

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

February 15, 1977

The sixteenth meeting of the Public Health, Welfare and Safety Committee began at approximately 11:00 A.M. on the above date, called to order by Chairman Stan Stephens in Room 405 of the State Capitol Building, Helena, Montana.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 329: Chairman Stephens turned the meeting over to Senator Roskie, sponsor of the above bill which is a proposed revision of architects' registration law. The Senator from Great Falls explained his bill which would, he said, improve the statute by making it a little more definitive in some sections, plus the elimination of the one section would improve the operation of the Board. The Senator testified that Mr. Karney of the Board of Occupational Licensing has knowledge of SB329 and has not particular problems with it. Senator introduced Marty Crennen of the Board of Architects as his first witness.

Marty Crennen briefly went into the points that would modify the registration law. Over a period of time, Mr. Crennen said, the complaints they received pointed out the weaknesses in the present law and the loopholes. The primary weaknesses were: (1) lack of definition of the term, "public buildings" and (2) those kinds of buildings that are designed without the benefit of licensed people, whether they be an architect or an engineer, (see Exhibit "A").

W. J. Bennington, architect from Billings, testified in support of the bill. He explained the reasons why architects are asking for the legislation. Bennington also covered the problem of "adequate" liability insurance, now demanded in the law. Mr. Bennington said the architects feel this should be taken out and then be negotiated when contracts are awarded.

Bill Zuccain was introduced by Senator Roskie. The Great Falls architect would accept questions from the Committee if needed.

Adding to his testimony, Mr. Crennen said that building departments in municipalities and the State are in real need of some support from licensing boards in some instances because they have been and are being asked to approve plans for buildings of any description which are presently being prepared by non-licensed people. In essence, they are putting their necks on the line by either expressed or implied approval of these plans which may or may not be properly designed, but are certainly without benefit of professional licensing.

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To which Senator Olson addressed his first question upon conclusion of witnesses' testimony. Senator asked if, with the proposed legislation, he or anyone could still design and build his own home without the service of an architect - the answer was affirmative.

The hearing was concluded on Senate Bill 329, with NO ACTION being taken.

CONSIDERATION OF SENATE BILL 365: Senator Roberts presented this bill, saying he was carrying it at the request of the SRS. The Senator from Libby introduced Pat Melby of the Social & Rehabilitation Services, who had further testimony.

Pat Melby testified that two sub-sections were left out of the proposed legislation. He handed out amendments to the Committee to take care of the omission (see Exhibit "B"). Melby said the Department is embarking on an ambitious program of trying to limit the amount of funds paid under Medicaid and also to try to recover funds paid under Medicaid where a third party may be liable for those actual costs.

Richard Weber, also of the SRS, testified next. He explained the Department's need for this bill (see Exhibit "C"). Weber provided a detailed explanation of the different sections.

Chad Smith, lobbyist for the Montana Hospital Association, then testified in opposition of the proposed bill. Smith offered amendments (see Exhibit "D") and said that if those amendments were written into the proposed legislation, his group would support it.

The hearing was concluded and the Committee turned to questioning the witnesses.

The main thrust of the questioning was directed to the problems between the hospitals' needs and the SRS' needs - the hospitals are having problems collecting their monies through Medicaid now; they are concerned about the State being first in line in subrogation.

Senator Roberts asked Mr. Smith if Smith was trying to preserve the right to subrogation (through his amendments) and the answer was affirmative.

Mr. Melby reiterated that all the State can or hopes to recover through this legislation are the funds the State spent on that welfare patient, nothing over and above that. He added that the Department should not be put in the position of collection for the hospitals.

Chairman Stephens closed the hearing on SB365, with NO ACTION being taken.

Before adjourning, the Chairman reminded the Committee that action would be taken on SB341, 399, 246 and 269 Thursday, as well as

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hear SB355, 425 and 427.

ADJOURNMENT: With no further business at this time, Chairman Stephens adjourned the meeting at 11:50 A.M.

A handwritten signature in cursive script, appearing to read "St. Stephens", written in dark ink.

STAN STEPHENS, Chairman

SUPPORT,
OPPOSE OR
AMEND?

REPRESENTING:

SUPPORT,
OPPOSE OR
AMEND?

(Please leave any prepared statement with Secretary)

Marty Crennen	Board of Architects	58329	support
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W. J. BENNINGTON	ARCHITECT	SB 329	SUPPORT
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Pat Melby	SRS	365	Support
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[illegible]

DATE _____

COMMITTEE ON _____ BILL NO. _____

BILL NO.

