

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 24, 1983

The meeting of the State Administration Committee was called to order by Chairman Pete Story on January 24, 1983 at 10:30 a.m. in room 331 of the State Capitol, Helena, Montana.

ROLL CALL: Roll was called and all members of the committee were present.

The meeting was opened to the hearing of Senate Bill No. 148.

SENATE BILL NO. 148: "AN ACT REESTABLISHING THE BOARD OF OIL AND GAS CONSERVATION UNDER EXISTING STATUTORY AUTHORITY AND RULES; TRANSFERRING COLLECTION OF THE OIL AND GAS PRODUCERS PRIVILEGE AND LICENSE TAX FROM THE BOARD TO THE DEPARTMENT OF REVENUE; PROVIDING UNIFORM PENALTIES; PROVIDING THAT THE PRIVILEGE AND LICENSE TAX RATESETTING IS SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; CLARIFYING THE BOARD'S REGULATORY AUTHORITY; AMENDING...".

SENATOR HIMSEL, District 9, Kalispell, Montana, introduced his bill as a sunset review bill. He submitted his introduction in writing, shown attached as EXHIBIT 1. This introduction indicates the purposed changes to the bill.

PROPONENTS were called.

JERRY FOSTER, Administrator of Natural Resources Corporation Tax Division, Department of Revenue. He stated that he was asked by the directors office to speak briefly to the re-organization, which makes sense, for the department of revenue to take this, and they are equipped now. The one thing they ask is that this be prepared in order to determine an additional FTEs and costs necessary to administer the staff.

There were no other proponents and no opponents so Senator Story called for questions from the committee.

SENATOR TOWE asked if there were a reason for the effective date.

SENATOR HIMSEL said it was to correspond with the fiscal year.

SENATOR TOWE asked if there were two taxes right now. There is a production tax that pays for the board and a severance tax that is separate from that, is that right.

JERRY FOSTER stated that they would propose to add two tenths percent on to the six percent. The six percent now is just the benefits we desire to funnel that two tenths percent back

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would simplify it. There are two separate taxes.

SENATOR TOWE expressed that the tax provided in 82-11-130 is a production tax and the title 15 is the severance tax.

DEE RICKMAN, executive secretary of the Board of Oil and Gas Commission, responded to the question whether the amount was appropriated by saying that it does go into an earmarked fund.

SENATOR STORY reminded the committee that this is a bill that decides only where the tax will be collected.

SENATOR HIMSL closed on SENATE BILL 148.

The meeting opened to the hearing of SENATE BILL 137.

SENATE BILL NO. 137: "AN ACT REVISING THE SUNSET PROVISIONS CONCERNING STATE AGENCIES; ELIMINATING THE 6-YEAR LIMITATION ON REESTABLISHING AGENCIES OR PROGRAMS; ESTABLISHING A PROCEDURE FOR SPECIFYING AGENCIES AND PROGRAMS TO BE REVIEWED; AMENDING SECTIONS ...".

SENATOR HIMSEL, District 9, Kalispell, Montana, introduced this bill and submitted his written statement for the record shown as EXHIBIT 2.

PROPOSERS were called: There were no proposers.

OPPOSERS were called:

DR. JOHN LOWRY, representing the Common Cause, spoke opposing the bill stated that the essence of the sunset process is that you have automatic, periodic evenhanded review and termination of every agency, board and commission unless terminatively reenacted. S.B. 137 affectively guts the sunset act. Section 1 leaves it up to the legislature and the legislature audit committee to decide which agencies are even put out on a sunsettable list. They will probably overpoliticize the process by simply having it up to the governor and the fairness of the process will be or seem to be compromised. Secondly, amended section 5, charges the legislative audit committee with the reviews, but in the next breath states if for some reason they can't, no sweat. In section 8 it definitely reestablishes agencies or programs. This is against the program. He said that in their opinion, the features of 137 make it nonadvisable.

He suggested all agencies should be reviewed. He suggested if the Legislative audit committee does not have the time or the money there are other ways around that.

Dr. Lowry stated that they approve the sunset act. He said they would like to see a lean and meaningful sunset process. He stated that he is new to Montana. He would like to see one third public members on the board; improve complaint procedure and publish them, publish information and see funds deposited in the state treasury. He would like to see more emphasis on the two step process. The question is should this be done by government at all.

There were no other opponents.

QUESTIONS were called for from the committee.

