

January 16, 1979

Chairman Brand called the hearing to order at 9:00 a.m., all members were present.

HB 337-Sponsored by Rep. Stobie -- I have been asked to introduce this by the Highway Patrol, and Major Tooley is here so I will turn it over to him.

MAJOR DUANE TOOLEY-Montana Highway Patrol -- This attempts to check an oversight made in the '75 session where some people were left out of the cost of living increase. Those people had exhausted their benefits prior to that. The association was going to get in touch with me but they haven't yet. It would cover 6 people -- we want to make sure that anyone who has run of benefits can be taken care of. Patrolmen don't earn Social Security benefits unless it is after they are with us. I don't think this will be tremendously expensive.

TOM SCHNEIDER-Montana Public Employees' Association -- We support this and I would like to beat Larry by saying there's no funding provided for this. We have no more than 6 people. None of those 6 can be young and they are surviving spouses whose husbands had used up their benefits by the time they died. Because of something that happened in '75, there is some available funding. I would like to ask you to hold the bill until we can get more information on the whole thing.

OPPOSERS

LARRY NACHTSHEIM-Administrator, Public Employees' Retirement System -- There is no funding but that isn't our major concern. We took over administration of the Highway Patrol in '71 and the problem previously has been taken care of with administrative procedures. In 4 cases we are aware of the lady having a 5 or 10 year "certain" -- if something happens to them before the 5 years are up we give the rest of the money to their beneficiary, and if they live past 5 years we continue to pay them at a reduced rate. July 1 to September 1 -- but those "certains" ran out on these 6 people we are talking about. One is 76, another is 59 and another is 70, I don't find that great a problem of funding.

O'CONNELL-This would definitely be a sunset bill in that it terminates at their death. TOOLEY-Yes. KROPP-How long would someone have to have been retired to use his benefits? NACHTSHEIM-The first one retired in '58 and died in '70 and his wife continued to receive benefits until '75, she is 70. Another retired in '62 and died in '70 and she received benefits until '75 and she is 59. JOHNSTON-Where does the money come from? TOOLEY-It would come straight out of the retirement fund. Which isn't in that great a shape. MAGONE-At the time they retired they had no option of including their wives? NACHTSHEIM-There was a statutory choice but it wasn't offered at that time. The patrolman made the choice and their beneficiary had a second choice. At the present time we have a choice they can take of getting 1/2 pay with 25 years of service and if he doesn't die that before he dies then we recalculate the benefit using the wife's age. Now we offer them more choices. So that should something happen to him his wife can be taken care of. MAGONE-But then they had no choices? NACHTSHEIM-Yes. AZZARA-Are there 3 or 6 people? SCHNEIDER-That's why we want a few days to find out. AZZARA-So you could be talking about as much as \$21,000 a year, so couldn't we name them? BRAND-I'm not sure we could do that in a bill. SALES-Could this occur in any other system? NACHTSHEIM-The same situation could occur but we probably have 10 people a year who end up in the same situation but it is because they opted for that particular benefit plan. BRAND-This would not apply to those not offered a choice of pension plans? NACHTSHEIM-Those people just weren't around.

STOBIE-I think you can use your own judgement on this and if we have the opportunity to dig up the answers to the questions raised you can make the right choice.

HB 286-Sponsored by Rep. Sivertsen -- We have a number of people who have come to testify in support. This will terminate the present board members and the new board will consist of 5 members. I have some amendments -- see Attachment #1. The amendments provide for no more than two consecutive terms and also for staggered terms. Page 2, line 12 - we left out an effective date so we put it in.

TOM COLLINS-Montana Association of Realtors -- he submitted written testimony, see Attachment #2.

TOM MATHER-Past President of the Montana Association of Realtors -- In '63, I was legislative chairman and helped create the licensing act because we realized the public needed protection and wanted to enhance the reputation of those working in the industry. Doctors would serve on a medical board so we feel realtors should serve on this board. The volume of real estate is much more than it was in '63. Everyone engaged in real estate knows that at anytime their trust accounts can be checked.

JACK WEIDENFELLER-President of the Past President's Association and on behalf of the Montana Realtors' Association -- I also appear on behalf of the Missoula Board of Realtors in support of this bill. It is our opinion that a majority of this board should be licensed professionals. Our profession touches people's lives more than any other profession and we feel that one bad apple spoils the whole barrel. We would rather police ourselves than be policed by someone else.

