



Dora

Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunset Review: Fire Service Training and Certification Advisory Board

On-Line Learning Advisory Board

October 15, 2008





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Department of Regulatory Agencies

Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

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 Fire Service Training and Certification Advisory Board and the On-Line Learning Advisory Board. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 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



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Department of Regulatory Agencies

Bill Ritter, Jr.
Governor

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Executive Director

2008 Sunset Review: Fire Service Training and Certification Advisory Board On-Line Learning Advisory Board

Summary

Key Recommendations

Continue the Fire Service Training and Certification Advisory Board.

The advisory board plays an important role in that it provides a unique forum in which volunteer firefighters can meet and interact with career firefighters to discuss issues of mutual concern. This interaction provides an opportunity to the Division of Fire Safety to better communicate its activities to Colorado's fire service and first responder communities.

Sunset the On-Line Learning Advisory Board.

The On-Line Learning Advisory Board (OLAB) has fulfilled its statutory mandates by defining the term "complete educational program" and by recommending standards to the State Board of Education, which were adopted, regarding on-line programs. Since the OLAB has fulfilled its statutory mandates, nothing remains for it to do.

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 Education
Colorado Department of Public Safety

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

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

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

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

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 Fire Service Training and Certification Advisory Board and the On-Line Learning Advisory Board shall terminate on July 1, 2009, 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.

Fire Service Training and Certification Advisory Board

Creation, Mission and Make-Up

Senate Bill 99-140 created the Fire Service Training and Certification Advisory Board (Advisory Board) to replace the Fire Safety Advisory Board (Fire Safety Board) which was repealed in the same bill. The Advisory Board, like the Fire Safety Board that preceded it, was created to advise the Director of the Department of Public Safety's Division of Fire Safety (Division) on the administration of the voluntary Fire Service Education and Training Program (Fire Service Program) and the Firefighter and First Responder Certification Program (Certification Program).

The Fire Service Program and the Certification Program (Programs) were created to provide voluntary training opportunities for firefighters and other first responders, including volunteer firefighters, and the Advisory Board assists the Division Director in promulgating training and certification standards.

The Advisory Board consists of seven voting and two nonvoting members. The seven voting members are appointed by the Governor to four-year terms.³

- One member representing the Colorado State Fire Fighters Association;
- One member representing the Colorado State Fire Chiefs Association;
- One member representing the Colorado Fire Training Officers Association (CFTOA);
- One member representing the Colorado Professional Fire Fighters Association;
- One member representing the property and casualty insurance industry;
- One member who is a fire chief or training officer from a volunteer fire department participating in the Programs; and
- One member who is a fire chief or training officer from a career fire department participating in the Programs.

The two nonvoting members of the Advisory Board are the President of the Colorado Community College and Occupational Education System and the Director of the Colorado Department of Public Health and Environment's Emergency Medical Services and Prevention Division,⁴ or their respective designees.⁵

³ §§ 24-33.5-1204(2)(a), 24-33.5-1204(2)(b) and 24-33.5-1204(2)(e), C.R.S.

⁴ Subsequent to the passage of SB 99-140, the relevant office in the Emergency Medical Services and Prevention Division was transferred to the Health Facilities and Emergency Medical Services Division, and renamed the Emergency Medical and Trauma Services Section.

⁵ § 24-33.5-1204(2)(c), C.R.S.

The members of the Advisory Board appointed by the Governor must be geographically apportioned, with at least two coming from communities with populations of less than 15,000.⁶

On an annual basis, the Advisory Board must elect a Chair and a Secretary from among its members.⁷

Responsibilities of the Advisory Board

The Advisory Board is required to advise the Division Director on:⁸

- The promulgation of rules enacting standards for the certification of firefighters and procedures for determining whether a firefighter meets the established standards;
- The promulgation of rules enacting standards for the certification of first responders and procedures for determining whether an applicant meets such standards;
- The promulgation of rules enacting standards for fire service education and training for volunteer firefighters, the qualification of instructors, and procedures to ensure that the quality of the program is adequate to meet the minimum training requirements for volunteer firefighters; and
- The establishment of fees for the actual direct and indirect costs of the administration of the Programs.

Revenues and Expenditures

Members of the Advisory Board receive no compensation for serving as such, but are reimbursed for necessary travel and other expenses actually incurred in the performance of their duties.⁹

In fiscal year 06-07, the Board incurred travel expenses in the amount of \$322.64. There were no expenditures in fiscal year 07-08.

⁶ § 24-33.5-1204(2)(d), C.R.S.

⁷ § 24-33.5-1204(2)(e), C.R.S.

⁸ § 24-33.5-1205(2), C.R.S.

⁹ § 24-33.5-1204(3), C.R.S.

Meetings of the Advisory Board

The Advisory Board need only meet as often as necessary, as determined by the Chair of the Advisory Board or by the Division Director.¹⁰

The terms of all of the Advisory Board's members expire at the same time, and this occurred most recently on July 1, 2007. As a result, the Advisory Board has met relatively infrequently in the last two years, with one meeting occurring on June 26, 2007 and the most recent on June 3, 2008.

Proposals and Their Status

Table 1 outlines Advisory Board's activities and proposals, and the status and outcome of each, for fiscal years 06-07 through 07-08.

