

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

March 7, 1979

The thirty-sixth meeting of the State Administration Committee was called to order by Chairman Pete Story on the above date in Room 442 of the State Capitol at 10:00 a.m.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL No. 23: The Chairman called on Rep. Ken Robbins, House District 91, Conner, to present his testimony as sponsor of the bill.

Rep. Robbins advised this was introduced at the request of the Department of Professional and Occupational Licensing and would allow the Board of Veterinarians to establish fees for examinations and licenses. The present \$25 fee does not cover the cost of this examination, nor giving the examination. It also specifically includes veterinary technicians. Page 2, lines 9 and 10 contain the changes from the present law to provide that the board may set the fee at a figure commensurate with the cost of the examination. Section 4, page 4, provides for an immediate effective date in order to cover the next examination date. Exams are given twice a year, in January and June, at Bozeman. There are usually about 20 applications to take the January test and about 40 in June, and it is their desire to have this in effect for the June exam.

There being no proponents and no opponents, questions from the Committee were called for.

Sen. Rasmussen questioned the anticipated cost increase in order to meet the actual expense of giving the exam. Rep. Robbins further explained that what the board wanted to do was go to a national test program which cost about \$50, according to Mr. Carney. They didn't ask for a certain amount in order to be flexible and not have to come back next session asking for an additional amount.

There being no further questions, the hearing on House Bill No. 23 was closed.

CONSIDERATION OF HOUSE BILL No. 77: The Chairman called on Rep. Bud Gould, House District 98, Missoula, to present his testimony as sponsor of the Bill.

Rep. Gould explained this was requested by the Department of Institutions to allow them to charge a reasonable rate or a small amount for room and board to people who are staying there doing work in the community. This would also depend on if the person is working in the institution.

Proponents were called for.

Bob Rhay, representing the Administrator of Institutions, further explained that this relates to the half-way houses and life centers; that the cost is now about \$25 a day in the centers and if they

could charge a small amount from those persons who are working in the community, they could reduce this charge to the state. They felt this would also help these people to establish their sense of responsibility.

There being no further proponents and no opponents appearing, the hearing was opened for questions by the committee.

Sen. Jergeson questioned that since the Department is directed to establish rules in order to charge these rates, if a statement of intent would be required, to which Rep. Gould replied that the House had asked the same question but decided that it probably did not.

Sen. Jergeson then asked Mr. Rhay what the savings to the State would be if the charge now as \$25, to which he responded that the charge would be flexible depending on the ability of the person to pay; but if these people were charged, it would reduce the state cost to about \$18 per day.

Sen. Ryan commented that since these people were actually serving a prison sentence even though they were placed in these community centers, if this shouldn't be an obligation of the state to pay for their care.

Replying to Sen. Story's inquiries regarding these centers, Mr. Rhay stated the two women's centers in Billings and Missoula were the only two operating at the present time, with about 16 persons at Billings and 14 in Missoula.

Sen. Ryan questioned if this money was to come from the earnings of these people, to which Mr. Rhay replied affirmatively and only apply if that person is working, how much he makes, the family situation and if he is responsible for restitution; it is an individualized rate for that person.

There being no further questions, closing statement was offered.

Rep. Gould added that he thought there was a strong possibility of two pre-release centers being authorized which would also be covered by this Bill. With over 700 people in the penitentiary now, the trend to alternative means of confinement would help the state in the cost of maintaining an inmate.

Chairman Story then closed the hearing on House Bill No. 77.

CONSIDERATION OF HOUSE BILL No. 141: The Chairman called on Rep. Ken Nordtvedt, House District 77, Bozeman, sponsor of the Bill, to present his testimony.

Rep. Nordtvedt explained that this was introduced at the request of the Department of Revenue and concerned increasing public contractors' license fees. In giving the background information on present law governing how contractors are licensed by the state in order to bid on government projects, he advised there were 3 classifications now with Class A authorized to bid on any size

project, with B and C classes limited to a certain dollar amount. The license fee was established several years ago, and because of inflation having increased costs so much, the limitations on B and C classes were not realistic with present day construction costs. The Bill also provides for a new Class D license for very small contractors; this is intended to help the growing number of young people trying to start a construction business, with the project cost limited for this class to \$15,000.00. The House also amended the Bill to increase the \$300 fee for Class A which was the original increase proposed by the Department of Revenue to \$400.