SENATOR MARBUT, referring to page 1, line 25, asked Senator Himsl what he means, and does it mean and does that mean the legislature can add to the list.

SENATOR HIMSL stated that he has an amendment to follow up on that. EXHIBIT 3.

SENATOR TOWE asked what was the designation.

SENATOR HIMSL said they would prioritize this on the basis of their knowledge in the audit committee thus going to the legislature before going thru the auditing process.

SENATOR TOWE asked why you would take out all the criteria for the standards of the audit.

SENATOR STORY suggested to Dr. Lowry that if he opposed this bill he was eliminating the very thing he was advocating.

DR. LOWRY said that they do want to extend the process to other departments. He said that in Texas, they had every agency that wasn't constitutionally mandated on that list.

SENATOR STORY said that the only way they could add them was to pass this bill.

DR. LOWRY said he would still rather see this bill killed.

SENATOR HIMSL told Dr. Lowry that many of the things he suggested has already been done.

SENATOR HIMSL closed on SENATE BILL 137.

The meeting was opened to hear SENATE BILL NO. 141.

SENATE BILL NO. 141: "AN ACT TO PROVIDE FOR VOTING BY
ABSENTEE BALLOT AT LEAST 14 DAYS PRIOR TO AN ELECTION;
AMENDING SECTION 13-13-222, MCA."

SENATOR GAGE, District 7, introduced S.B. 141 by stating that this bill requests the Secretary of State's Office requiring that absentee ballots be available at least 14 days before election. He stated that he has talked to several clerk and recorders and they say that absentees going out of the country do not have time to be returned before the votes are counted. They thought even 21 days.

PROPOSERS were called.

ALAN ROBERTSON, legal counsel for the Secretary of State, testified supporting S.B. 141 and saying that at the present the ballots must be available as soon as printed but that it is up to the printers when they are out. There really should be a minimum time because then the people that are going on vacation can vote absentee before they leave or get them back into us in plenty of time. He also stated that there could be legal problems such as they have had in other states in that there have been court cases where peoples votes have gotten in late and they were required to count them even after election day. He said that he believes two weeks to be reasonable and if the bill passes people will at least know when to expect the absentee ballots to be available.

JEANNE-MARIE SOUVIGNEY, representing the ASUM Legislative Comm., testified in behalf of the many students who must vote absentee and said that many do not get to vote due to the difficulty in getting the absentee ballots on time.

BILL ROMINE, representing the Clerk and Recorders, testified in favor of H.B. 141 saying that the burden will be with the election administrator who is at the disposal of the printer.

There were no other Proponents and no Opponents.

SENATOR TOWE CLOSED on SENATE BILL 141. No action was taken.

The meeting was opened to the hearing of HOUSE BILL NO. 35.

HOUSE BILL NO. 35: "AN ACT TO REQUIRE A GRANT OF RULEMAKING AUTHORITY WITH EACH STATUTE ENACTED OR AMENDED IF IT IS TO BE IMPLEMENTED BY AN ADMINISTRATIVE RULE; AMENDING SECTIONS 2-4-305 AND 5-4-402, MCA; AND PROVIDING AN APPLICABILITY CLAUSE."

REPRESENTATIVE FRED "FRITZ" DAILY, introduced House Bill 45 by stating that this bill was a result of his idea. What the bill will do is to prohibit any agency or board from adopting rule making that was granted to them by some rule making authority in the past. This makes a rule that if they want authority they will have to come before the legislature and ask for it.

PROPOSERS were called.

CHAD SMITH, representing the Montana Hospital Association testified in behalf of H.B. 35, stating that they were still overcome with rules that are unnecessary.

There were no other proponents.

OPPOSERS were called.

SCOTT CURREY, representing Labor and Industry, stated that they would support the bill with the amendments submitted in EXHIBIT 4. He said that he talked to Representative Daily and the bill seems to have two purposes, one is to give the legislature notice when rule authority is requested by an agency and two, to limit rule making authority in a situation where the legislature did not intend to give it. There will be side effects because if a person or attorney looks at the Montana Code Annotated where the laws are codified if rule making authority has been granted or not. He stated that he does not believe the submitted amendments would change the bill but that they would clarify it and the second problem, they want to guard against ABC passing rules that go with the statutes that the legislature had not intended them to get rule making authority for. I submit that the legislature could draft a statement of intent saying that it is not the intent of the legislature that this bill could involve rule making authority. Statement of intent are codified in the annotations sections in the NCA.

