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Critics see few licensing panels needed in Nevada

By [JOHN G. EDWARDS](#)
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Nevada's outgoing governor isn't the only one questioning the need for licensing boards that set standards and license workers in many occupations.

While defenders say the boards protect the public from harm, others suggest they are unnecessary for occupations that don't require high skill levels.

Even worse, some say the boards often are more concerned about protecting their peers from competition than keeping the public safe.

Gov. Jim Gibbons already was a lame duck, having lost the Republican primary, when he tried to start a small revolution in state government. He directed 36 boards and commissions to complete questionnaires intended to get them to justify their existence and the balances in their bank accounts.

In doing so, Gibbons attracted the interest of lawmakers and politicians who must cope with an estimated \$1.5 billion to \$3 billion biennial shortfall in state revenue next year.

The Legislature also will be busy with redistricting, as required following the latest census.

Assembly Majority Leader John Oceguera, D-Las Vegas, who is expected to become speaker next year, suggested Democrats will scrutinize the occupational licensing commissions, rather than ignore the issue raised by the state's Republican chief executive.

"Nevada's financial condition makes it mandatory for us to look very carefully at every board and commission as well as the entire budget," Oceguera said in an e-mail. "Speaking for the Democrats in the Assembly, we have been going over proposals for months to establish priorities, set new and measurable standards, and eliminate the deadwood."

Some analysts question the need for licensing workers in certain occupations, particularly those that don't require high levels of skills; but others defend occupational boards as a key safeguard for the public.

"The licensing boards in Nevada are as important, if not more so, than our criminal justice system," said John Hunt, independent counsel for the Nevada State Board of Dental Examiners and former Democratic nominee for attorney general. "Boards and commissions are one of the last sentinels of protection for professional services rendered to the public."

Occupational boards are composed of professionals and members of the public who are in the best position to protect the public from possible irreparable harm caused by licensed professionals, he said.

Professional board members also have the expertise to determine the validity of complaints, which often confuse civil juries, Hunt said.

The Institute for Justice, a libertarian public interest law firm based in Arlington, Va., has a different perspective.

"Cities and state governments are placing all kinds of barriers to business startups and innovation," institute attorney Dana Berliner said. "This is a bad thing at all times and particularly a bad policy in times of economic calamity."

During recessions, workers who lose their jobs need the opportunity to start their own businesses, and licensing agencies often make that difficult, Berliner said. "Many, if not most, make it difficult to start home-based businesses. That is important for people who have lost their jobs."

Unemployed workers typically cannot afford to rent commercial space, she said.

About 10 years ago, Berliner represented several individuals who wanted to start limousine services in Las Vegas. The Nevada Transportation Services Authority asked the applicants to prove that they wouldn't create competition for already licensed limo companies.

She questions why that should be necessary, since, for example, shoe store owners aren't allowed to block other shoe stores from opening.

Berliner won the case for her clients, but the court let the anti-competitive rule stand. "In general, occupational licenses tend to protect people already in business," she said.

Berliner said she has studied mostly licensed professions that require minimal skills. If state medical boards and other agencies regulating highly skilled professions were abolished, which she considers unlikely, private licensing organizations would be created, she said.

Cato Institute, a conservative think tank committed to limited government, has a similar view.

Occupational licensing boards "basically perform the same functions that unions once did," Cato senior fellow Peter Van Doren said.

Licensing boards restrict outsiders from entering professions and tend to drive up salaries in those professions, resulting in higher fees, a National Bureau of Economic Research paper argued.

Union membership has declined over the last half century, but occupational licensing has increased, the study said.

A report by economics professors Alan Krueger of Princeton University and Morris Kleiner of the University of Minnesota addressed the issue. The report found that less than 5 percent of the U.S. work force was covered by state licensing laws in the early 1950s. The percentage grew to 20 percent by 2000.

When state and local licensing are included, the percentage runs higher. A Gallup survey in 2006 showed 29 percent of workers were required to have government licenses for their jobs.

Professor Steve Johnson of the Boyd School of Law at the University of Nevada, Las Vegas, has mixed opinions about occupational licensing boards.

Johnson acknowledged the argument that the government should protect citizens who, for example, are unwilling to read the pages of fine print on a credit card application. However, he

questioned the need for licensing in other cases.

"I'm risking the chance to get a bad haircut," Johnson said. "But is that a risk I should be allowed to take?"

Gibbons' chief of staff, Robin Reedy, outlined several reasons for the governor's concern about the semi-independent boards, saying, "In general, I'm sure the governor would say we're overregulated."