Further proponents were called upon.

Jim Madison, Miscellaneous Tax Division, Department of Revenue, in support of the Bill, stated this had been suggested by some of the contractors in that the present limitations were not high enough to allow them to bid on many projects unless they were Class A. Their original proposal related to raising the limitations on the B and C licenses with the fees increased to reflect this raise; however, they have no problem with the changes made by the House and endorse the Class D license being created.

Opponents were called for.

Larry Huss, representing the Montana Contractors' Association, said that as the Bill was originally drafted, they had no objection to it. However, as amended, the Association opposes the Class A license fees increased from the present \$200 up to \$400. It would appear this Bill is now a revenue bill for the Department of Revenue. He requested the amendment on page 1, line 25, be stricken and returned to the \$300 figure. They do endorse the creation of a new Class D license.

Bill Olson, Assistant Manager of the Montana Contractors' Association, supported Mr. Huss in his remarks and repeated the concern with the raise to \$400 for the Class A license.

The hearing was opened for questions from the Committee.

Sen. Jergeson questioned that there were no other requirements than to pay the fee, to which Mr. Madison replied there were certain questions on an application form which the Department of Revenue was directed to ask. For the lower two classes, they allowed most any contractor to get a license; however, on Class A, they ask for a complete balance sheet in order to assure that the contractor has assets to do the job and they check on the contractor's ability to be bonded. Continuing, Sen. Jergeson asked if there was a fiscal note; Mr. Madison advised the Department of Revenue had prepared one but that the final figure would be more or less a guess as you don't know how many contractors might change from one class to another. A possible increase per year would be somewhere between \$42,000 and \$50,000.

Sen. Story questioned how many contractors were now licensed in the various classes, to which Mr. Madison replied there were 973 on their records as Class A, about 170 in Class B, and about 700

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in Class C, he thought.

Sen. Ryan inquired what the Department did with a \$400 license that they didn't do with a \$15 license; Mr. Madison replied there was not much difference in the actual handling of an application, only that additional time was spent on the Class A in determining if the contractor had adequate resources to do the job.

Sen. Story asked if a different department wasn't looking at a contractor's ability to do the job, to which Mr. Madison replied that in the smaller cities was where there might be a problem with lacking expertise.

In answer to Sen. Ryan's question, Mr. Madison stated the money collected went into the general fund.

There being no further questions, hearing closed on House Bill 141.

CONSIDERATION OF HOUSE BILL No. 12: The Chairman called on Rep. John Scully, House District 76, Bozeman, to give his testimony as sponsor of the Bill.

Rep. Scully explained this was introduced at the request of the Interim Subcommittee on Legal Services and Election Laws and was No. 3 on the priority list from last session because of the obvious abuse on the attorney privileges of the various state agencies. The Committee started out by sending out survey questionnaires asking about legal services. The survey results were incomplete at best, Scully stated, and some were completely evasive. They then sent another questionnaire with a letter from him stating they would bring them before the committee to answer in person if there was no cooperation - this did have some results.

The state presently pays out \$500,000 per year for legal services on a retainer basis. Most of the hearings officers being used by the various departments, such as SRS and Department of Revenue, were not reported as they didn't call them legal services. However, Rep. Scully thought they should be included, making the actual figure closer to \$800,000 paid out per year by the state. Our study disclosed that the legal personnel of the state only stay a short time - they come right out of law school, get 3 or 4 years' experience and move on to a better paying job. It then appeared the state pay scale was the problem as they should have some incentive for an attorney to stay after this time period; the state plan should reflect that. Mr. Gosnel cooperated with us, and we felt that this should be changed next time. With the ceiling at \$22,000 to \$25,000, in order to work out a plan to retain these attorneys, the State Plan must be revised.

