

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 13, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. Rep. Huennekens and Rep. Anderson were excused. Rep. Bennett was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 342 SENATOR S. BROWN, sponsor, stated this bill is to delete citizenship requirements for membership on a bank board of licensure for certain professions. Citizenship is not an adequate test. EXHIBIT 1.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. DAILY asked if under existing law these various professionals are required to be citizens. The Senator replied yes.

REP. CURTISS asked who requested the bill. The Audit Committee requested it to be drafted.

REP. KEEDY asked if there are any other relative oath requirements that have or have not been addressed by the bill. The Senator did not think there were any.

REP. HANNAH asked if there would be any advantages for a person to keep citizenship in two countries. The Senator replied it would probably be more of a disadvantage since he might have to pay taxes twice.

That ended the discussion on Senate Bill 342.

SENATE BILL 265 SENATOR HAGER, sponsor, stated this bill is to amend 72-15-301 to increase the compensation for estate public administrations. This will raise the compensation allowable to 3% instead of the present 2%. This will help meet expenses of the administrator.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. EUDAILY asked about section 2 of the bill. The Senator replied that is in reference to another set of laws. The attorneys

fees would not be raised, only the public administrators.

REP. HANNAH asked why set the rate, is there an abuse? SENATOR HAGER responded this would relate to the person who dies without heirs. The county has to settle the estate, which is the only function of the public administrator. REP. KEEDY stated with the basic cost of inflation, the money would be increased anyway. Wouldn't that increase the fee? The Senator responded no it would not. He did not feel that would handle the problem.

REP. MATSKO asked who pays for the attorney in these cases. It was replied the state does.

The Senator stated if your uncle died and you were appointed administrator, you would be receiving 2% of the estate for performing the duties. The public administrator handles the estate if there are no relatives available.

EXECUTIVE SESSION

SENATE BILL 216 REP. HANNAH moved do pass.

REP. HANNAH moved the amendments as in EXHIBIT 2. The amendments carried with REP. BROWN voting against it.

REP. HANNAH moved do pass as amended. The motion carried with REP. BROWN voting against it.

SENATE BILL 245 REP. CURTISS moved do pass.

It was decided to hold the bill until REP. BENNETT was present with some proposed amendments.

SENATE BILL 267 REP. EUDAILY moved do pass.

REP. EUDAILY moved on page 3, line 7 to insert "court" after "the". REP. BROWN felt the amendment was unnecessary. REP. HANNAH felt that the supreme court demonstrated we need the bill to be redundant.

The motion resulted in a roll call vote. Those voting yes for the amendment were: CURTISS, EUDAILY, HANNAH, MATSKO, DAILY and ABRAMS. Those voting no were: KEYSER, SEIFERT, CONN, MCLANE, SHELDEN, KEEDY, TEAGUE and BROWN. The amendment failed 8 to 6.

The motion of do pass carried with MCLANE, CURTISS and DAILY voting no.

SENATE BILL 403 REP. SHELLEN moved do pass.

REP. DAILY made a substitute motion of do not pass. REP. DAILY withdrew his motion.

The motion of do pass carried with KEYSER, MCLANE, DAILY, and CURTISS voting no.

SENATE BILL 404 REP. BROWN moved do pass.

REP. CURTISS made a substitute motion of do not pass. REP. CURTISS felt this bill is asking for people to come in and be guardians and they really don't know who will do this. The SRS would be responsible if they are under their care.

REP. DAILY asked what the difference is between developmentally disabled and incapacitated. REP. CONN replied developmentally disabled is when a person is born that way. Incapacitated could be the result of an accident.

REP. YARDLEY opposed the motion of do not pass.

REP. DAILY asked if this would make it easier for people to be removed from Warm Springs or Boulder. REP. YARDLEY did not think so. REP. BROWN asked if it would be possible to keep some people from going into the facilities that should. REP. YARDLEY stated limited guardianship would be for a specific purpose.

REP. KEYSER asked who sets this up. The court was the answer.

REP. CURTISS felt this was not a family type situation. It is establishing a system whereby these associations can have limited guardianship. The court will select the best person or association most qualified to serve. JIM LEAR stated the court would look first to the desires of the person who will be subject to the guardianship.

REP. CONN stated in many cases these individuals do not have a family to make the decisions.

The motion of do not pass failed with only DAILY, CURTISS and MCLANE voting for the motion. The vote was reversed to do pass. DAILY, CURTISS and MCLANE opposed the motion.

SENATE BILL 265 REP. MCLANE moved do pass.

