

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 18, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on March 18, 1983, at 10:05 a.m., in Room 405, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL 290: An act including wholesale petroleum distributors under the definition of "distributors" in the basic gasoline license tax law; providing for an annual license fee; and providing an effective date.

Representative Carl Seiffert gave the committee a new bill with proposed amendments to House Bill 290. (Exhibit No. 1) He stated he spent 16 years in the petroleum business and never felt it was quite fair that he would have to reach in his pocket and put money up front. It provides an option for them to assume the tax liability themselves. The current wholesale cash purchases are tax inclusive. When this purchase is made they note the purchase as a negative cash flow. This is approximately 10% and with the proposed increased taxes it might reach 18%. If enacted it will bring negative cash flow to a zero balance. Bonding requirements will still be applicable. It only concerns Montana wholesale distributors, it does not apply to wholesale dealers. There are some amendments on the white bill. It retains a \$200 license fee. The one-time fee is to process costs by the Department. On applications they will assume that tax liability. It is unfair that they should have to tie up the original capital in order to take care of the problem of collecting taxes.

John Braunbeck, Montana IOMA, stated the amendments retain the \$200 fee but require it only as a one-time charge.

Carl Rieckman, Montana Petroleum Association, stated they do have some problems with the amendments that are being offered. We hope to have some feedback on what it was they were suggesting but they have not at this time. He asked the committee to give them more time to get this information and report back to the committee.

NEUTRAL POSITION ON HOUSE BILL 290: Norris Nichols, Department of Revenue, stated they took a neutral position on House Bill 290. He gave the committee proposed amendments which they would like inserted in the bill. (Exhibit No. 2) He stated there will be additional costs. This came about at the suggestion of the wholesaler distributors. Now they want to amend that out as a onetime fee. If you have a one-time fee it is not going to help. Out of 75 there are 18 licensed for wholesale and blending gasohol. Under this act we have no idea of the number that will become eligible. We all realize the problems they have because of cash flow. They have to pay the money upfront or within 10 days. They do not know how many will become licensed if this bill passes.

QUESTIONS FROM THE COMMITTEE: Senator Dover stated you talked about collecting the taxes and the fact that they are having to take their

own money to finance it. When do they collect taxes? Representative Seiffert stated presently they are paying the taxes within 10 days. Under this bill they would not have to pay tax on the fuel until the following month.

Senator Dover asked do you see a problem there when you deliver the fuel you either pay it or the state is going to lose control and have to rely upon that individual "sticking around" to collect this? Representative Seiffert stated that is present law.

Senator Dover stated this amendment should probably go to appropriations. Mr. Nichols stated he was told to work this amendment up and submit it.

In closing, Representative Seiffert stated if that \$200 fee creates a problem he would suggest that you put it back in on an annual basis. There is no reason for the state to pick up additional costs. The people do not have to participate if they do not want to.

The hearing was closed on House Bill 290.

CONSIDERATION OF HOUSE BILL 853: An act reestablishing the Board of Horseracing under existing statutory authority and rules; changing the composition of the Board; providing for an Executive Secretary to the Board and defining his duties; requiring the Board to establish a fund for recognition of Montana-bred horses; revising and clarifying provisions relating to horseracing; and providing an immediate effective date.

Representative Ron Miller gave the committee his written testimony which is attached to the minutes. (Exhibit No. 3) He also passed out information entitled "Lawyers Alert". (Exhibit No. 4)

PROPONENTS TO HOUSE BILL 853: Bill Chiesa, representing the State Fair, stated he was one of the five people appointed by this industry to put this bill together. Those in the business felt it would ensure us some of the concerns of the audit committee as a group. He believes this is a good bill. It was drawn as a compromise.

Ann Scott, representing Montana Division of HBPA, stated this is a group of horsemen and industry people. They support this bill. One of the things you have to realize is no where in this bill is the question as to whether or not this Board is intending to regulate harness races. That is an issue that is currently going before the courts. In the House this bill was introduced shortly before the hearing. It was right before transmittal. There wasn't time to get into the ramifications of this but it is something this committee needs to be aware of. The members of the HBPA maintain that the original intent of the board was to only regulate saddle racing. They now want to have harness racing in the state. Their position is in states where they have both they are done on separate tracks. When you run a harness race the track is packed and when you run a saddle race it needs to be worked up very well. This is a real concern because of 1) safety for horses and 2) regulating under the economic border on the existing industry is an enormous possibility. If you try to regulate under the same board you are not doing a good

job. If the harness racing people would like to set up a separate board they would not have any problems with that. Under this bill the original intent was to regulate under the saddle races.