During our investigation, we found many discrepancies, such as in the Fish and Game which had a full-time legal staff but the part-time attorney made twice as much as the full-time staff. Our job was to address how much legal counsel was paid by the state, but in checking with the Attorney General's office which is supposed to commission each attorney, they had no record of who was or who wasn't commissioned. A law now on the books says the Attorney

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General was supposed to commission state attorneys, but as this wasn't being done, we felt this law should be repealed. We also tried working with the executive branch on outside attorney help and deal with the value system in normal practice as to what charges are. The committee thought the attorney pool was necessary to the system and the Attorney General is supposed to be the legal head for the entire state; that is why the responsibility for this pool of legal staff was placed under his jurisdiction. According to the Fiscal Note, the cost would be about \$157,000; comparing this to the \$800,000 now being spent, this pool concept becomes more realistic. \$65,000 for a part-time lawyer by the Fish and Game is not feasible. We don't think the Attorney General is going to be in a position to take over the state legal jobs, and we don't think that the board established under this Bill should exempt any elected officer from this system either. Also, he didn't think the Bill would stop the attorney general from hiring additional staff in order to carry on its business over the objections of the governor. In other states, the attorney general's office has the best attorneys, and, Scully added, this Bill was prepared with the best advice available and felt it will work. There are safeguards to allow the state to hire special lawyers when expertise is needed, and provides accountability and a record keeping system on who is hired or fired in the legal system.

The Chairman called for proponents to the Bill.

Rita Theisen, counsel for the State Auditor's office, in a neutral position, expressed the concern as to how this would affect the office of a legally constituted elected official. The Bill does refer to an elected office of the state government and provides that state agencies can't hire except under this Bill. It states the attorney general will have the authority to determine the staff requirements of an elected official, and they don't want this type of infringement in their office. If an agency were in a position where they needed additional help, they felt they could go to the attorney general for this help if the staff attorney couldn't handle it all; however, they did not want an elected office being subject to this. There being no further proponents, those in opposition were called for.

Joe Roberts, representing the Governor's office, commended the Committee on its work. However, he disagreed with the concept of the pool of attorney's being in another elected office - the attorney general's. Regarding abuses of the retainer system, several years ago, every office had general retainers and lately these agencies have hired their own full-time legal staff. There are several left in state government, but not to the extent it was several years ago. Regarding the Fish and Game, that happened because the Commissioner wanted their own separate attorney.

The State Tax Appeals Board is another agency which wanted its separate counsel in order to be a less biased legal staff - they don't feel they could afford a full-time attorney. He acknowledged there is a problem now with the state being competitive in getting younger attorneys and the turnover after a few years.

Under the present State Plan, the only move left to them is into an administrative position in order to have the salary increased to what he could make in private practice. In order to award the person to stay in state government, we should be in a competitive job market moneywise. He felt the recommendation to change the state classification to reflect this was good. He stressed two points why state agencies look for outside counsel: 1. They need expertise on a particular matter; and 2. They may be dealing with a very technical and sophisticated point of law and it is important for the state to get the best available lawyers for these matters. The areas of natural resources, water law, oil and gas are very technical and require a good deal of expertise, and that a pool of attorneys may not meet those requirements. In the use of hearings officers by state agencies, if a staff attorney was used, it would appear there would be a conflict of interest. He cited an example such as the SRS having hearings on nursing home operators and having the hearings officer a member of their staff. The two main objections he stated were the pool being under the attorney general and the executive branch having to draw from that pool. Also expressed was the possibility of a conflict if the executive branch were of opposite beliefs and parties from the attorney general's office which was doing the hiring of these attorneys. Another problem area which he saw was the legal review board as proposed by the Bill.

Mike Young, Department of Administration, Insurance Division, testified he dealt with defending the state in civil litigation regarding insurance and contracts and negligence suits. These can become technical and somewhat philosophic. He felt the committee did not take into account the transitory history of the attorney general's office. At the time he was there, the replacement rate was about one per month, although this turn-over rate has slowed down. His primary concern with the pool concept was that if the agency was involved in a large lawsuit, and the attorneys in the pool were changed in the middle, they would be placed in a very bad situation. Also, the pool lawyers are not into the same types of problems a staff attorney deals with, for instance, in a small community, it is best to use an attorney who has some attachment with that area in order to handle the case to the best advantage of the state. This is to play down the "big town lawyer" image. He also repeated the problem of the state not being able to compete for top-grade legal help because of the pay scale restrictions and if the work would be of the same quality if the pay were at a lower rate, and that staff attorneys handle legal work unique to that particular agency. He then stated what type of work they handled in their department and that the present system was working well.