Example of effect of Amendment to 5-4-402 is shown on EXHIBIT 5.

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JON MEREDITH, representing the Department of Revenue, stated his comments with the premise on the fact that the bill has not been amended, or if it is left as is, he would concur to a great extent with Mr. Currey's comments. The problem the department of revenue sees with the bill as currently written are two; one, we are going to have to follow around every legislative introduction throughout the session to see if it could possibly affect the department and if it would have to see if they would need rule making authority, then dream up some kind of standard phrase to attach to all of those bills that would grant us rule making authority. The other thing is that they do not want to go back to the rule making procedure they have had in the past. See EXHIBIT 6

DAL SMILIE, representing Social and Rehabilitation Services, testified supporting Mr. Currey's amendments. EXHIBIT 7.

FRANK CROWLEY, representing the Department of Health and Environmental Sciences, referred to a couple of items, one was regarding the statement of intent being published in the Codes is incorrect, he stated that his understanding is the statement of intent are only going to appear in the first set of the codes issued after the session and will not be in the subsequent volumes year after year. He stated that there may be an alternative to the bill, there may be some internal ways within the legislature to accomplish this.

There were no other proponents nor opponents.

REPRESENTATIVE DAILY CLOSED on House Bill No.35 by replying to the opponents by saying that they are not only talking about agencies; but they are talking about boards. Every board out there has rule making authority, granted when the board was established. He said he sympathizes with Mr. Currey's thought about the agencies being the only one this bill applies to, but that he believed that it should apply to every legislator and every average citizen who wants a bill passed in this legislature.

QUESTIONS were asked of the committee.

SENATOR TOWE said that he has a problem deciding what they are trying to do. Do you mean that the rule making authority must be in the statutes in the immediate legislative session?

REPRESENTATIVE DAILY said that he would like the bill to work with this session but it would cause a problem so we will apply it to the next legislature.

SENATOR TOWE questioned what the draft language is to do.

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SENATOR TOWE suggested that suppose you had a bill passed in 1977 that granted rule making authority and now are you saying an agency cannot come in and make a rule that relates to that law passed in 1977 unless we reinacted.

REPRESENTATIVE DAILY said "no", I am saying that if they amended that section of the law.

Question was asked regarding the state and federal conflict and it was also suggested why not say their should not be rule making authority at all.

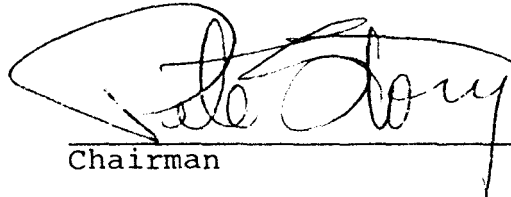
SENATOR TOWE asked David Ness whether or not a polling of the Legislature could be tossed out.

DAVID NESS stated that is still a good law. The amendments will take care of this to a certain extent.

CHAIRMAN STORY selected SENATOR STIMATZ and SENATOR HAMMOND as a subcommittee to study this bill further.

The meeting closed on the Hearing of House Bill No. 35.
No action was taken.

There being no further business, the meeting adjourned at 11:55 a.m.



Chairman

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

47th LEGISLATIVE SESSION -- 1983

Date Jan 24, 198

SENATE
SEAT #

[illegible]

Each day attach to minutes.

DATE

January 24, 1983

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>Lu</i> DAL Smilie	SRS	HB 35		✓
John T. Lowry	Common Cause	SB 137		✓
Dee Rickman	Board of Oil & Gas Com.	SB 148	✓	
Roland A. Pratt	MT Optometrist Assoc	SB 137	✓	
Jon Meredith	MT Funeral Directors Assn	HB 35		✓
Charles Landman	DOR	HB 35		✓
Frank Gronow	EIC	HB 35		✓
W. S. Davis	Mont. Dept. of Health	SB 35		✓
Bill Romaine	League of Women Voters			
Scott Crocker	Clerks & Recorders	S.B. 141	✓	
Jane Equite	WDOE	SB 35		✓
Don Allen	Dept of Re.	148	✓	
John S. Smith	MT. Petroleum Assn.	148	✓	
ALAN ROBERTSON	ASUM	141	✓	
	SEC. OF STATE	141	✓	