REP. KEEDY felt there was no need for the bill. If inflation goes up the amount of the estate will increase. REP. IVERSON stated there would only be an increase of approximately \$75.

REP. DAILY stated the public administrator in Butte also works in another capacity. The public administrator only receives the fee for the estate, no salary is given.

The motion of do pass carried with EUDAILY, YARDLEY and KEEDY opposing the motion.

SENATE BILL 342 REP. KEEDY moved do pass. The motion carried with CURTISS and DAILY voting no.

SENATE BILL 83 REP. BROWN moved do pass.

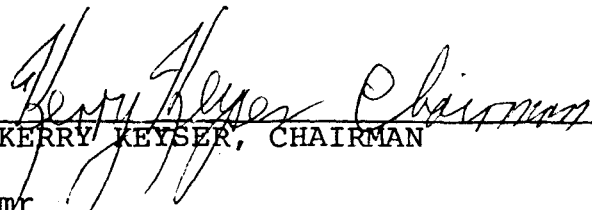
It was mentioned that the bill was passed earlier by the committee and returned by the House Floor. An immediate effective date was amended to the bill.

REP. KEEDY disagreed with the do pass motion. This offense is already in the criminal statutes as theft. It is special legislation that addresses a narrow section of the community. The date and time that it must be returned is designated on the contract. In bold print it states a penalty is assessed if it is not returned. It creates a presumption of guilt if there is false identification or failure to return the merchandise.

REP. CONN stated there are warnings on machines stating if it is broken into the person will be prosecuted. It is not unusual to have this stated. REP. KEEDY responded if a store does not have a shoplifter warning sign that does not mean you can shop-life in that store and not be prosecuted.

The motion of do pass as amended carried with KEEDY voting no.

The meeting adjourned at 9:35 a.m.


KERRY KEYSER, CHAIRMAN
mc

March 1980

OFFICE OF THE LEGISLATIVE AUDITOR
SUNSET POSITION PAPER #3

RE: CITIZENSHIP REQUIREMENTS FOR LICENSURE

Some of Montana's licensing laws require that applicants for licensure must be citizens of the United States. (See Appendix A.) The validity of such a requirement has been called into question a number of times and court decisions indicate that citizenship requirements are generally unconstitutional. In the case of In Re Griffiths, 413 US 717 (1973), the U.S. Supreme Court considered a Connecticut rule for admission to the practice of the law which required that all applicants be citizens. In considering the constitutionality of a prohibition against aliens being admitted to the bar, the court stated at page 721:

"In order to justify the use of the suspect classification, a state must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose for the safeguarding of its interest."

The court went on to conclude that the state had not carried its burden of proof in showing that the prohibition against aliens practicing as attorneys was necessary or accomplished any public purpose. In another U.S. Supreme Court case, Examining Board vs. Flores De Otero, 426 US 572 (1976), the court considered a prohibition in Puerto Rican law against aliens being licensed as civil engineers. At page 599 the court stated the question:

"Does Puerto Rico's prohibition against an alien engaging in the practice of engineering deprive the appellee aliens of 'any rights, privileges, or immunities secured by the constitution and laws,' . . ."

At page 601 the court answered this question as follows:

". . . the statutory restriction on the ability of aliens to engage in the otherwise lawful practice of civil engineering is plainly unconstitutional."

The court quoted extensively from its prior holding in the case of In Re Griffiths in reaching the conclusion that a prohibition against aliens practicing did not serve any public purpose. A final recent case was decided in U.S. District Court in the state of New York, Kulkarni vs. Nyquist, 446 F. Supp. 1269 (1977). The court considered a prohibition in New York's education laws concerning citizenship requirements. The court summarized the state of the law as follows:

"With respect to the first question, the law has been settled for quite a long time that a state may not restrict an alien lawfully residing in the United States, from pursuing a livelihood because he is not a citizen or does not intend to become one."

Clearly, these cases indicate that the state has a strong burden to show necessity and a public interest in precluding aliens from being licensed under state law. With the relevant boards in Montana, it does not appear that burden has been met and, therefore, such requirements for citizenship are probably invalid.

ISSUE:

Should citizenship requirements be removed from Montana's licensing laws?