Don MacIntyre, chief counsel, Department of Natural Resources, opposing the Bill, stated his concern was with Section 3 of the Bill which would put a freeze on hiring state legal help. In their department they didn't have the overtime situation which would justify the hiring of additional full-time help, however, putting on a freeze is not good as the agencies should have the authority to manage their own department as they see fit. Another concern was that staff counsel handles basic policy and every-day work, where the attorney under the attorney general would not be concerned with the various agencies' every-day problems. He

thought it was very important that the state have persons kept in a particular area in order to gain the most expertise. With this pool concept, he felt the state would get into a situation of only considering law in a defense situation, rather than a preventive type of situation. He stated that if Section 3 of the Bill was taken out, he would not object to its passage.

Rick Tucker, State Auditor's office, also stated his objections to Section 3 of the Bill and that they felt it couldn't be backdated.

In closing, Rep. Scully mentioned that the attorneys for the various executive officers were not present nor offered any input to the committee during the time they were considering this problem. Regarding Section 3, he agreed it did put a freeze on hiring, with the express consent of the legislature. This is to address the overspending on the part of some state agencies as they do feel these agencies should justify their need for additional help. It still allows the agency to come to them with a request and the facts pointing to the necessity of additional help. In refuting the objections raised, he mentioned that attorney's fees are 80% of the cost of insurance, turn-over in the attorney general's office would not be a major threat to a lawsuit; no one at present can know what this might develop into. Most of these people were too young when they were hired to have any great amount of expertise and he felt the "good old boy" concept should cease. Referring to the review board, he thought the governor should not feel threatened by this when he has a 3 to 1 vote advantage and because of the makeup of the board, it would give him some control on who was hired. The Attorney General's office is not given the power advantage because of the board structure under the Bill. If an elected constitutional officer doesn't have the power to protect his office, then perhaps that elected officer should be excluded from the Constitution. Some offices asked to be included, rather than excluded, so we felt all of them should be left in.

There is supposed to be 3 branches of government, leaving out the commissioner of higher education. Regarding Section 14, we felt that this was included in the executive branch. He then invited the Committee to look at the material the Committee had considered in drafting this legislation.

The Chairman then opened the hearing to questions from the Committee

Sen. Roskie inquired of Mr. Young if some attorneys were doing non-law work if other people should be hired to do this type of work, which was answered that he had been hired in an administrative position because he wouldn't have fit under the State pay scale as an attorney since it was too low. He felt emphasis should be on attorneys doing legal work and administrators doing administrative work. The same question was asked of Mr. MacIntyre who replied that the DNR had 4 lawyers of which 3 are full-time legal staff, and Mr. Doney, the Director. When he started with the DNR in 1973, there were 5 attorneys, one of which was also a forester and 2 of which were not used in any legal way.

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Sen. Ryan questioned the statement made in reference to the integrity of attorneys in going to small towns, to which Mr. Young replied that a state agency may hire an attorney to develop the best case possible to present to a judge, but in cases where it is a young attorney going against an attorney in a "home town", the judge tends to listen to the hometown attorney, in his opinion, and that it is very difficult for a young attorney to admit he can fully handle a case. Continuing his questioning, Sen. Ryan asked how much they paid attorneys; Young answered that he hadn't hired any within the last 6 months; that he kept a ledger of complete financial records and both attorney and employer kept track of time, recording it by the tenth of an hour, and offered to furnish a copy.

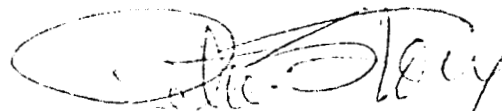
Referring to the work handled by in-staff lawyers, Rep. Scully said that at present, most all the trial work goes out to private practice, leaving nothing of real importance for the staff attorney to handle. He thought this was wrong, and under this Bill the trial work will stay in the state and give these state attorneys a chance to participate.

Responding to Sen. Jergeson's inquiry, Mr. MacIntyre replied that Bob Cummin's contract has been changed as a result of the audit, he thought to about \$50 per hour on particular matters. There are two on-going cases and there is a contract which was renegotiated. He defended Mr. Cummin's ability as a trial lawyer and stated the legislature probably had the authority without making a specific order regarding termination of an attorney's employment.