VISITOR'S REGISTER

[illegible]

E X H I B I T "A"

PROPOSED REVISION OF ARCHITECTS REGISTRATION LAW
By: Montana Board of Architects

1-21-77

In the interests of providing the Board with adequate legal tools with which to deal effectively with complaints of unauthorized or illegal practices, we are proposing certain modifications of our Registration Law. Licensing Boards are generally being held more accountable for "keeping their house clean", and we have been made aware of inadequacies in our own laws which make it extremely difficult to prevent illegal or shoddy practice.

A statement of the purpose of the act has never been included, and we propose to make such provision in this act. Other specific change found in the bill may be substantiated as follows:

- 66-103 "Public Building" not defined in this section of law at present time, and there is some confusion that public buildings are only those which are public funded. The proposed definition is that contained in section 69-2105, RCM (14).
- 66-106 Present penalty for violations of this act consists of a nominal fine or an unlikely jail sentence. A more practical means of stopping an act of violation, and one commonly used by regulatory agencies, is that of injunction.
- 66-106¹ "(c)3": Present language leaves much to individual interpretation, and limitation should be stipulated to prevent design and construction of multi-story or complicated projects by unqualified people. Larger structures such as apartments, motels, etc. become quasi-public buildings.
- 66-107 "(c)4": Intent is to assure that public safety is provided in buildings used by public.
- 66-110 State of Montana is only regulating agency of architects, therefore should be only one with power to license.
- 66-113 Present language is redundant and revision is simply better grammatically.
- 66-114 Law requiring architects to carry liability insurance is not necessarily protecting state. No amounts are prescribed, so large project may be inadequately covered. Liability question is in limbo for many professions at this time. Better solution for architect projects would be specific coverage for project and all concerned with project as a project cost. Would likely supplement basic policy. Currently all architects renew annually - can't comply with letter of law. Not available any other way.
- 66-115 Payment schedule is obsolete, and also is only permissive. State A/E contracts spell it out.

OMITTED
From original
draft

AMENDMENT OF SENATE BILL 365

Amend Senate Bill 365 following Subsection (2), Page 2, by the addition of:

(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under Subsection (1) without prior approval of the state department.

~~(3)~~ (5)

E X H I B I T "C"

TESTIMONY OF DEPARTMENT OF
SOCIAL & REHABILITATION SERVICES
SUPPORTING SENATE BILL 365

Senate Bill 365 is an attempt by the Department of SRS to clarify the Department's right to recover payments made on behalf of a welfare recipient in cases where another party is primarily responsible for that recipient. The attempt is threefold:

First, the Department seeks a legislative statement of the commonlaw doctrine of subrogation. Second, the Department seeks clarification of the amount which may be recovered in ADC cases. Third, the bill provides for notice to the Department when the Department may have some right to recover from a third party.

Subrogation is a creature of equity. The doctrine was developed by the courts to provide a remedy for the party who pays the debt of another person who is the creditor of a third party. The court in effect substitutes the paying party in the place of the creditor who received the benefit of a debt paid. By this substitution the court may, in following the dictates of its conscience, prevent the enrichment of the one party at the expense of another.

There are two common cases in which the Department of SRS should be subrogated to the rights of a recipient.

The first case arises when the Department makes payment of medical benefits to a recipient and that recipient is also entitled to payment from an insurer. In those cases the insurer is contractually bound to make payment to the recipient and the end result is a double payment to or on behalf of the recipient.

This unnecessary cost to the Department can be prevented if the Department is placed in the shoes of the recipient vis a vis the insurer, and is allowed to recover from that insurer the amount which the Department has already paid on behalf of the recipient.

The second type of case arises when a third party is liable in tort to pay the medical expenses of a recipient of medical benefits. In that situation a windfall double payment will be avoided by giving to the Department the right to pursue the tortfeasor in the name of the recipient and share in any recovery to the extent of benefits paid on behalf of the recipient.

E X H I B I T "D"

PROPOSED AMENDMENTS TO SENATE BILL 365:

prepared by Chad Smith,

Montana Hospital Association

1. Page 1, Section 1, line 20.

Following: "subrogated"

Insert: "after the providers of medical services"

2. Page 6, Section 3, line 21.

Following: "subrogated"

Insert: "after the providers of medical services"

3. Page 9, Section 5, line 15.

Following: "subrogated"

Insert: "after the providers of medical services"

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

45th LEGISLATIVE SESSION - 1977

DATE: Feb. 15-'77

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