Reedy said Gibbons believes in the three branches of government: judicial, legislative and executive. Occupational licensing boards should come under the direction of executive agencies, she said.

"They became more and more segregated with no oversight at all. For practical purposes, there is a belief that they are autonomous. That is not the belief of this governor or this executive branch."

Reedy said Gibbons has been annoyed with boards that sent lists of new members or commissioners for him to appoint.

"The governor does not believe in rubber-stamp boards. No, the governor appoints," she said.

Board and commission candidates "need to apply through the governor's office. It's his decision," Reedy said.

She was stunned to learn some boards approved salary increases for staff while the state was under tight fiscal controls because revenues have plunged.

"Some boards thought they were subject to furloughs," she said. "Some boards thought they weren't."

It's easy to understand their confusion and feeling of independence. Most occupational licensing boards cover their administrative expenses by collecting fees from the professionals they regulate. They generally don't use state tax revenue.

"Some of the agency boards and commissions run on a shoestring," Reedy said. "Without volunteers, they wouldn't be operating."

Other boards and commissions probably have bigger staffs than they need.

Consolidating some of the boards could improve efficiency, she said. Health professional licensing boards could be consolidated and share clerical staffs, for example, she said.

"It is just a more efficient way of distributing that power between the haves and have-nots of boards and commissions," Reedy said.

Financial resources of the boards also should be reviewed, given the shortage of state government revenue, she said.

"Every pile of (state) money sitting everywhere is at risk. Having endured one of the worst economies of our lifetime, rocks are showing up and some of those rocks need to be fixed."

With that in mind, the governor required each of the surveyed boards to provide copies of bank statements showing the money they have on deposit.

Oceguera rejected the idea of pulling cash out of board and commission bank accounts, however.

"I do not foresee raiding the budgets of the various boards and commissions," he said. "What I do see is a careful process of making certain that self-sufficient boards and commissions are truly paying their own way, and also determining on a case-by-case basis if the commission is truly necessary, if its function should be consolidated, or if it should be eliminated."

Reedy favored enacting "sunset provisions" for boards and commissions that would let the Legislature terminate boards that cannot prove they still fulfill a need.

Reedy questioned whether some professions would be better regulated by private industry than state government, as lawyers are by the State Bar of Nevada.

However, Reedy said she has encountered opposition from lobbyists who want to maintain the status quo at licensing boards and commissions.

Some boards expressed opposition as well.

"Elimination of the Nevada State Board of Nursing would bring anarchy, which is not much of an exaggeration," the nursing board commented in the governor's survey.

Others took a different approach.

The Nevada State Board of Cosmetology suggested it was well managed enough to take on additional responsibilities, such as state licensing for tattooing.

The board already oversees permanent makeup, a form of tattoos that some women get on their eyebrows and lips.

The cosmetology board could be combined with the Barbering Board and Massage Therapy Board, cosmetology board executive director Vincent Jimno said in an interview.

"We're not looking for the new work. We're not seeking to build an empire," Jimno said. "If they throw it at us, we're ready for it."

Dianne Cornwall, director of the Department of Business and Industry, sees no need for reform among the licensing divisions she oversees, such as the Nevada Athletic Commission, which sets physical and mental standards for sports contestants.

"We have no intention within our department of changing our board structure," Cornwall said. "I don't think that we have a board within this department that isn't useful and necessary."

Assembly Democrats are not afraid to consider occupational licensing board reform next year while coping with the revenue shortfall, Oceguera said.

"Of course it is a challenge to do a thorough analysis of the Nevada budget within the mandatory 120 days of the legislative session, but I know the people in our caucus are up to the challenge," he said.

Gibbons also will influence the budget process, including those for occupational licensing boards, Reedy said.

Gibbons is preparing the state budget because his successor, Republican Brian Sandoval, will not have time to do so, she said. However, she added, Sandoval could change aspects of the budget.

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KEY OCCUPATIONAL LICENSING BOARDS

Board	Employees	Created
Contractors Board	65	1941
Board of Medical Examiners	27	1899
Private Investigators Licensing Board	13	1949
Board of Nursing	10	1923
Board of Pharmacy	9	1901
Board of Veterinary Medical Examiners	5	1919
Board of Dental Examiners	7*	1895
Board of Architecture, Interior Design	7	1949
Board of Professional Engineers, Land Surveyors	6	1919
Board of Cosmetology	20	1931

*with contracts for 2 attorneys

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