NAME: Bill Romaine DATE: 1-24-83

ADDRESS: Helena

PHONE: 442-2220

REPRESENTING WHOM? Clerks & Recorders

APPEARING ON WHICH PROPOSAL: S.B. 141

DO YOU: SUPPORT? x AMEND? _____ OPPOSE? _____

COMMENTS: this bill will ensure that the ballots are printed at least
14 days before an election. The clerks support legislation
aimed at getting ballots printed early.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

DATE:

ADDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

OFFICE OF THE LEGISLATIVE AUDITORBENEFITS OF SUNSET

(SENATOR HIMSELF)

During the first six years of sunset, ⁴⁶46 boards or agencies were subject to sunset. The following chart summarizes the results of the first two cycles of sunset:

	<u>Number</u>	<u>Terminated</u>	<u>Modified</u>	<u>Continue As Is</u>
1st Cycle:	14	3	9	2
2nd Cycle:	22	4	14	4
3rd Cycle:	10			

This session the Legislative Audit Committee is recommending abolishing three more regulatory boards and creating advisory councils in their place. The committee is also recommending modifying seven boards or agencies.

However, as has been proven in hearings before the Audit Committee, the success of sunset is measured in terms of whether boards or agencies become more responsive and accountable to the public and not merely how many are terminated. Rules, regulations, and operations have been changed. Boards and agencies having to justify their existence took "second looks" at many practices and questioned the need for others.

Through legislative changes, over 150 modifications have been made to sunset agencies to make them responsive and more effective. Some changes include:

- Eliminating the Department of Professional and Occupational Licensing and transferring the functions to the Department of Commerce.
- Adding public members to all regulatory boards.
- Giving boards a wider range of disciplinary authority.
- Providing for the licensing of physician assistants.
- Requiring mortuaries to disclose itemized funeral costs.
- Amending the law on discrimination in housing to enable the state to receive federal funds.
- Repealing outdated laws for many agencies.
- Removing prohibitions on advertising by licensees.
- Repealing excessive restrictions on entry into professions.

Non-legislated changes brought about through reviews of rules, regulations, and operations include:

- Improving the overall management of licensing boards.
- Improving complaint handling procedures and inspections.
- Removing duplication in inspection requirements between the Board of Pharmacy and Department of Health.
- Improving overall licensing and renewal procedures.
- Deleting board rules which prohibit advertising.
- Adopting rules for public participation.
- Clarifying the definitions of psychologist and sanitarian.
- Improving file maintenance by a number of boards.

SENATE BILL 148

SENATOR HIMSL

Senate Bill 148 would re-establish the Board of Oil and Gas Conservation, Department of Natural Resources and Conservation created by 215-3303, with existing statutory authority and rules.

The bill requires (on page 8) that "measures be taken to prevent contamination or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal of salt water and oil field wastes".

On page 9 the language is changed to invoke the provisions of the Administrative Procedure Act --

On page 10 it calls for the Department of Revenue to collect both the severance tax and the producers license tax assessment instead of one being collected by the Department of Natural Resources and further producer reports are to be made to the Department of Revenue and the Board as well as the state treasurer.

On page 7 the penalty for delinquent filing of the severance tax is changed from 10% to 25% -- the same as the late filing penalty for the privilege and license tax assessment (page 13).

The audit found that the producer's tax in 1982 had an income of \$409,000 and a delinquency of only \$632 with the 25% penalty while the Oil and Gas Severance tax produced a total of \$53,000,000 in 1982 but had a delinquency of \$147,000 with the 10% penalty --

it was apparent that the higher penalty had effect on the tax collection.

I ask for your support of the committee action in re-establishing the Board of Oil and Gas Conservation.

EXPLANATION OF SENATE BILL 137
AMENDING THE SUNSET LAW
(SPONSORED BY SENATOR MATT HIMSL)

The Legislative Audit Committee recently completed the last of 46 scheduled sunset audits. Based upon the Committee's experience, it unanimously decided to revise the sunset law.

The first revision would eliminate the six-year reaudit feature and delete from the sunset law those agencies presently scheduled for reaudit. Sections 3 and 9 of the bill accomplish this. Currently an agency that has gone through the sunset process can only be reestablished for six years, after which time it is required to go through the process again. The Committee believes that it is not cost beneficial to conduct full scale reviews of the same programs again; therefore, we are proposing to amend out the reaudit feature.