ELWOOD E. HANNAH-Billings Board of Realtors -- I'm not just representing the Montana Board of Realtors, but also have a letter here addressed to Rep. Sivertsen from Helen Mahnke, President of the Billings Board of Realtors and Gene Stumvoll, Chairman of the Legislative Committee of the Montana Association of Realtors. (See Attachment #3)

GORDON KENNEL-Havre Association of Realtors -- All of the members of our board voted unanimously to support this.

PHILIP RYGG-Flathead Board of Realtors -- We appear in support of this bill.

LARRY FONNER-Realtor in Whitefish -- We support this bill. (For additional statements, see Mr. Fonnens witness sheet.)

MARION COOKE-Bozeman Board of Realtors -- I represent the Bozeman Board of Realtors, and we endorse the bill wholeheartedly.

TOM COLLINS-We couldn't get anyone else from the Highline, but we thank Rep. Sivertsen for his time and interest.

OPPOSERS

ROBERT CUMMINS-State Board of Real Estate, Member -- I am Chairman of the Real Estate Board. The bill before you has as its purpose the removal of the present members.

(Cummins continued)-All of the members want the problems of recent years to be resolved. The public has lost faith in the system. In '63 the legislature enacted a bill that 3 members would be lay members from each congressional district. In '77, at the behest of the realtors that was changed to permit not less than 2 nor more than 3 licensees (not realtors). This bill limits the number of lay people so that the fox guards the chicken coop. How can the public interest be served by putting the fox in there? There are 4100 licensees in the state at the present time supervised by the board who is supervised by the Department of Professional and Occupational Licensing. The Montana Association of Realtors represents about 2000 -- it is voluntary and no one is here to represent them. The board realizes that the present members are going to go. The sunset people wanted to decrease this board to what it was before '77. This board heartily supports the concept that the board be made up mainly of lay people. If it were true that only professionals could do this then in turn the legislature would be all lawyers. To enable licensees to regulate their own house is asking for trouble. Page 1, line 21 says that 3 members must be selected from a list submitted by the realtors. This is a voluntary organization, so in order to be protected or to get on this board you would have to be in this organization. There is no stipulation as to how these 3 names would be selected. It is a popularity contest. There is no restriction as to how those members will be selected. I do believe that there should be a limit in terms. It takes 18 months to get your feet on the ground and then have a maximum of another year for effectiveness - after that is persona non grata. I am a lawyer and be aware that if you pass this you are making it a closed shop. There is another law on the books that addresses the problem. 37-51-201 says who the chairman can be and that it can't be a professional and cannot make motions cannot second motion and doesn't have the right to vote except in the case of a tie. The rulings would obviously be against the public. Another problem is with executive reorganization, on quasi judicial boards the lay member has to be a lawyer. We have about 200 complaints right now and between 80 and 90% of these complaints are lodged against the realtors and the other against licensees. There are a lot of things that a board this powerful could do. It is obvious that these people want to get rid of the older people who make an occasional deal or the part time people. Senator Foskie stood right here two years ago and said that very thing on the education bill. In my opinion, the opportunities of abuse by the licensees are tremendous. Since the inclusion of licensees on the board 18 months ago, we haven't revoked a license. Stacking this board with 4 members would be a death move for the people. At the sunset committee hearing their recommendation was to tone down the number of public members over a period of time. As far as the terms, I would consider one member having a 6 year term. We are in support of the members being by the Senate. To find people to serve on this board is very difficult. The state is entitled to a fair and equitable board. The licensing act is stacked against the public from the beginning.

SCOTT SEACAT-Legislative Auditor's Office -- We are not against or in favor of this bill. There was a sunset audit done on this and we recommended termination of the present board, with another made coming under the Board of Business Regulation.

SIVERTSEN-I find it healthy to have a good discussion on this. As one who is trying to represent my people, I come to you with this bill. Robert Cummins knows better than I what some of these changes should be rather than oppose and criticize. This is a very complex business and like he said, it takes 18 months for some people to get acquainted -- that is why we need professional people on here. With Senate

January 26, 1979

(Sivertsen continued)-confirmation, I think we can do it. I don't think the board has done their job in the past. We have had complaints about how the exams were being conducted, etc. I would hope that I would have an opportunity to have some input at the time you consider the other bill. I think we have a real problem.

