

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

January 17, 1983

The meeting of the State Administration Committee was called to order by Chairman Story at 10:30 a.m. on January 6, 1983 in Room 331 of the State Capitol.

ROLL CALL: Roll was called. All members were present. Senator Tveit came in late.

SENATE BILL NO 45: The hearing was opened to S.B. 45 and introduced by SENATOR STIMATZ. SENATE BILL NO. 45 is "AN ACT TO REQUIRE THAT THE NECESSITY FOR ADMINISTRATIVE RULES BE DEMONSTRATED IN THE RULEMAKING RECORD OF ADMINISTRATIVE AGENCIES AND TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW THAT RECORD; AMENDING SECTIONS 2-4-305 AND 2-4-402, MCA."

SENATOR STIMATZ stated that this bill introduced at the request of the Administrative Codes Committee of which he is a member as well as is Senator Hammond. He stated that it is basically a housecleaning bill but does make a few minor changes in the existing law. Senator Stimatz introduced David Niss, counsel for the Code Committee.

DAVID NISS, counsel for the Administrative Code Committee, addressed the committee and partially explain the emphatics involved in the rule making process. He said that when agencies purpose to adopt new rules to amend existing rules or repeal existing rules, the agencies filing under the provisions of the Montana Administrative Procedure Act (MAPA) are required to publish notices of their propose changes, adoption or repeal in the Montana Administrative Register. After the agency purposes in this document what it is going to do, it must also give notice in addition to the text of the change and notice of opportunity for hearing in addition to the text change and notice of the date, in which those interested in the change, can submit comments to the person designated by the agency. After the time provided for consideration of the rule book by the agency and the public has lapsed, the agency must make a decision whether or not to adopt the rule and if it decides to adopt the rule, amendment or repeal the rule, then again publish notice of that action in the Montana Administrative Register. The register contains two types of notices; the notice of purposed rule making and the final notice.

After the agency in done public notice, and once the step has been taken and the rule has been changed, the final version of it is published in the Administrative Rules of Montana.

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The changes proposed by the committee would not change the standard under rules are currently determined. Right now, rules must be necessary to actuate the purpose of the statute. That is the standard and current law.

What the committee is doing, by this proposed change, is require that 'that reasonable necessity' rule, must be demonstrated in the statement published in these books and in the testimony submitted to the agency, oral or written. Agencies do not have to hold hearings, only offer opportunity for a hearing. The written and oral date of these comments referred to in the proposed change, and the "either, or" rule, depending upon whether the agency either voluntarily or upon request to hold a hearing on the proposed rule change. What the amendment would do is to require, that reasonable necessity for the rule actually be shown in these documents in the information submitted to the agency by the public. The reason for this change is because the members of the administrative code committee became concerned after reviewing many proposed rule but there may not be an adequate showing of what it is that makes the adoption of the change of the rule necessary, and it is the committee's fear that if that is not shown, that for some there may not be 'no reasonable necessity' and while a court at this time has the authority to invalidate a rule if it believes the rule not to be necessary to effectuate the purpose of the statute. The committee believes it unfair for citizens proposing, what would be an unnecessary rule, in court to challenge the rule, and that there should be some mechanism, by which an agency or body, like the administrative code committee, could advise the agency whether or not an independent body should exercise a judgement.

David Niss pointed out that there is another bill similar to this bill in the House, H.B. 92, that would allow the administrative code committee to object to the rule on the basis that the statutory standard had not been complied with for adopting rules. There may be a time when the legislature might not want this.

PROPOSERS for SENATE BILL NO 45 were called.

CHAD SMITH, attorney and appearing in behalf of the Montana Hospital Association, informed the committee of it support of S.B.45 and stated that the hospital industry, being one of the most controlled industries are particularly concerned about rules, which are very expensive. He stated that they are particularly interested in this proposal in this bill because of the definition of "reasonably necessary". It sets forth what is necessary for the codes committee to make a decision. If they are available to the code committee they are

of course available to the industries or citizens that are being regulated so they can voice their objections.

SCOTT CURRY, attorney for Labor and Industry, stated that they support the bill with a few minor amendments. He stated that he thought the intent of the bill, it is found that it is important that reasonable necessity be demonstrated, however, as the bill reads now, it says "reasonable necessity must be demonstrated in written and oral data, views, comments, and testimony or the rule could be ruled invalid. The thing he was concerned about is that agencies would not have to hold hearings or have to hear testimony in adopting rules.

