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# Problems with Occupational Regulation Need Legislative Attention

## SUMMARY

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**T**here are problems with occupational regulation that need attention, according to an evaluation report by the Legislative Auditor. The state has good criteria for deciding when an occupation should be regulated but has not applied the criteria consistently or effectively.

Minnesota has a complex, multifaceted system of occupational regulation. Seven state departments and 26 independent boards regulate nearly 200 occupations. The number of regulated occupations has grown rapidly in recent decades. There were 40 newly regulated occupations in the 1970s, 39 in the 1980s, and 41 so far in the 1990s.

There are several forms of occupational regulation, the most restrictive of which is "licensure," which limits the right to practice a legally-defined occupation to those holding a state license. The purpose of occupational regulation is protection of public health, safety, or well-being, but it has been the subject of considerable criticism. For example, occupational regulation can be used to "fence out" competitors, allowing those in the

occupation or profession to charge higher prices. Occupational regulation can also limit access to various jobs, disproportionately affecting disadvantaged groups, and it can enhance the power of the occupational groups being

regulated. There is also concern that the regulatory process is often dominated by the occupation being regulated.

Minnesota law recognizes the potential negative consequences of occupational regulation and requires certain conditions to be met if new regulation is to be enacted. The fundamental requirement is to demonstrate that there is a significant threat to public health or safety from unregulated practice. The burden of proof is on proponents to make the case that occupational regulation is needed and that the proposed regulation meets specific statutory criteria. Minnesota law also requires the least restrictive form of regulation to be used if regulation is necessary.

The evaluation reviewed proposals for regulation before the Legislature in recent years and interviewed many state officials involved in occupational regulation. The study concluded that the statutory criteria for

### *Program Evaluation Report* **Occupational Regulation**

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#### **Key Findings**

- The number of regulated occupations is growing rapidly.
- The state's policy on occupational regulation is not applied consistently.
- Oversight of regulated occupations needs to be improved.

#### **Major Recommendations**

- The Legislature should require occupational groups to provide specific information relating to the statutory criteria for regulation when they seek to be regulated.
- Boards and agencies responsible for occupational regulation should make their biennial reports more readable and useful to the Legislature, the Governor, and the public.

*The report is available at our web site:  
<http://www.auditor.leg.state.mn.us/pe9905.htm>  
Copies of the full report or summary are also available  
by calling 651/296-4708.*

regulation that constitute the state's policy on occupational regulation are not applied consistently. The report recommends that legislative committees or executive branch agencies conduct a more formal analysis of proposals for regulation. Such studies were conducted by the Minnesota Department of Health for health-related professions at various times between 1976 and 1994.

The report also recommends that the 24 regulatory boards and the Department of Health improve the biennial reports they are required, by statute, to submit before each budget session. The reports have not always been submitted, and those that have been do not communicate essential information in a readable or useful fashion. The reports should clearly communicate how boards and agencies are handling complaints by the public and whether the agencies are investigating complaints in a timely fashion. They should specifically include information on whether any backlog of investigative cases is growing or diminishing over time.

Finally, the report recommends that the Legislature should conduct a strategic review of existing regulatory programs, because some may no longer be needed. The evaluation found numerous examples of regulated occupations that do not require specialized education, examination, or experience. Although the Legislative Auditor's study was not designed to recommend elimination or consolidation of regulatory boards or programs, the report and a supplementary *Directory of Regulated Occupations in Minnesota* could help the Legislature find opportunities to reduce the number of independent boards and regulated occupations.

Copies of the report, entitled *Occupational Regulation*, and the supplementary *Directory of Regulated Occupations in Minnesota*, may be obtained from the Office of the Legislative Auditor by calling 651/296-4708, or at our Web site address, <http://www.auditor.leg.state.mn.us/pe9905.htm>. For further information, contact Elliot Long or Roger Brooks at 651/296-4708.