Jack Whittaker, Cascade County Commissioner, stated they support this bill.

Bob Glasgow, stated they are a proponent of the bill as it stands. He would be an opponent if there was an amendment to prohibit harness racing. When the original bill was passed it encouraged the breeding of purebred horses. The fact is the horses do run on the same track as the purebreds. They had 1140 horses, 448 were Montana bred. We do not have enough to run all the races in Montana. He stated he is a strong proponent to the bill as it stands.

Doris Poppler, Yellowstone County Commissioners and Yellowstone Exhibition (Fair Board), stated they are a strong proponent of this bill. They will be allowed the flexibility in racing. If this bill were to be amended to undersaddle it would limit them. They have nearly five years studying harness racing and do feel they have the equipment and ability to change the tracks. They are building a training track which would accommodate both sides.

Chub Askin, Horsemen's Benevolent and Protective Association, stated we are in favor of the bill but they are opponents to the adoption of harness racing because there are few bred here. Now probably 99% of all horses participating in harness racing would come from Canada and the eastern states. At the same time there would be 600-700 horses that would have no place to go at that time.

Bert Boughton, President, Montana Horse Council, stated they strongly support House Bill 853 and asks for good consideration. His written testimony is attached to the minutes. (Exhibit NO. 5)

Bob Cartwright, Northwest Montana Fair and Racing, stated they are strongly in support of this bill as written.

Harry Halissa, Western Montana Fair, stated they support this bill and asked consideration in its passage.

Linda King, Montana Board of Horse Racing, stated she supports this bill. It would allow them to take in additional money for board expenses. We have been bringing in with the 1% for the Board to administer about \$100,000 per year. The current appropriations are close to \$300,000 per year. At this time they have money to carry them through for a few years. The Board has to make some tough decisions about the races that we are regulating and are giving up a few dates to cover the cost of licensing. This additional amount of money would be a valuable source of income. They are going to look at new race meets with the financial impact in mind. It is now getting tight. If you decide to add additional things to this bill you look at the economic impact to the state. Additional written comments are attached to the minutes. (Exhibit No. 6)

Yearle Addy, stated he works as an official at some of the tracks. I

think you can realize the agreement forged together in this bill is getting on shaky ground. Without this bill there will be no horse-racing in Montana. He submitted a list of names for the record on this bill. (Exhibit No. 7)

Steve Pilcher stated he supports this bill. His written comments are attached to the minutes. (Exhibit No. 8)

Senator Delwyn Gage stated he spoke in favor of this bill. He has been involved in racing for about 13-15 years. They do not race in Montana; however, they used to. This bill would go part way to making racing in Montana more inviting. Washington has a program that part of the paramutual money is paid to owners of Washington bred horses. That money is paid out to the owners depending on how much those horses have won in the state. The reason it is so inviting is when you win a purse your trainer gets 10%, the jockey gets 10% and you end up with 80%. The bonus money would be 100%. In the state of Washington that bonus money has totaled to 25-40% of all money you have won during that year. One year they were fortunate and their money was in excess of \$45,000 with no costs at all. It also invites them when they are claiming horses to claim Washington bred horses not Montana. That is what this bill is saying to those people. If you are going to race in Montana, do so as an owner of Montana bred horses. I think the racing industry does need regulating. This bill would make him bet on his horse if he is going to bet at all and would be a good handle for them. He sincerely supports this bill. With regard to harness racing his feeling is in the State of Montana they are trying to build the breeding industry. If the harness people want to do the same we have an obligation to build a mechanism for the use of the product. There are problems involved when you do have track conditions that are not favorable. We need to do as much as we can to promote both the breeding and the racing industry. He hoped the committee would support this bill.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Lee asked other than fair board members or managers in the room here today, is there anyone interested in harness racing or who represents harness racers? There were none.

Senator Goodover asked does this bill include harness racing as it states? There are no amendments to the bill other than Representative Millers? Senator Kolstad stated that is correct. There are no other amendments that would prohibit harness racing.

Senator Regan asked the amendment being offered is an appropriate kind? Mr. Chiesa stated I do not think there is any problem with that. We are simply collecting the money and allowing the commission the right to have the money pass through their hands.