Mr. Curry said that his amendment would change the "and" in line 11, page 3 to an "or". That would require "reasonable necessity" be shown in two places, one in the notice of rule making and secondly during public hearing, public comment procedure. EXHIBIT 1. He stated that this amendment does not change the purpose of the bill and hopefully clarifies the committee's intent.

DAL SMILIE, attorney for Social Rehabilitation Services, testified supporting SB 45 and offering an amendment. He distributed written testimony including the amendment which is shown in EXHIBIT 2.

DAVE WOODGARD, chief legal counsel for the Department of State Lands, in favor of the bill along with the amendment presented by the SRS or Dal Smilie, submitted written testimony to the committee as EXHIBIT 3. He added that the bill as now written could create problems in the Department of State Lands and cited the issuing easements. He stated that those individuals coming in and asking for easements across state land to get to their land are charged a fair amount of value and also a fee that is currently \$25, but, that it is not inconceivable that in 2 years it could be up to \$35. He stated that if they went into the administrative process to amend their rules from \$25 to \$35, the only problem would probably be those who receive easements on a regular basis like the power company and they will be opposed where others might ignore the change, thus in order to have support we would have to go find an individual who might think it would be a good idea to pay more for that service.

There was no other proponents and no OPPONENTS, questions were called for.

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SENATOR STIMATZ asked DAVID NESS to comment on the amendments who stated that this was the first time he has had a chance to review them. He asked the committee to keep in mind the administrative code committee's purpose in proposing the original changes in the bill. At this time only some agencies introduce evidence out of the rule making record to support rule changes procured by that agency. Department of Health is required to have hearings on state air pollution, which overcome NAPA and gives the agency a choice until request. At many of these hearing, the departments attorneys submit written testimony favoring the rule changes, those at the hearing can hear the agencies position. This is allowing public information and it may be that this is what the codes committee was trying to do and this amendment may allow the agency not to introduce that kind of record testimony.

Mr. Ness said he did not see where the amendment Mr. Smiley submitted would have any substantial effect. It deletes, "testimony considered by the agency" and substitutes "testimony considered by the public or the agency". The word the codes committee was trying to get at was the word "considered", which would include all testimony.

SENATOR STORY asked what part of this bill is operative in cases when there is no public hearing.

SENATOR STIMATZ stated that it would be shown in the Montana Administrative register.

DAVID NESS stated the substituting "or" for "and" is a choice as to how far the committee or legislature wants to go in requiring the agencies' substantiating reasonable necessity on the record.

MR. SMILIE stated that they are afraid if there were a hearing and no one showed they would not be able to make their change, or if there were only opponents.

MR. NESS stated that the only thing the agencies would have to do is have a member of the agency show up and testify.

MR. SMILIE asked if this is the purpose if they could show it in the bill as the intention.

SENATOR STIMATZ stated this was the purpose of the bill and he would be glad to meet with anyone on this bill.

The meeting closed on S.B. 45.

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SENATE BILL 33: The hearing was opened to S.B. 33, "AN ACT TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO POLL THE LEGISLATURE TO DETERMINE THE INTENTION OF THE LEGISLATURE WITH RESPECT TO ANY EXISTING ADMINISTRATIVE RULE: CLARIFYING HOW LEGISLATORS MAY OBJECT TO ANY RULE; ALLOWING A POLL TO BE TAKEN ONLY IF THE LEGISLATURE IS NOT IN REGULAR SESSION: AND CLARIFYING WHERE POLL RESULTS ARE TO BE PUBLISHED: AMENDING SECTIONS 2-4-306 AND 2-4-403, MCA."

SENATOR HAMMOND introduced S.B. 33 and reviewed the changes in the bill with the committee. He stated that this bill is at the request of the administrative codes committee. He referred to David Ness for further questions.

CHAD SMITH, representing the Montana Hospital Association, testified in favor of S.B. 33. He stated that they run into many things that they question. He said that they are under many rules and regulations and they question their value at times and thus are in favor of the portion of the bill that rules in the past two years be reexamined. They are also in favor of the change on page two of the bill that allows both sides of the argument to be heard.

