General Assembly, having just decided to extend the Committee for three years, did not intend for DORA to conduct a sunset review of the Committee this year. Based upon this assumption, DORA did not review the Committee this year, but will do so in 2012 pursuant to Section 7 of SB 235.