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PROFESSIONS Occupational Regulation: Review Commission

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PROFESSIONS

Occupational Regulation: Review Commission

CODE SECTIONS:	O.C.G.A. §§ 43-1A-1—43-1A-8 (new)
BILL NUMBER:	HB 850
ACT NUMBER:	1484
SUMMARY:	The Act creates a council to review all proposed legislation on occupational licensing or certification. The Act specifies factors the council must consider in evaluating the need for regulation and information that may be required of any applicant group proposing the legislation.

History

Licensing regulation in Georgia emerged in the 1970's in the wake of national interest in consumerism. Occupational licensing was criticized as being anti-competitive, driving the cost of services up while failing to provide correlative benefits to the public such as the censure or elimination of incompetent professionals.¹ Proponents of reform urged that several of the licensing boards were extraneous to the occupational regulatory scheme.²

In 1977, the Legislature passed a "Sunset Act"³ requiring periodic audits of licensing boards to assess their contributions to the public interest. That act requires a legislative review of each regulatory agency every six years.⁴ During the review, a standing committee of the Legislature conducts public hearings at which members of the public and the agency testify. The agency has the burden of demonstrating public need for its services during the review process.⁵ Specific factors are to be considered in evaluating the agency's effectiveness and public need,⁶ including a review

1. "[J]ust 23 professionals out of 225,000 during a recent 18 month period" were disciplined in Georgia. H. Straus, *Work of State Licensing Boards Limited*, Atlanta J., Sept. 2, 1984, at 10A, col. 2.

2. *Id.* For example, the State Construction Industry Licensing Board issues licenses and regulates ten different professions including low-voltage electrical contractors which install telephone and alarm systems. See O.C.G.A. § 43-14-6 (1984).

3. 1977 Ga. Laws 961-71 (codified as amended at O.C.G.A. § 43-2-1—43-2-9 (1984)).

4. O.C.G.A. § 43-2-4 (1984).

5. O.C.G.A. § 43-2-5(a) (1984).

6. O.C.G.A. § 43-2-5(b) (1984).

of a performance audit conducted by the state auditor.⁷ The agency automatically terminates unless the legislative review process results in a determination that the agency should be continued or reestablished.⁸

The Sunset Act has not completely eliminated unnecessary regulation. By 1984, only three regulatory boards had been terminated through the review process, and meanwhile several new boards were created.⁹ In 1985, renewed criticism of the regulatory scheme led to the introduction of HB 850, which was carried over to the 1986 session.

HB 850

The Act, known as the "Sunrise" Bill,¹⁰ establishes review procedures that must be conducted prior to the introduction of any legislation to create a new occupational regulatory agency. The legislative purpose set forth in the Act is nearly identical to that contained in the 1977 Sunset Act.¹¹

HB 850 adds a new chapter to Title 43 of the Code entitled *Georgia Occupational Regulation Review Law*.¹² The Act creates the Georgia Occupational Regulation Review Advisory Council¹³ (Council) composed of ten members, eight of whom will be state department and agency heads

7. O.C.G.A. § 43-2-6 (1984).

8. O.C.G.A. § 43-2-4 (1984).

9. See generally, H. Straus, *Political Interest in Reforming Regulatory Boards Has Waned*, Atlanta J., Sept. 4, 1984, at 1A, col. 2; H. Straus, *Work of State Licensing Boards Limited*, Atlanta J., Sept. 2, 1984, at 1A, col. 2.

10. Memorandum from William G. Miller, Jr., Joint Secretary, State Examining Boards, to Board Presidents (Oct. 31, 1985) (discussing the purpose of HB 850) (copy available at the Georgia State University Law Review Office).

