

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

February 4, 1981

The twentieth meeting of the Senate State Administration Committee was called to order by Senator Pete Story, Chairman on the above date, in Room 442 of the State Capitol Building at 10:00 A.M.

ROLL CALL: All members of the committee were present except for Senators Kolstad and Johnson who were absent.

CONSIDERATION OF SENATE BILL NO. 202: AN ACT TO CREATE THE POSITION OF PUBLIC DEFENSE COORDINATOR; TO PROVIDE FOR THE COORDINATOR'S APPOINTMENT, QUALIFICATIONS, REMOVAL, SALARY, STAFF, AND DUTIES; AND TO PROVIDE FOR A COUNTY CONTRIBUTION TO THE COSTS OF THE COORDINATOR'S SERVICES.

Senator Fred Van Valkenburg, District 50, sponsored this bill for the state of Montana, stating there is a constitutional mandate that indigent individuals be given competent legal assistance. He feels the legislature should acknowledge and deal with this. The measures now are inefficient. This bill is important if we are to provide effective counsel. If not, convictions are going to be overturned. This bill creates a public defense coordinator who provides centralized assistance for counties of this state. There may be some funding needed to begin this project.

PROPONENTS: Mike McGrath, representing the Attorney General's office, handles all the appellate cases so they are familiar with the problems of increasing cases of allegations or incompetent defense counsel. This bill will help alleviate, not eliminate, the situation. It is their position that the quality of the legal work done on behalf of indigent individuals would improve, the quality of work before the Supreme Court would be improved, and the quantity would be reduced. It would save both county and state money.

Mike Stephen, M.A. Co., is involved with individuals who enter the system and is obliged to process these individuals and represent them adequately. The county would have available expertise under the bill.

Marc Racicot, County Prosecutor Services, gave an example of a \$90,000 bill to handle four triple-homicide cases, entering guilty pleas, with no trials. The cost of \$60,000 was for civil defense cases. They handled all this for \$5,000. The cost savings are to the counties. He claims the better the opposition you are, the better is the work. The demand for services under this bill would be overwhelming. The only

February 4, 1981

fault would be a lack of people, although it would be totally sustaining.

Mike Abley, Supreme Court, stated public defense function is intricate and sensitive, with errors being expensive and irreversible. This bill can help prevent these errors. The cost could easily be made up. The court is more aware of problems in the state.

OPPONENTS: None.

Questions from the committee: Senator Towe asked Senator Van Valkenburg to explain the salary which is to be fixed by the governor. He answered that the fiscal note should be based on a grade 19. Mr. Racicot stated it is commensurate with the county prosecution trainor.

Senator Ryan stated to Senator Van Valkenburg that this is not an indictment of a failure of our law school. He answered that Montana's law school is a generalized school, that criminal and law defense is a specialty.

Senator Hammond asked how the \$90,000 bill was incurred. He answered that with the rate of \$45 an hour for attorneys in private practice the amount was high because of pre-trial motions and pretrials.

Senator Story asked if another attorney might have avoided that fee. Mr. Racicot stated there may not have been enough people in his organization, but they would have avoided one-fourth of \$60,000. Their present fee is \$25 an hour but at the discussed time it was \$15 an hour.

Senator Van Valkenburg discussed the possibility of the public defense coordinators contracting with private attorneys in particular areas at rates they would negotiate with county commissioners.

Senator Story pointed out the discrepancy between the number of attorneys in Missoula with tenure and the possible one attorney in Ingomar, Montana. Senator Van Valkenburg stated there is no training for defense in this state, and this particular attorney would probably handle his cases here in Helena.

Senator Hafferman stated he does not like to see any more added to the state that will cost more money. Senator Van Valkenburg stated this proposal of his will actually save money.

Senator Hammond remarked to Senator Van Valkenburg that it appears that the system will be as good as the public defense coordinator.

Senator Towe asked about a possible problem of attaching it to the Attorney General. Senator Van Valkenburg answered it is appropriate. Senator Story asked why it could not be the Supreme Court Justices themselves. The answer was that it was not feasible.

Mike Abley said the court could consider whether it would be attached to them and decided against it.

Mr. Stephen said that public defender jobs are not sought after; established lawyers may not want this job but a new attorney may be interested.

Senator Hammond asked if the state should run a school for lawyers. Mr. Stephen stated this bill offers the opportunity for the district judge and the county to establish rapport.

Senator Story suggested the possibility of using the law school itself, with potential volunteer help and an interested dean. Senator Van Valkenburg stated that they are not cooperative. In closing, Senator Van Valkenburg stated that there are problems, but the legislature should address this situation this session.