**Table 1
Advisory Board Proposals and their Outcomes**

Fiscal Year	Proposal/Activity	Status and Outcome
06-07	Assisted the Division in revising the rules governing the first responder and firefighter certification programs.	The rules, as promulgated by the Division Director, became effective on December 30, 2007.
06-07	Examined the Division's Fire Officer III program, and those in other states, and recommended that the Division postpone revising its program until after the National Fire Protection Association (NFPA) releases its anticipated revisions.	The Division adopted the recommendation.
06-07	Examined the Certification Program and recommended to the Division that it postpone revising the program until after the International Fire Service Accreditation Congress (IFSAC) releases its anticipated revisions in 2010.	The Division adopted the recommendation.
07-08	Recommended that the Division replace the computer system that it utilizes in administering the Certification Program.	The Division adopted the recommendation and is working with the State Portal Authority on a solution.
07-08	Reviewed the NFPA's new competency standards and recommended that the Division update its testing and job performance requirements (the practical skills that must be physically demonstrated) to the new standards.	The Division adopted the recommendation and is working with CFTOA to update the standards and will seek audits from IFSAC and the National Board on Fire Service Professional Qualifications (ProBoard) to ensure that the updated standards remain accredited.

¹⁰ § 24-33.5-1204(3), C.R.S.

As Table 1 clearly demonstrates, the Advisory Board has made numerous substantive recommendations over the years. The Division has been extremely receptive to those recommendations, adopting all of those enumerated in Table 1.

Reasons for Continuation of the Advisory Board

The Fire Service Program and the Certification Program represent cooperative ventures between the State and local emergency response agencies. The Division's mission is to support local emergency response agencies with training and certification.

However, the Division lacks the staff and expertise to administer all aspects of these two programs. Rather, the Division relies heavily on the Advisory Board and CFTOA to support them. Through the Advisory Board, CFTOA constitutes the backbone of the firefighter certification system. CFTOA members serve as subject matter experts to assist the Division in reviewing the test banks and developing skills sheets used in the various trainings. CFTOA also helps to administer the written and practical examinations.

The Advisory Board plays an important role in that it provides a unique forum in which volunteer firefighters can meet and interact with career firefighters to discuss issues of mutual concern. This interaction provides an opportunity to the Division to better communicate its activities to Colorado's fire service and first responder communities.

Additionally, this interaction is, in a sense, required to ensure the continued accreditation of the Programs by IFSAC and ProBoard. The latter of these organizations requires an accredited agency, such as the Division, to maintain a mechanism to ensure that the Certification Program "is responsive to the views and opinions of groups affected by the adoption of a certification program, such as volunteer groups, labor organizations, fire chiefs' associations, etc."¹¹ The Advisory Board most efficiently fulfills this requirement.

With the Advisory Board's recent appointments, the Division expects the Advisory Board to take on a more active role in assisting the Division in meeting its goals surrounding fire protection and emergency response.

¹¹ National Board on Fire Service Professional Qualifications, Committee on Accreditation, *Accreditation Self-Study Document*, Criteria E.

Analysis and Recommendation

The Fire Service Program and the Certification Program provide voluntary certification programs for all hazards response personnel: firefighters, medical first responders and hazardous materials responders. For firefighter and medical first responder certification, procedures are established in conjunction with the Advisory Board and in accordance with nationally recognized standards.

Although the training and certifications offered by the Programs are voluntary, according to Division staff, a large number of fire departments in the state require certification as a condition of employment, promotion, or both.

Of the approximately 395 fire departments in Colorado, 245 (62 percent) are all-volunteer, 45 (11 percent) are all-career, and 105 (27 percent) are some combination of the two. There are approximately 5,669 (38 percent) career firefighters and 9,218 (62 percent) volunteer firefighters in the state.

In fiscal year 07-08, 215 of Colorado's fire departments participated in the Certification Program. That same fiscal year, the Certification Program issued 3,689 firefighting, and 3,051 National Incident Management System certifications.

These statistics would seem to justify the continuation of the Fire Service Program and Certification Program. But whether the Programs, the Advisory Board, or all three are subject to review is unclear.

The Advisory Board, the Division Director's authority to promulgate rules relating to the two programs, the Programs themselves, the Firefighter and First Responder Certification Fund that funds the Certification Program, and the Fire Service Education and Training Fund that funds the Fire Service Program, are all scheduled to repeal on July 1, 2009, subject to the provisions of section 2-3-1203, Colorado Revised Statutes (C.R.S.).¹²

However, section 2-3-1203, C.R.S., provides for the sunset review of advisory committees, such as the Advisory Board, as opposed to full sunset reviews of programs and their governing boards, such as the programs at issue here, as provided in section 24-34-104, C.R.S. Furthermore, section 2-3-1203(3)(v), C.R.S., provides only for the review and repeal of the Advisory Board, and none of the other related components detailed above.

¹² § 24-33.5-1209(1), C.R.S.

This is an important distinction because section 2-3-1203, C.R.S., lacks an adequate framework within which to analyze the Programs. Section 2-3-1203, C.R.S., merely requires the agency that houses the advisory committee to provide to the Department of Regulatory Agencies (DORA):¹³

- The names of the current members of the advisory committee;
- All revenues and 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 has been acted on, implemented, or enacted into statute; and
- The reasons why the advisory committee should be continued.

This provision of law provides no criteria for continuation and no framework within which to analyze programs such as those at issue here. However, this provision is sufficient for reporting on advisory committees, such as the Advisory Board.

On a final, and more substantive note, the Division is about to embark upon some substantial initiatives that will require extensive conversations with its stakeholders, and the Advisory Board is the ideal conduit for those conversations. These initiatives include implementing new computer systems for the Certification Program and two, reaccreditation site visits, which typically have required substantial Advisory Board participation.

As a result, and based on the information provided by the Division, the General Assembly should continue the Advisory Board, so long as the remaining components of the Programs are continued as well. Additionally, the General Assembly should amend the statutory reference to the Emergency Medical Services and Prevention Division, in the provision outlining the membership of the Advisory Board, to refer to the Emergency Medical and Trauma Services Section.

¹³ § 2-3-1203(2)(b)(I), C.R.S.