The second revision would change the way agencies or programs are selected for sunset. Sections 1 through 7 of the bill address these changes. Since there would be no reaudit feature, each session of the legislature would have to designate agencies or programs it believes warrant sunset review. The Legislative Audit Committee, based upon recommendations solicited from the legislature and from the executive branch, would present recommended programs or agencies to the full legislature in the form of a bill which would be subjected to legislative hearing. These programs or agencies, as prioritized by the Legislative Audit Committee, would then be subject to sunset and review prior to the next legislative session.

It is the intent of this bill that the types of agencies or programs selected for future sunset review will be varied and not merely licensing or regulatory boards. Any state program could be subject to this new sunset process, and the new method of designating sunsetted programs would match audit resources to programs currently enjoying legislative interest or concern.

J2009H, 1/24/83

EXHIBIT 3

State Administration
Jan 24, 1983

AMENDMENT TO SENATE BILL 137

Page 1, line 25

Following: "governor"

Insert: "and suggestions from legislators and legislative committees, staff recommendations,"

Proposed Amendments to HB 35

Page 2, Line 10

Following "Adopted"

Strike: Remainder of line 10 and all of lines 11 through 14 and
"Adopted" on line 15

Page 4, Line 8

Following "(3)"

Strike: "A statute enacted or amended"

Insert: "A bill requested by an agency"

Page 4, Line 9

Following: "By"

Strike: "An administrative"

Insert: "A substantive"

Page 4, Line 13

Following: "Amended"

Strike: Remainder of line 13 and all of lines 14 through 16

HB 35

Example of effect of Amendment to 5-4-402, MCA

An existing statute with a clear statement of intent granting express rulemaking authority to an agency is amended changing punctuation. HB 35 would require a new delegation of authority for an agency to implement any rule or amendment concerning that statute. If the legislature inadvertantly left out the new delegation of authority the reader of the statute would have no notice that the rules under that statute would be invalid.

The adoption of HB 35 will make it impossible for the non attorney, or even an attorney without much research, to be able to tell what the law is. HB 35 is the surest way to stifle business in Montana.

TESTIMONY OF JON A. MEREDITH, ADMINISTRATOR,
DEPARTMENT OF REVENUE, LEGAL & ENFORCEMENT DIVISION
ON HOUSE BILL #35

An Act To Require A Grant Of Rulemaking Authority With Each Statute Enacted Or Amended If It Is To Be Implemented By An Administrative Rule, before the Senate State Administration Committee on 1/24/83.

This bill would require a specific grant of rulemaking authority for each rule adopted and therefore would eliminate the department's capacity for adopting rules in areas where only general rulemaking authority exists. For example, Section 15-1-201, MCA, grants the department general authority to "make rules to supervise the administration of all revenue laws of the state." Under this general grant of authority a large number of sections containing no delegation of rulemaking authority have been implemented. This is especially true in the area of property taxes where there is no specific grant of rulemaking authority in order to administer real property taxes.

Further, during a legislative session the Department of Revenue or the Legislative Council would have to keep track of every bill affecting the Department to be sure specific grants of rulemaking authority had been included. If a bill passed and it didn't contain such a grant, the department might be placed in the position of making "de facto" rules. In other words, agencies would be administering statutory law through informal policies simply because a specific grant of rulemaking authority was inadvertently left out. Such informal policy-making would entirely circumvent public input and leave agencies to interpret statutory law as they saw fit. This result would probably be exactly opposite that desired and an unfortunate one considering the system as it now stands allows public input during every phase of rulemaking accomplished under general grants of authority.

JAM/ilb

January 24, 1983

To: Senate State Administration Committee
From: Dal Smilie, SRS Attorney
Re: HB 35

HB 35 takes a great step towards making statutes that appear clear on their face indecipherable to Montana businessmen. Each statute will require costly attorney research by agencies and the public into all past session laws to determine the meaning. Passing this bill will frustrate both agencies and citizens in their pursuit of an understandable, dependable and stable body of law to operate their business. This bill will allow full employment for Montana attorneys.

Montana law should be clear on its face without having to hire an attorney to research all past session laws to determine what the law really means. An agency should not need additional authority to implement a legislative mandate in an area it already has authority. An agency has no real way of insuring that it gets adequate authority to implement a legislative mandate for bills not drafted or proposed by the agency.

SRS recommends that HB 35 should not pass.