There were no other proponents and no opponents therefore questions were asked for of the committee.

SENATOR STORY asked the effects of the polls due to Judge Bennetts ruling.

DAVID NESS stated the effect of the bill is in current statutes.

The meeting CLOSED on SENATE BILL 33.

SENATE BILL NO. 123: The hearing was opened to S.B. 123, "AN ACT TO RAISE THE DOLLAR AMOUNT OF THE BOND THAT NOTARIES PUBLIC MUST GIVE; AND TO MAKE IT CLEAR THAT THE GOVERNOR'S AUTHORITY TO ISSUE A COMMISSION IS DISCRETIONARE; AMENDING SECTION 1-5-405, MCA".

SENATOR MARBUT introduced the bill to the committee by stating he has a bill with proposed amendments to 1-5-405 of the Montana Codes to increase the buying requirements of the notary public to \$5,000, which is the first change and the second change is to substitute the word "may" to "shall" in the section of the law. The purpose of the bill is a result of research of the secretary of the state and Montana is considered lower than average. The intention is that the bond of the notary public is for the protection of the public.

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If the notary should make an error the bond would be sufficient to allow legal action.

There was question brought up if this would increase cost to the notary. A letter from Western Surety Company no change. and it will remain \$30 for at least 5 years. EXHIBIT 4.

He noted the inconsistency of the words "shall" and "may" pertaining to the governor's authority.

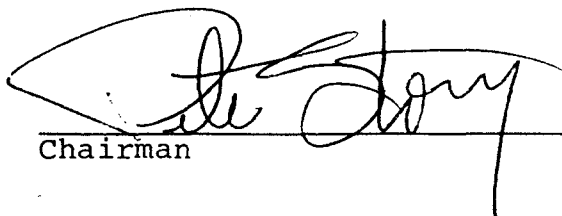
PROPOSERS were called to testify.

CLIFF CHRISTIAN, representing the Secretary of State spoke in favor of S.B. 123. He distributed a letter for the record from Milton G. Valera, President of the National Notary Association.

There being no other proposers and no opponents, questions were called for.

The meeting closed on S.B. 123.

Motion was made to adjourn at 11:30 a.m.

  
Chairman







PROPOSED AMENDMENTS TO SB45

Page 3, Line 11

Following: "Comments"

Strike: "and"

Insert: "or"

Page 3, Line 12

Strike: Line 12 in its entirety

Insert: "Submitted by the agency or the public"

January 14, 1983

To: Senate State Administration Committee

From: Dal Smilie, Attorney  
SRS

Re: SB 45

The Department of Social and Rehabilitation Services generally supports SB 45. As currently written Section (6)(b) on page 3 is unworkable. SRS suggests the following amendment:

(6)

(b) Reasonably necessary to effectuate the purpose of the statute. Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, and testimony considered by the agency  
SUBMITTED BY THE PUBLIC OR AGENCY.

As currently proposed SB 45 wouldn't allow necessary and lawfully mandated rule changes unless it was supported by public testimony. Often no public comments are received so the agency would be unable to demonstrate necessity from testimony considered. Often only those adverse to a proposed rule testify, the proponents (often rules are mandated by new law, federal changes, etc.) often are not present to testify. As written the agency would have to recruit "straw men" proponents to demonstrate necessity from testimony.

SRS's proposed amendment to SB 45 would allow the agency to demonstrate necessity from its own testimony rather than finding and recruiting straw men to testify when a rule change is mandated.

DEPARTMENT OF STATE LANDS TESTIMONY ON SENATE BILL 45  
BEFORE THE SENATE STATE ADMINISTRATION COMMITTEE

The department supports the amendment which has been put forward by the Department of Labor and Industry. The new language would seem to preserve the intent of the original bill, without unduly restricting the passage of necessary rules.

The language in lines 11 and 12 on page 3 of the bill would seem to require that members of the public would have to comment or present data which would demonstrate reasonable necessity. In many instances this would be extremely unlikely despite the fact that an agency could easily demonstrate a rule's reasonable necessity and that the majority of Montana citizens would benefit from the rule.