11. Compare O.C.G.A. § 43-2-2 (1984) with O.C.G.A. § 43-1A-2 (Supp. 1986). "The General Assembly finds that the need for and the effectiveness of many regulatory agencies which have been created in this state have not been systematically evaluated." *Id.*

12. O.C.G.A. § 43-1A-1 (Supp. 1986).

13. As introduced, the bill created a seven-member Georgia Occupational Regulation Review Advisory Council composed of the following state department and agency heads or their designees: State Auditor, Legislative Budget Analyst, Commissioner of the Department of Human Resources, Director of the Office of Planning and Budget and the Commissioner of the Department of Revenue.

The House Committee on Health and Ecology added the Administrator of the "Fair Business Practices Act of 1975" or his designee. HB 850 (CA), 1986 Ga. Gen. Assem. § 1.

The substitute bill offered by the Senate Committee on Governmental Operations changed the composition of the membership to the following: 1) the Secretary of State or his designee, 2) the Director of the Office of Planning and Budget or his designee, 3) the chair of the Senate Committee on Natural Resources, 4) the chair of the Senate Committee on Governmental Operations, 5) the chair of the Senate Committee on Human Resources, 6) the chair of the House Committee on Health and Ecology, 7) the chair of the House Committee on State of Republic, and 8) the chair of the House Committee on Natural Resources and Environment. HB 850 (SCS), 1986 Ga. Gen. Assem. § 1.

and two of whom will be legislators.¹⁴ The Council will review all bills introduced in the General Assembly proposing the licensing or regulation of a business or profession.

In its review of proposed regulation, the Council must consider four criteria: 1) whether the practice of the occupation will have recognizable, not remote, potential harm to the health, safety, and welfare of the public; 2) whether the practice of the occupation requires specialized skill or training the public needs and will benefit from; 3) whether effective protection can be obtained through other means; and 4) whether the cost effectiveness will be favorable for the citizens.¹⁵

Groups and individuals proposing regulation and other interested parties are required to explain in writing eight factors to the extent requested by the Council and the legislative committee referring the bill to the Council. Similar to the factors in the sunset statute, these factors include: 1) an explanation of the need for regulation and the potential harm to the public if regulation is not implemented; 2) efforts made to address the problem through a code of professional ethics or other means of self-regulation; 3) alternatives that have been considered including certification or registration; 4) benefits to the public; 5) potential harm to the public as a result of regulation, including the anti-competitive effects of regulation; 6) a list of everyone potentially affected by the regulation including a list of associations and professional groups; 7) the expected cost of regulation, including the cost of insurance and the direct impact on the state's budget; and 8) any additional information requested by the Council.¹⁶

If the Council justifies a need for regulation, a report is prepared recommending an appropriate type of regulation and an oversight state agency. Alternative types of regulation include certification, licensing, civil or criminal penalties, inspection requirements, or a system of registration. These recommendations are to be evaluated by the General Assembly before a regulation will be implemented. The legislation attempts

14. The Conference Committee substitute bill represents a composite of the original version and its amendments. It changes the membership of the Council to include the following state department heads or their designees: 1) Comptroller General, 2) Secretary of State, 3) Commissioner of the Department of Human Resources, 4) Director of the Office of Planning and Budget, 5) Commissioner of the Department of Natural Resources, 6) Commissioner of the Department of Revenue, 7) Commissioner of Agriculture, 8) Administrator of the "Fair Business Act of 1975," and two members of the Legislature. HB 850 (CCS), 1986 Ga. Gen. Assem. § 1, HB 850 (AP), 1986 Ga. Gen. Assem. § 1.

15. O.C.G.A. § 43-1A-6 (Supp. 1986).

16. Compare O.C.G.A. § 43-2-5 (1984) with O.C.G.A. § 43-1A-7 (Supp. 1986).

to prevent a burgeoning state regulatory scheme by screening out potentially useless and expensive regulatory agencies before inception.¹⁷

17. According to the Atlanta Journal, "Rep. Betty Clark (D-Atlanta) said the council would add another tier of government. 'I don't see the need to create [a council] to gather information for us. That's what we're elected for.'" Atlanta J., Jan. 24, 1986, at 7A, col. 1.