Senator Boylan asked how much money is involved in the State of Montana? How much did they receive from horseracing? Ms. King stated the state does not have a tax on racing itself. The state does take 1% for the regulation of the industry which is about \$110,000 so the total handle

was around \$11 million. The state gets mostly general fund revenue. There is income derived through personal and property taxes from the people who own these horses.

Senator Christiaens asked in Ms. King's testimony she stated we have to check closely expenses to the state. Ms. King stated one of the reasons it has gone up we have hired an executive secretary. They needed someone on a 24-hour basis that could do the day-to-day supervision. They hired through the state the veterinarian that was responsible for overseeing race tracks, most of the urine samples for the drug program and others. Travel and expenses for their security people are going up. Some of the small tracks 1% of the handle is less. Great Falls and Billings are super meets. Our income is falling behind our outgo. They are going to have to get innovative to get the money they need to regulate it.

Senator Kolstad stated there was mention made on the winning tickets. Ms. King stated at the present time the board has been getting that money. It is our feeling it would better be spent by the individual meets. There are some meets which may not be approved to run because their facilities are so bad. They felt in order to maintain and improve horseracing in the state that money would be better spent by the licensees to improve racing.

Senator Goodover stated there seems to be a definite conflict between the two groups. He got the impression from Mr. Askin that he does not want to have harness racing on the regulation track. Mr. Askin stated at the time they would be prepared to have racing there would be 300-400 horses with no place to go. This bill does not include harness racing, it just does not include it. Mr. Chiesa stated our intent is to run harness horses during March and April during the time when the other horses will not be running.

Senator Kolstad asked you don't see it as a conflict? Mr. Chiesa stated no.

Senator Lee asked is their sufficient demand for harness racing so that you can justify your expenditures? Mr. Glasgow stated in 1978 they had a national horse show to run appaloosas. At that time they had a lot of hassle because Billings was going to take dates that Helena had. They have been studying this for almost five years. Last year they asked for additional dates as the racing commission will justify. We asked for these dates. We were met by a group of about one hundred people at the hearing that if Billings were to run it would kill various fairs. This was our response to not competing. They would run early in the year for their harness racing. Running from April to the first week in June they would not be conflicting with the horses or jockeys. To improve the track they have to have more days to do the things they want to do. We feel we should be able to run harness racing and build another industry in the state. Fifteen years ago, there were a small percent of quarter horses. These two breeds, thoroughbreds and appaloosas has grown within the last ten year. I think this was meant originally to encourage the breeding of all breeds of horses.

Senator Fuller asked if these horseraces were started what problems

would you see? Mr. Meloy stated there is no question that Mr. Glasgow runs his horses in the spring. If he is not successful, we are going to take a beating because they are not going to get a percentage. If he has his harness meets and he does not have a good handle then they will take a beating.

Senator Goodover asked if Senator Gage's amendment is to preclude harness racing? Was there an amendment in the House? Ms. King stated no. Senator Goodover stated then why are we looking for an amendment? Ms. King stated there was nothing in the bill that dealt for or against harness racing because that is one issue no one could get together on. Right now they are in court because the Board voted to allow to give Billings harness racing dates. Unless the Legislature makes a statement one way or another we will always be in court.

Senator Goodover asked why hasn't Senator Gage offered an amendment? Senator Kolstad stated because he isn't here. Mr. Addy stated there was a quick agreement here this morning that there would be no amendments offered. That is why it has not been offered.

Senator Regan stated under the existing rulemaking authority they will fight it out among themselves. I don't know why we continue discussing it they do have the rulemaking authority.

ACTION ON HOUSE BILL 853: Senator Goodover made the motion that Representative Miller's amendment to House Bill 853 Be Adopted. Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendments to HOUSE BILL 853 BE ADOPTED.

In closing, Representative Miller stated he strongly recommends that we stick with the five member board. He thinks they have a good bill.

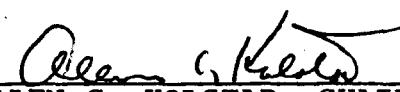
The hearing was closed on House Bill 853.

ACTION ON HOUSE BILL 451: Senator Dover made the motion that House Bill 451 Be Not Concurred In. Senator Lee seconded the motion.

The Committee voted 8-2 with Senators Fuller and Christiaens voting no, that HOUSE BILL 451 BE NOT CONCURRED IN.

Senator Dover will carry this bill on the floor.