APPENDIX A

Requirement for U.S. Citizenship		
<u>No</u>	<u>Yes</u>	<u>Board</u>
<u>1st Sunset</u>		
<u>Cycle</u>		
	X	Accountants
X		Architects
	X*	Banking
X		Counting Printing
X		Electricians
X		Engineers and Land Surveyors
X		Insurance Commissioner
X		Investment Commissioner
X		Landscape Architects
X		Physical Therapists
X		Plumbers
	X	Realty Regulation
<u>2nd Sunset</u>		
<u>Cycle</u>		
X		Athletics
X		Barbers
X		Chiropractors
X		Cosmetologists
X		Dentistry
X		Hearing Aid Dispensers
X		Human Rights Commission
X		Massage Therapists
X		Medical Examiners
X		Morticians
X		Nursing
X		Nursing Home Administrators
	X	Optometrists
X		Osteopathic Physicians
	X	Pharmacists
	X	Podiatry Examiners
X		Psychologists
X		Radiologic Technologists
X		Sanitarians
X		Speech Pathologists and Audiologists
X		Veterinarians
X		Veterans Affairs
<u>3rd Sunset</u>		
<u>Cycle</u>		
X		Aeronautics
X		Hail Insurance
X		Horse Racing
X		Livestock
X		Milk Control
X		Oil and Gas Conservation
	X	Outfitters Council
X		Public Service Commission
X		Water and Waste Water Operators
X		Water Well Contractors

*Bank directors must be U.S. citizens.

AMENDMENT TO SENATE BILL 216
THIRD READING COPY

1. Title, line 8

Following: "DAYS;"

Insert: "REQUIRING AN AFFIDAVIT FOR MATTERS PENDING OVER 90 DAYS; PROVIDING FOR CENSURE OR SUSPENSION FOR VIOLATIONS;"

2. Title, line 9

Strike: "SECTION 3-2-104, MCA; REPEALING SECTION 3-5-212"

Insert: "SECTIONS 3-2-104 AND 3-5-212, MCA"

3. Page 1, following line 23

Insert ~~Insert~~: (2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after the same shall have been submitted for decision the justice of the supreme court before whom the matter is pending shall submit an affidavit to the chief justice setting forth the cause name and number, and the reason the matter has not been decided. Copies of the affidavit shall be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 90 days to decide the matter which has been submitted. No cause, motion, or other proceeding shall remain undecided for more than 180 days after submission for decision without the approval of a majority of the other members of the supreme court for good cause shown in the affidavit requesting additional time. A justice of the supreme court who violates the provisions of this section is subject to censure or suspension by a majority vote of the other members of the supreme court."

4. Page 1, line 24

Following: "{3}"

Strike: "(2)"

Insert: "(3)"

5. Page 2, line 3

Strike: Section 2 in its entirety

Insert: "Section 2. Section 3-5-212, MCA, is amended to read:

"3-5-212. Salaries not to be paid until affidavit filed. The state auditor shall not draw a warrant in payment of the services of any judge of the district court until such judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless

casualty or sickness shall have intervened: If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after the same shall have been submitted for decision the district court judge before whom the matter is pending shall submit an affidavit to the chief justice of the supreme court setting forth the cause name and number and the reason the matter has not been decided. Copies of the affidavit shall be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 90 days to decide the matter which has been submitted. No cause, motion, or other proceeding shall remain undecided for more than 180 days after submission for decision without the approval of a majority of the supreme court for good cause shown in the affidavit requesting additional time. A district judge who violates the provisions of this section is subject to censure or suspension by a majority vote of the supreme court."

JWN/jcee

DEPARTMENT OF REVENUE
SENATE BILL NUMBER 272

Senate Bill 272 is a substantial revision of the laws relating to the issuance and execution of a warrant for distraint by the Department of Revenue. The warrant for distraint is an existing remedy used by the Department for the collection of unpaid taxes.

At the outset it should be noted that the warrant will not be used with respect to inheritance and estate taxes or to taxes collected at the local level, particularly property taxes.

The purpose of Senate Bill 272 is to provide a uniform method for the issuance and execution of a warrant that is applicable to all taxes (other than inheritance tax and estate tax) administered and collected by the department. The procedure has two basic elements: issuance and execution. Except in special circumstances, at least 60 days must pass from the due date of the tax until a warrant may be issued and prior to execution the opportunity for a hearing with respect to the underlying tax must be available to the taxpayer. Under this procedure, it is possible and will in fact most often be the case that the opportunity for a hearing will precede the issuance of the warrant.

The significance of issuance of the warrant lies in the fact that upon filing the warrant with a clerk of the district court, a lien arises on all real and personal property of the taxpayer in the county wherein the court is located. The resulting tax lien has the effect of a court judgement as far as enforcement is concerned.