The hearing was closed on S. B. 202.

CONSIDERATION OF SENATE BILL 217:

REVISING THE ADMINISTRATIVE PROCEEDURES OF THE  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL  
LICENSING....

Senator Steve Brown, sponsor of the bill, pointed out some changes and submitted amendments and explained each in turn. It is his feeling from being on the audit committee this could alleviate the six-year review.

Ed Carney showed a sample of an application that seems quite subjective.

Questions of the Committee: Senator Towe asked Senator Brown about Mr. Huss' comments about related practices. Senator Towe said there is a provision for revoking license in the law of these boards, which is different from renewal. Senator Brown said this is basic information that the board should have.

Mr. Carney said this is not alerting the current process; cause is still needed prior to a hearing. Senator Ryan stated he had looked at an application that must be unconstitutional; some questions may not be answered. Mr. Carney stated this application is part of the licensing process, and there may be some boards not asking this question.

Senator Towe in looking at the audit report itself stated they will find out his criminal conviction, malpractice suit, and other. Would not a better approach be to require by law that he have a direct obligation to report it to the board.

Senator Brown said the purpose of these boards is to protect public health and safety.

Senator Towe asked about the confidentiality of the information and was assured that it is confidential. Senator Story asked why were codification instructions not put in the bill. Senator Brown said in this legislature it is being done.

The hearing was closed on S.B. 217.

CONSIDERATION OF SENATE BILL 217:

AN ACT TO REMOVE AUTHORITY OVER STAFFING FROM THE BOARDS OF MEDICAL EXAMINERS, PHARMACISTS, NURSING, BARBERS, COSMETOLOGISTS, AND WATER WELL CONTRACTORS.

Senator Steve Brown submitted amendments and stated this bill deals with an issue of who should control full-time staffs who serve these various boards. This law would eliminate the latter occupations.

Senator Towe asked him to please explain each section, and he did.

PROPOSERS: None.

OPPOSERS: None.

Questions from the committee: Senator Towe asked about the excepting of pharmacists but not nurses. Senator Brown said it would be up to the board's director who he hired and whether they are licensed in their occupation. Senator Towe asked if the board has the authority to hire and fire; yes, was the answer.

Mr. Carney stated this problem of hiring is not a problem to him but in later years it may be a problem who does hire and the way it is done by another director. He works with the boards as a team; it is his practice as an individual.

February 4, 1981

Senator Brown pointed out that if the law is left on the books, it could cause problems and as result the director would be unpopular. The committee discussed possible future problems.

Senator Towe stated he could approve as amended S.B. 218, but he is concerned that it would be an unworkable system in some boards.

Senator Story stated that when they were created they knew how much authority they wanted to give or deny them. This State Administration Committee is familiar with this more than audit.

Senator Towe moved the amendments pass. Motion carried unanimously.

Senator Towe moved SENATE BILL NO. 218 DO PASS, AS AMENDED. He stated he had a reservation about legislation taking away authority of boards and may have to face the fact they may not have a board. This motion passed unanimously.

There was discussion by the committee on S.B. 217. Discussion on S.B. 155 resulted in Senator Towe refusing the amendments by Mr. Nachtsheim.


ACTION ON SENATE BILL 155:

Senator Towe moved to pass one amendment. It passed unanimously. In another suggested amendment by Mr. Nachtsheim on page 10, line 23 Senator Towe explained why "within one year" should be struck. Senator Story asked how many students were there, and Towe answered many were involved.

At this point Senator Hafferman left but gave the secretary his yes vote for a do pass, as amended.

Senator Towe moved that amendment and title DO PASS, AS AMENDED. It passed unanimously by those present.

ADJOURNMENT: 11:30.



\_\_\_\_\_  
PETE STORY, Chairman

2071

ROLL CALL

STATE ADMINISTRATION      COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2-4

---

| NAME                         | PRESENT | ABSENT | EXCUSED |
|------------------------------|---------|--------|---------|
| Senator Pete Story, Chairman | ✓       |        |         |
| Senator Allen Kolstad, V. C. |         | ✓      |         |
| Senator William Hafferman    | ✓       |        |         |
| Senator H. W. Hammond        | ✓       |        |         |
| Senator Jan Johnson          |         | ✓      |         |
| Senator Patrick Ryan         | ✓       |        |         |
| Senator Thomas Towe          | ✓       |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |
|                              |         |        |         |

Each day attach to minutes.

NAME: LARRY NUSS DATE: 2-4-81

ADDRESS: Box 514, Helena

PHONE: 442-8070

REPRESENTING WHOM? MONTANA SOCIETY of Cert. Pub. Acc.