ADJOURN: There being no further business, the meeting was adjourned at 11:30 a.m.



ALLEN C. KOLSTAD, CHAIRMAN

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 3-18-83

STANDING COMMITTEE REPORT

March 18

19 83

MR. **PRESIDENT**

We, your committee on **BUSINESS AND INDUSTRY**

having had under consideration

HOUSE 451
Bill No.

MENAHAN (DOVER)

Respectfully report as follows: That.....

HOUSE 451
Bill No.

BE NOT CONCURRED IN

~~SECRET~~


GARY LEE,

VICE

Chairman.

HC

HOUSE BILL NO. 290

1 HOUSE BILL NO. 290
2 INTRODUCED BY SEIFERT, DEVLIN, STOBIE, SCHULTZ, MARKS,
3 WILLIAMS, SHONTZ, HARP, IVERSON, D. BROWN,
4 KEATING, C. SMITH, GOODOVER
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING WHOLESALE
7 PETROLEUM DISTRIBUTORS UNDER THE DEFINITION OF
8 "DISTRIBUTORS" IN THE BASIC GASOLINE LICENSE TAX LAW;
9 PROVIDING FOR THE BASIC GASOLINE LICENSE; AMENDING SECTION
10 SECTIONS 15-70-201 AND 15-70-202, HCA; AND PROVIDING AN
11 EFFECTIVE DATE."*

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14
15 Section 1. Section 15-70-201, MCA, is amended to read:
16
17 "15-70-201. Definitions. As used in this part, unless
18 the context requires otherwise, the following definitions
19

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that

1 gasoline placed in storage at refineries or pipeline
2 terminals, shall be deemed to be "distributed" after it has
3 arrived in and is brought to rest in this state.

4 (6) "Distributor" means:

5 (a) any person who engages in the business in this
6 state of producing, refining, manufacturing, or compounding
7 gasoline for sale, use, or distribution;

8 (b) any person who imports gasoline for sale, use, or
9 distribution;

10 (c) any person who engages in the wholesale
11 distribution of gasoline in this state and chooses to become
12 LICENSED_AS_A_GASOLINE_DISTRIBUTOR.

13 (c) any dealer licensed as of January 1, 1969,
14 except a dealer at an established airport.

15 (7) "Gasohol" means all products commonly or
16 commercially known or sold as gasohol, produced and sold in
17 Montana for the purpose of effectively and efficiently
18 operating internal combustion engines, consisting of not
19 less than 10% anhydrous ethanol produced in Montana from
20 Montana agricultural products.

21 (8) "Gasoline" includes all products commonly or
22 commercially known or sold as gasolines, including
23 gasoline, natural gasoline, aviation gasoline,
24 and all flammable liquids composed of a mixture of selected
25 hydrocarbons expressly manufactured and blended for the

1 purpose of effectively and efficiently operating internal
2 combustion engines. Gasoline does not include special fuels
3 as defined in 15-70-301(6).

4 (9) "Import" shall include and mean to receive into
5 any person's possession or custody first after its arrival
6 and coming to rest at destination within the state of any
7 gasoline shipped or transported into this state from point
8 of origin without this state other than in the fuel supply
9 tank of a motor vehicle.

10 (10) "Motor vehicle" means all vehicles operated or
11 propelled upon the public highways or streets of this state
12 in whole or in part by the combustion of gasoline.

13 (11) "Person" means any person, firm, association,
14 joint-stock company, syndicate, or corporation.

15 (12) "User" shall include and mean the operation of
16 motor vehicles upon the public roads or highways of the
17 state or of any political subdivision thereof.

18 SECTION_2.—SECTION_15-70-202_HCA_IS_ANEDED_ID_READY
19 "15-70-202. License, fees, and security of gasoline
20 distributors. (1) ~~AN ESTATE OF GOVERNMENT~~ ^{THE STATE} ~~OF GOVERNMENT~~ ^{THE STATE} prior to the
21 ~~GOVERNMENT~~ ^{THE STATE} ~~OF GOVERNMENT~~ ^{THE STATE} doing business, shall file an application
22 for a license with the department of revenue on forms
23 prescribed and furnished by the department setting forth the ^{THEM} #3
24 information as may be requested by the department. Each
25 distributor shall at the same time file security with the

1 department in an amount to be determined by the department.
2 However, the required amount of security may not exceed
3 twice the estimated amount of gasoline taxes the distributor
4 will pay to this state each month. Upon approval of the
5 application, the department shall issue to the distributor a
6 nonassignable license which shall continue in force until
7 surrendered or canceled.