At present the warrant mechanism is specifically provided for with respect to personal income tax, corporate license taxes, and child support debts. Additionally, the statutes provide for liens by the filing of various documents for such taxes as the oil and gas severance tax, special fuels tax, etc. These latter liens apply to real property, personal property, or both, depending on the particular tax involved. Several of these liens can be obtained within 15 days of notification of the taxpayer. Moreover there are no provisions relating to prehearing execution. The revision in Senate Bill 272 addresses these differences and attempts to provide a remedy that is fair to the taxpayer and effective for the Department.

Section Analysis

Section 1. New Section. This section defines the warrant for distraint and the amount of the warrant. The warrant when filed is a lien upon all real and personal property of the taxpayer in the county where the lien is filed.

Section 2. New Section. The procedure for issuance of a warrant is developed. The procedure involves two 30-day periods. Thirty days after the due date, the department may issue a notice to the taxpayer that unless payment is received within 30 days of the notice, a warrant may be issued. The 30-day periods may be avoided as provided in Section 3.

Section 3. New Section. This section provides for issuance of a warrant without waiting for either of the 30-day periods referred to in Section 2 to expire in two cases: the jeopardy situation and the trust situation. In the jeopardy situation immediate action may be required to protect the state's interest. In the trust situation, withholding, the taxpayer is holding the money in trust and is subject to greater regulation. Note that utilization of the provisions of Section 3 is discretionary.

Section 4. New Section. Section 4 outlines the procedure for filing a warrant.

Section 5. New Section. This section provides for an opportunity for a hearing prior to execution. The hearing is a contested case proceeding and an appeal from the hearing may be taken to STAB. The hearing must be requested in writing within 30 days of the notice of a right to a hearing. It is important to note that the opportunity for a hearing must occur prior to execution on a filed warrant. The hearing is on the underlying tax liability. The hearing requirement may be satisfied prior to issuance of the warrant, and in fact in most cases this will be the situation. However, should a warrant be issued without an opportunity for a hearing, Section 5 will insure that no action may be taken on the warrant until the opportunity is made available.

Section 6. New Section. The method for execution upon the warrant is outlined. The language is based on existing material in section 15-30-311, M.C.A.

Section 7. New Section. This section, the analog of Section 3 above, provides for pre-hearing execution in the jeopardy situation. When the provisions of Section 7 are used, notice must be given to the taxpayer and a hearing, if requested, must be held as soon as possible.

Section 8. New Section. Section 8 details the provisions for full or partial release of the lien.

Section 9. New Section. It is made clear that the warrant for distraint is not exclusive, and the Department may use other remedies for the collection of unpaid taxes. Such a remedy would be a suit in district court. A civil action might be desirable when an out-of-state taxpayer is involved, and the Department will have to enforce the judgment in a foreign jurisdiction.

Section 10. Amends 15-30-208, M.C.A. This section is rewritten to tie the warrant procedure for withholding taxes to the general provisions in Sections 1 through 9.

Section 11. Amends 15-30-226, M.C.A. The language dealing with warrants is deleted as unnecessary in view of the new sections.

Section 12. Amends 15-30-311, M.C.A. This section, which is the general warrant section for individual income tax, is rewritten to mesh with the new sections.

Section 13. Amends 15-30-312, M.C.A. On page 10, lines 8 and 9, language is added to tie this section to the provisions of the new sections. Section 15-30-312, M.C.A., deals with jeopardy assessments.

Section 14. Amends 15-31-406, M.C.A. Section 15-31-527, M.C.A., is proposed for repeal by Senate Bill 272 (see Section 54), and consequently a reference to 15-31-527, M.C.A., on page 10, line 21, must be deleted.

Section 15. Amends 15-31-525, M.C.A. This section is extensively amended to tie it to the new sections.

Section 16. Amends 15-35-105, M.C.A. This section relates to the coal severance tax. The issuance of a warrant would be subject to the provisions of Sections 1 through 9.

Section 17. Amends 15-36-107, M.C.A. This section relates to the oil and gas severance tax. It is amended for consistency with the new provisions.

Section 18. Amends 15-36-108, M.C.A. This section also relates to the oil and gas severance tax, and it too is rewritten to tie it to the provisions of the new section.

Section 19. Amends 15-37-107, M.C.A. This section relates to the tax on metalliferous mines and is rewritten to tie the language to the provisions of the new sections.

Section 20. Amends 15-37-206, M.C.A. This section deals with micaceous mineral mines and is rewritten to tie it to the new sections.

Section 21. Amends 15-38-107, M.C.A. This section and the next relate to the resource indemnity trust tax. The section is amended for consistency with the new provisions.

Section 22. Amends 15-38-108, M.C.A. This section is rewritten to tie the language to that found in the new sections.