APPEARING ON WHICH PROPOSAL: SB 217

DO YOU: SUPPORT?                      AMEND? X OPPOSE?                     

COMMENTS: Section 1, Page 2, Line 19

Strike: Line 19

Insert: "man days and actual operating costs  
of the department for each board."

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Ed Cunningham DATE: 2-21-81

ADDRESS: 2010 R.A.

PHONE: 440-3737

REPRESENTING WHOM? 2nd P.D.

APPEARING ON WHICH PROPOSAL: CB 217-218

DO YOU: SUPPORT? — AMEND? — OPPOSE? —

COMMENTS: To provide information —



2-4-81

ST AD

BILL NO.

| NAME                 | REPRESENTING                                  | Check One |        |
|----------------------|---|-----------|--------|
|                      |   | Support   | Oppose |
| Harry Olson          | Barker  |           | ✓      |
| Meg Fars 5N          | self  |           |        |
| Denise Wunert        |   |           |        |
| Anita Sucka          |   |           |        |
| Thomas Drate         |   |           |        |
| Joannette Behrmiller |   |           |        |
| Frank J Davis        | Mont St Pharmacy Curcison                     | ✓         | ✓      |
| Tom Gleason          | CAS. CO. ELECTED OFF.                         | ✓         | ✓      |
| Ed. [unclear]        | Dept of P.O.L.                                | ✓         | ✓      |
| Loren Townsend       | County Prosecutor Services B <sup>8</sup> 202 | ✓         |        |
| Marc Racicot         | " 202   | ✓         |        |
| Mike Ahler           | Supreme Court 202                             | ✓         |        |
| Marty Elson          | Mont Nurses Association                       |           |        |
| Mike McGRATH         | ATTY GEN 202                                  | X         |        |
| Mike Stepha          | MTA CO SB #202                                | X         |        |

(Please leave prepared statement with Secretary)

# STANDING COMMITTEE REPORT

FEBRUARY 4

19 31

PRESIDENT

MR. ....

STATE ADMINISTRATION

We, your committee on .....

SENATE

218

having had under consideration ..... Bill No. ....

SENATE

218

Respectfully report as follows: That ..... Bill No. ....

introduced bill, be amended as follows:

1. Title, line 7.

Following: line 6

Strike: "PHARMACISTS,"

Following: "BARBERS,"

Strike: "COSMETOLOGISTS,"

2. Title, line 8.

Following: "37-3-203,"

Strike: "37-7-104,"

3. Title, line 9.

Following: "37-30-203,"

Strike: "37-31-312,"

4. Page 2, lines 4 through 16.

Following: line 3

Strike: line 4 through 16 in its entirety

Renumber: subsequent sections

XXXXXX  
DO PASS

CONTINUED

## SENATE BILL 218

5. Page 5, line 8 through page 6, line 1.

Following: line 7

Strike: line 8 on page 5 through line 1 on page 6 in its  
entirety

Renumber: subsequent sections

416  
AND, AS SO AMENDED  
DO PASS

# STANDING COMMITTEE REPORT

.....FEBRUARY 4..... 19 81.....

MR. ....PRESIDENT.....

We, your committee on .....STATE ADMINISTRATION.....

having had under consideration .....SENATE..... Bill No. 155.....

Respectfully report as follows: That .....SENATE..... Bill No. 155.....

introduced bill, be amended as folloed

1. Title, line 5 through line 8.  
Following: "SYSTEM"  
Strike: Remainder of line 5 through "INTERMITTENT" on line 8  
Insert: "BY REQUIRING CERTAIN EMPLOYEES TO AFFIRMATIVELY  
EXERCISE THE OPTION TO BECOME MEMBERS AND ELIMINATING THE  
ONE YEAR RULE FOR CERTAIN STUDENT"
- 2 Title, line 8 and line 9.  
Following: "AMENDING"  
Strike: "SECTIONS 19-3-104, 19-3-401, AND"  
Insert: "SECTION"
3. Page 1, line 12 through Page 7, line 11  
Following: line 11  
Strike: line 12, page 1 through line 11, page 7 in its entirety

XOXPASS

CONTINUED

## 4. Page 8, line 1:

Following: "year"

Insert: "who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment."

## 5. Page 10, line 23.

Following: "writing"

Strike: "within 1 year"

## 6. Page 12, lines 21 and 22.

Following: "(16)"

Strike: remainder of line 21 and line 22 in its entirety

Insert: "all former members receiving a retirement allowance other than as a beneficiary serving in employment if that employment does not exceed 60 working days in any fiscal year. These former members must be reinstated into membership on the 61st working day in any fiscal year unless they elect to return to membership prior to that day."