8 (21) "Each distributor who delivers gasoline to any
9 person other than another distributor shall pay a license
10 fee of \$200, and ~~one thousand dollars for the issuance of each license~~
11 ~~one thousand dollars for each license~~
12 ~~one thousand dollars for each license~~

13 (24) "Security" means:

14 (a) a bond executed by a distributor as principal with
15 a corporate surety qualified under the laws of Montana,
16 payable to the state of Montana, and conditioned upon
17 faithful performance of all requirements of this part,
18 including the payment of all taxes and penalties; or
19 (b) a deposit made by the distributor with the
20 department, under such conditions as the department may
21 prescribe, of certificates of deposit or irrevocable letters
22 of credit issued by a bank and insured by the federal
23 deposit insurance corporation."

24 **SEC. 3.** Section 3. Effective date. This act is
25 effective July 1, 1983.

-End-

-5-

Proposed Amendments to HB-290

1. Title, line 9.

Following: "FOR"

Strike: "AN ANNUAL"

Insert: " A "

2. Page 4, Line 20.

Following: "distributors."

Strike: "(1) All gasoline distributors, prior to the commencement of doing business,"

Insert: "(1) Any person who engages in the wholesale distribution of gasoline in this state under Section 15-70-201 (6)(a)(b)(c) exercising the option under Section 15-70-201 (6)(c),"

3. Page 4, Line 24.

Following: "department."

Insert: "The license fee for such gasoline distributors is \$200."

4. Page 5, Line 10.

Following: "\$200"

Strike: "and upon renewal of the license shall pay an annual fee of \$200."

Insert: " . "

SENATE BUSINESS & INDUSTRY COMMITTEE

March 18, 1983

House Bill No. 290, third reading copy, be amended as follows:

1. Title, page 1, line 10
following: "MCA;"
strike: "and":
2. Title, page 1, line 11
following: "Date."
insert: "; and appropriating monies for funding."
3. New Section.
insert: "NEW SECTION. Section 4. Appropriation. The following
money is appropriated from the Highway Farmarked Revenue Account
02138 to the Department of Revenue to fund the administration of
this act.

Fiscal year ending June 30, 1984	\$61,000
Fiscal year ending June 30, 1985	\$61,000

STATEMENT OF REP. RON MILLER
ON
HB 853

Chairman Kolstad and members of the Senate Business and Industry Committee:

I have the pleasure of introducing to you today, HB 853, "An Act Reestablishing the Board of Horseracing...", a bill which had the good fortune to be sent over to the Senate from the House on a 94-2 vote on third reading. As you can see from this vote, the future of horseracing in Montana appears bright -- mainly because the members of this growing industry have realized the need to compromise and work together for their mutual good.

The bill before you today is the result of one such mutual effort and represents the goals and compromises reached by Montana's racing industry. It may not be perfect, but it is a bill we feel will allow the industry to grow and prosper in the State of Montana.

I would like to draw your attention to several major provisions of HB 853.

This bill provides for a five-member, public board -- representing five geographical districts in the state. The previous board was comprised of 2 public members, 1 representative of horse breeders, and 2 representatives from track management. The recently completed sunset audit on the board concluded that the conflict of interest raised by members of the industry sitting on the board which regulated those individuals was not in the best interests of horseracing in this state. While the breeder representative on the board was prohibited from racing horses in Montana, there could be no way one could prohibit members of race track management from having a "conflict of interest." So, in the spirit of compromise, industry representatives agreed to a five-member public board.

This bill also prohibits any member of the board, its employees or employees of its licensees from holding any interest in a racehorse and from wagering on any race at which they serve in an official capacity.

It requires the board to adopt rules to ensure absolute responsibility of trainers for the condition of their horses; to set guidelines for the licensing of a person whose license has been suspended; and to set license fees commensurate with the cost of issuing a license.

HB 853 also sets out the definition, responsibility and authority of the Board of Stewards and the Executive Secretary.

One major new provision of this bill would allow the Board of Horse Racing to set aside up to 2% of wagering on "exotic races" to be used as a bonus for owners and to defray administrative costs of the board. The establishment of the owner's award is a major step forward for Montana racing in that it will further reward the breeding

and racing of quality registered horses in Montana. By helping to draw top competition to Montana's race tracks, the entire industry and the betting public will benefit.