There being no further questions, the hearing on House Bill No. 12 was closed.

ADJOURNMENT:

There being no further business to bring before the meeting, it was adjourned by the Chairman at the hour of 12 Noon.

  
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PETE STORY, Chairman



Date March 7, 1979

ROLL CALL

STATE ADMINISTRATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

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NAME	PRESENT	ABSENT	EXCUSED
Senator Pete Story, Chairman	✓		
Senator George F. Roskie, V. Chmn.	✓		
Senator Bob Brown			
Senator A. T. (Tom) Rasmussen	✓		
Senator Patrick L. Ryan	✓		
Senator Greg Jergeson	✓		
Senator William F. Hafferman	✓		

Each Day Attach to Minutes.

DATE March 7, 1979

COMMITTEE ON State Administration

House Bills 12, 23, 77, 141

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
William Olson	Montana Contractors Assn	HB 141		<input checked="" type="checkbox"/>
<del>Bill Gentry</del>	Dept. of Admin.	HB 12		<input checked="" type="checkbox"/>
Tom Heisen	STATE AUDITOR	HB 12		<input checked="" type="checkbox"/>
BQ Quay	Dept. of Inst.	HB 77		<input checked="" type="checkbox"/>
Ken Robbins	House Rep	7/B23		
Rep. Rick Tucker	State Auditor - Investigator	HB-12		<input checked="" type="checkbox"/>
Joni Birgane	L St V			
Mary Finley	L St V			
DENNIS M. TAYLOR	Legislative Council	HB 12		
Committee	Green v	HB 12		<input checked="" type="checkbox"/>
D. MacIntyre	DWRC	HB 12		<input checked="" type="checkbox"/>

March 4-29

# House Bill No. 141

## A BILL TO INCREASE CONTRACT LIMITS ON CLASS B AND CLASS C PUBLIC CONTRACTORS LICENSES AND TO INCREASE LICENSE FEES ON ALL LICENSES.

Present contract limitation amounts and license fees were established in 1935. The maximum contract amount has become especially restrictive in the case of Class C licenses. There should be no opposition to raising contract limitation amounts as the suggestion to do so was made by contractors. There may be some opposition to the license fee increase simply because any proposed increase in license fees will generate some opposition. The following schedule reflects present and proposed contract limitation amounts and license fees.

	<u>Present Contract Limitation</u>	<u>Proposed Contract Limitation</u>
Class A	Unlimited	Unlimited
Class B	\$50,000.00	\$100,000.00
Class C	\$25,000.00	\$ 50,000.00
<i>Class D</i>		<i>15,000.00</i>

	<u>Present Fees</u>		<u>Proposed Fees</u>	
	<u>New License</u>	<u>Renewal License</u>	<u>New License</u>	<u>Renewal License</u>
Class A	\$200.00	\$100.00	<del>400.00</del> \$300.00	<del>200.00</del> \$150.00
Class B	100.00	50.00	<del>150.00</del> 100.00	<del>75.00</del> 50.00
Class C	10.00	5.00	50.00	25.00
<i>Class D</i>			<i>15.00</i>	<i>7.50</i>

Miscellaneous Tax Division  
Department of Revenue

*TR-1-2000  
2/3/00*

NAME: LARRY HUSS DATE: 3/7/77

ADDRESS: 107 7th

PHONE: 442-8070

REPRESENTING WHOM? MONTANA CONTRACTORS ASSOCIATION (MCA)

APPEARING ON WHICH PROPOSAL: HB 141

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? X OPPOSE? \_\_\_\_\_

COMMENTS: Reduce Class "A" license fee from \$450 to  
\$300

Amend Section 1, Page 1, Line 25

Following: "\$300"

Strike: "\$450"

Insert: "\$300"

Comments - neutral

Opponents  
Rita Tyson - Auditor's office

Joe Roberts - Gov's office

. problems of survey  
abuses in retention system

in house attorneys have been pressing

Mike Young - Lawrence Dept Division

Dept of Admin

Don Marquette - Dept of Natural  
resources

object to section 3

freeze on hiring

Rick Tucker - state Auditor