STAIGMILLER-Why not have 5 members on the board? COLLINS-This is not our bill, Sivertsen made this up himself. AZZARA-I'm shocked by the sophistry that is being used to qualify 3 members to regulate themselves. How can 4 people out of 5 regulate themselves and protect the public? SIVERTSEN-Regular lay people are not going to understand the complexities. You are handling the livelihoods of many people and I think we need people who are protecting the public. AZZARA-I understand the complexities, and I am not convinced that a lay person is inherently incapacitated because of the complexities. Do you think so? SIVERTSEN-I think Cummins said that it takes 18 months out of two four year terms. AZZARA-If it is a regulating agency, it makes no sense to put the people who are being regulated in charge. SIVERTSEN-If they don't regulate themselves properly, we will have the same situation down the road. If we have a code of ethics, this would give you some assurance that it would be regulated to the best interest of the public. AZZARA-I agree with your concepts, but couldn't lay people be administered some test of their skills before they are considered for the board. We can't be too careful about who we allow to regulate. SIVERTSEN-With the method of selection, I would think that the best people would be selected. Everyone has to make a living and a lay person would need to devote alot of time to even be slightly effective. SALES-You said you have had 200 complaints and no licenses have been revoked for 18 months? CUMMINS-We have more complaints now. The board is stacked in favor of the licensee now and the peer protection seems to prevail when we here complaints. The only sanction they have is to revoke a license and they very seldom do. COLLINS-Great Falls is our best example and Cummins will tell you that we have had very few complaints. McBRIDE-Do you see the Board as quasi-judicial? COLLINS-We are in the middle of getting an Attorney General opinion. BEACAT-The board has quasi-judicial functions but is not stated so in the law and they do not receive quasi-judicial payment. So, they are and they aren't. CUMMINS-The board sets the qualifications for licensing. (he then discussed qualifications and equivalencies)As far as I know, anyone that has been criticized be the board has simply gone through the appeal process. We wanted to adopt the code of ethics and the realtor's organizations came out in mass to oppose such adoption. The people in Great Falls did not have their licenses revoked and the board never heard a thing about this. BARDANOUE-You say the Governor will pick 3 people from a list....what if the list only contains a few names, this doesn't prescribe a number of names. SIVERTSEN-I assumed that there would be at least 5. As far as the effective date, we need to clear this as quickly as possible because there are problems and the reason I want this date is that we need to get those people in line before we go home. BARDANOUE-Has this board been sunsetted? SIVERTSEN-Not yet, but it has been recommended. BARDANOUE-If this bill goes through, you can circumvent the sunset? SIVERTSEN-That is correct. BARDANOUE-Everyone is admitting a problem but do you think cosmetic surgery is going to solve that? SIVERTSEN-I am thinking very strongly about a legislative investigation on this. I believe that there's enough misconduct to warrant such an investigation. I think if we are going to save the board then this is absolutely necessary. BARDANOUE-Do you really feel that this will solve the problem? Doesn't it demand much more than this shuffling? SIVERTSEN-I don't think this is a solution but it is a step in the right direction. AZZARA-I object to the concept of the board and would be willing to work with the proponents to come up with such an amendment. BRAND-We are going to get more of these bills, and I would like to wait and look at all of them at once.

January 26, 1979

SB 48-Sponsored by Senator Ryan -- This is an agreement between states for moving prisoners from one state to another and the Governor has always had to be the one to transfer prisoners. This bill allows a person in the Department of Institutions to do this. There are medical reasons sometimes that this occurs. Currently, there are 17 Montana prisoners out of state and 12 out of states here.

McBRIDE-Are the women prisoners all out of state. RYAN-We have sent women to Nebraska before, now it is Nevada. AZZARA-Why were 12 prisoners brought in? RYAN-Some of them are federal and they committed the crime here. Sometimes it is for the safety and welfare of the prisoner (as in the case of finks and squealers) (those were Ryan's words - ns) SALES-During the women's Comp., someone was put in prison then moved out of state. RYAN-Yes, that's done for the protection of the prisoner. SALES-What is the purpose of the Governor empowering someone else? RYAN-Because the Governor is just a signer after hearing someone like myself talk. I am a parole officer. AZZARA-Under the present system, who does this? RYAN-The Governor does it after hearing reports from parole officers, etc. AZZARA-Who is the designee likely to be? RYAN-I would guess the head of the division of corrections. BRAND-Who would you like to carry this? RYAN-I think Carl Smith should. It was given to me because I am familiar with the situation but I have no feelings on that.

BRAND-Bardanouve had to leave so I told him we wouldn't have any executive action.

Adjourn: 10:45 a.m.


Joe Brand, Chairman


Nita Sierke, Secretary