As an example, the Department may determine that the fees for issuing an easement deed on State land should be raised from the current rate of \$25.00 to \$30.00. It could be easily determined that the rate is reasonably necessary in order for the department to recoup the costs of processing the deeds. However, the department may not receive any public comment or comments only from parties adversely affected by the change. Under the bill as it now reads, the department would seem to be precluded from adopting a necessary rule for the lack of a favorable comment as to the necessity of the rule, despite the fact that the rule would benefit the majority of taxpayers.

The Department of State Lands urges the Committee to amend the bill as suggested by the Department of Labor and Industry.



Office of General Counsel

January 11, 1983

TO WHOM IT MAY CONCERN:

This letter is to certify the willingness of this Company to continue writing the Notary Public bond in the state of Montana for a term premium of \$30, if the bond penalty is increased to \$5,000, and assuming no other change in the Notary Public law. This premium, like all others, would be subject to the approval of the Montana Department of Insurance, though we know of no reason to anticipate anything other than their approval. Should this approval be forthcoming, we would not anticipate requesting any change in this rate for a period of at least five years.

Yours very truly,

  
DAN L. KIRBY

DLK:n



## NATIONAL NOTARY ASSOCIATION

MILTON G. VALERA  
PRESIDENT  
DEBORAH M. THAW  
EXECUTIVE DIRECTOR

23012 VENTURA BOULEVARD  
WOODLAND HILLS, CALIFORNIA 91364-1186 USA  
TELEPHONE (213) 347-2035, CABLE: NOTARIAN

FOUNDER  
RAYMOND C. ROTHMAN  
1922

December 30, 1982

Mr. Cliff Christian  
Bureau Chief, Governmental Affairs  
Office of the Secretary of State  
Capitol Station  
Helena, MT 59620

Dear Mr. Christian:

Thank you for your recent inquiry about the position of the National Notary Association regarding Notary bonds.

The higher bond amount of \$5,000 that has been proposed in Montana will provide consumers with much greater protection against negligence or purposeful misconduct by Notaries than the present \$1,000 bond.

Some Notaries participate in fraudulent transactions through lack of knowledge or attention to detail or as willful co-conspirators. They will notarize a forged document without bothering to check the signer's identification documents or even requiring the document signer to appear before the Notary.

The reckless or criminal Notary may escape liability if a Notary bond is nonexistent or not large enough to prompt an action to recover damages by the party injured in a document fraud. A larger bond will encourage actions against the bond. In turn, the surety will look to the Notary for recovery of the bond amount, thus forcing the Notary to take financial responsibility for his actions.

Admittedly, a \$5,000 bond might not fully reimburse a victimized member of the public who has been financially damaged by the actions of a Notary. Yet, to a person who may have lost a life's savings, \$5,000 is far better than nothing at all. Furthermore, many attorneys would not be prompted to help a victim recover against a \$1,000 bond. A \$5,000 bond, however, would be more attractive and might lead to the victim's recovery of a much larger amount.

Please let me know if you would like any further information about notarial practices.

Sincerely,

Milton G. Valera  
President

Jan. 17, 1983

# Report of State Lands

449-2074

Dept of St. Lands

SB 45

OPPOSE?

See attached comments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: SCOTT CURRY DATE: 1-17-83

ADDRESS: DEPT OF LABOR

PHONE: 9-3661

REPRESENTING WHOM? DEPT OF LABOR

APPEARING ON WHICH PROPOSAL: SB45

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: BELIEVE BILL AS WRITTEN WOULD REQUIRE

TESTIMONY ON THE FLOOR TO AVOID INADVERTENCY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: David Woodgren DATE: 1-17-83

ADDRESS: Dept. of State Lands, Capitol Station, Helena

PHONE: 449-2074

REPRESENTING WHOM? Dept. of State Lands

APPEARING ON WHICH PROPOSAL: SB 45

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

COMMENTS: written testimony provided

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



NAME: Doc Smilie DATE: 1/17/83

ADDRESS: Holena

PHONE: 449 5622

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: 415

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

COMMENTS: written testimony provided

DATE: 1-17-83

ADDRESS: Box 664

PHONE: 442-2986

REPRESENTING WHOM? MINT HOSPITAL ASST

APPEARING ON WHICH PROPOSAL: SB 33 + SB 41

DO YOU:    SUPPORT?~~X~~                      AMEND?                      OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE AND HOUSE COMMITTEE

DATE 1-18-85

48th Session

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.