Section 23. Amends 15-51-111, M.C.A. This section is concerned with the electric energy producers' license tax. The section is rewritten for consistency with the new sections.

Section 24. Amends 15-51-112, M.C.A. Section 15-51-112, M.C.A., also relates to the electric energy producers' license tax. The section is amended to tie it to the new sections.

Section 25. Amends 15-53-112, M.C.A. Section 15-53-112, M.C.A., is concerned with the telephone company license tax. The section is changed for consistency with the new sections.

Section 26. Amends 15-53-113, M.C.A. The amendments to this section, which also deals with the telephone company license tax, tie the section to the new sections.

Section 27. Amends 15-54-112, M.C.A. This section, dealing with the express company license tax, is amended for consistency with the new sections.

Section 28. Amends 15-54-113, M.C.A. Section 15-54-113, M.C.A., relating to the express company license tax, is amended to tie the language to that used in the new sections.

Section 29. Amends 15-55-109, M.C.A. This section, concerning the freight line company license tax, is amended to tie it to the new provisions.

Section 30. Amends 15-56-112, M.C.A. This section and the next deal with the sleeping car company license tax. The section is changed for consistency with the new sections.

Section 31. Amends 15-56-113, M.C.A. Section 15-56-113, M.C.A., is rewritten to tie it to the provisions of the new sections.

Section 32. Amends 15-58-106, M.C.A. Relating to the coal retailer's license tax, this section is amended for consistency with the new sections.

Section 33. Amends 15-58-107, M.C.A. This section, also dealing with the coal retailer's license tax, is revised to tie it to the new sections.

Section 34. Amends 15-59-106, M.C.A. This section, which relates to the tax on cement and gypsum producers, is rewritten for consistency with the new material.

Section 35. Amends 15-59-107, M.C.A. Also relating to the tax on cement and gypsum producers, section 15-59-107, M.C.A., is reworded to relate to the provisions of the new sections.

Section 36. Amends 15-59-205, M.C.A. Section 15-59-205, M.C.A., is amended for consistency with the new material. This section, as well as the next, is concerned with the tax on cement dealers.

Section 37. Amends 15-59-206, M.C.A. This section is revised to tie it to the new sections.

Section 38. Amends 15-70-211, M.C.A. This section, dealing with the gasoline tax, is extensively rewritten to tie it to the provisions found in Sections 1 through 9 of Senate Bill 272.

Section 39. Amends 15-70-334, M.C.A. Dealing with the special fuels use tax, this section is also extensively reworded to tie it to the new material.

Section 40. Amends 16-1-409, M.C.A. This section, relating to the beer tax, is rewritten to tie the language to that found in the new sections.

Section 41. Amends 40-5-222, M.C.A. This section and sections 42 through 50 relate to child support. The child support laws already contain the warrant mechanism and the amendments tie the existing language to the new provisions. Various 20-day periods are changed to 30-day periods for consistency.

Section 42. Amends 40-5-223, M.C.A. Please see the comments to section 41.

Section 43. Amends 40-5-224, M.C.A. Please see the comments to section 41.

Section 44. Amends 40-5-225, M.C.A. Please see the comments to section 41.

Section 45. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 46. Amends 40-5-241, M.C.A. This section is extensively rewritten to coordinate with the new material.

Section 47. Amends 40-5-245, M.C.A. Please see the comments to section 41.

Section 48. Amends 40-5-246, M.C.A. Please see the comments on section 41.

Section 49. Amends 40-5-255, M.C.A. Please see the comments to section 41.

Section 50. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 51. Amends 69-1-226, M.C.A. This section relates to the consumer counsel tax and is rewritten for consistency with the new material.

Section 52. Amends 69-1-227, M.C.A. This section, relating also to the consumer counsel tax, is amended to tie the language to that employed in the new material.

Section 53. Codification instruction.

Section 54. Repealers. This section repeals sections 15-30-315, M.C.A., and 15-31-527, M.C.A. The sections are rendered redundant by the new provisions. The text of the repealed material is as follows:

15-30-315. Release of lien or partial discharge of property. (1) The department shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state of Montana in the part to be discharged; or

(c) the department determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

15-31-527. Release of tax liens. (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state in the part to be discharged; or

(c) the department determines at any time that the interest of the state in the part to be so discharged has no value.

VISITORS' REGISTER

SENATE HOUSE JUDICIARY COMMITTEE
BILL 265 Date 3/13/81
SPONSOR Hager

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 342

Date 3/13/81

SPONSOR S. Brown

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.