Another new provision will allow individual race meets to retain (after reporting the total face value to the board) money from unclaimed winning tickets. This money will be spent by the licensee for capital improvements to their race facilities upon approval by the board. This amount is expected to total between \$25,000 and \$30,000 each year and can be well-used by the tracks to make much needed repairs and additions to current facilities -- again, to the benefit of the entire industry and the betting public.

I hope you will agree with us that the bill before you today is a good and necessary piece of legislation. It will help a growing Montana industry mature in an atmosphere of support with a high standard of ethics. I urge your careful and positive consideration.

Chairman Kolstad, I would at this time ask the committee to consider one "housekeeping" amendment to this bill. In Section 13, on page 17, line 15, I would ask that the words "after first passing through the board's agency fund account" be inserted after "the department". The amended section (2) would then read:

(2) At the end of the racing season, sums collected under 23-4-202(4)(D) must be distributed by the department, AFTER FIRST PASSING THROUGH THE BOARD'S AGENCY FUND ACCOUNT, to the licensed owners of those Montana-bred horses finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

I understand this language will allow the owner's award to be collected and "passed through" the department to the owners of Montana-breds, without requiring a budget amendment to the board's current budgets. It will not in any way change the award, nor the intent of the House.

Thank you.

Lawyers Alert™

February 7, 1983

Volume 2, Number 8

State Agency Can Not Have "Representatives" From Groups

Where a state administrative agency is required to have representatives of both labor and management, this is unconstitutional, says the Ninth Circuit in a 2-1 decision.

This agency has "adjudicative" powers, and it must "require decisions devoid of favoritism, animosity, or personal interest."

Therefore, where this board is in charge of labor relations for farm workers, it cannot have two members appointed as representatives of agricultural employers, two as representatives of organized labor and three members as representative of the general public.

"The Board's functions include resolution of election disputes and resolution of charges of unfair labor practices. These functions are adjudicatory . . ."

Even if these same persons were

appointed to the Board, they would have a much better chance of being impartial than where they are chosen to "represent" a special group of persons.

"The labor and employer representatives on the [Board] cannot live up to the high standard of impartiality. We admit that Board members with a philosophical viewpoint favoring labor or employers would be capable of sufficiently impartial decision-making, but a designated labor or employer representative will serve with more than a philosophical viewpoint. A representative is appointed with a clear mandate to serve the interests of the side he represents. It may be appropriate for a group representative to act on rulemaking matters from the perspective of a built-in bias for an interest group, but a representative cannot reasonably be expected to ignore that bias when faced with close questions of fact or law in an adjudicatory context. Even the rare representative who could forget his allegiances when deciding adjudicatory matters would have to withstand the brunt of his constituency's pressure. We conclude that a representative is incapable of providing the impartiality necessary in the context of the adjudicatory matters presented to the [Board].

"The [Board] has not questioned the conclusion that the labor and employer representatives are partial. They have argued, rather, that the Board as a whole is impartial because the partiality of the employer representatives is evenly balanced by the partiality of the labor representatives. We conclude, however, that the impartiality required of adjudicatory decisionmakers cannot tolerate the presence of unconstitutionally biased members, even if biases are balanced."

Dissent

The court has taken over the legislative process, according to the dissent. "Administrative law, with its emphasis on speed, informality and low cost, has been a burgeoning area of experimentation for the last forty years. For the last decade various states have been attempting to deal with a newly organized agricultural work force. It is not surprising that a number of them should have extended administrative experimentation with investigation, arbitration,

rule making and adjudication into the farm labor area. [citation]

"[This] legislature has tried a reasonable experiment. It has combined a number of tasks in one body so that state policy in the agricultural employment area can develop rapidly and uniformly. By representation of competing groups it attempts to have these decisions made by knowledgeable people, thus reducing the risk of erroneous, unwise or uninformed decisions which might otherwise so easily be made in this complicated area which profoundly affects so many. By balancing these groups it attempts to control the board for bias. Whether the overall statute is the best that could have been devised is not for us to say . . . We sit only to determine whether the legislation is constitutional. The formulation is sufficiently fair to withstand attack.

U.S. Court of Appeals, Ninth Circuit, San Francisco, CA 94101. Tel: 415-558-6333. United Farm Workers of America v. Arizona Agricultural Employment Relations Board, No. 80-5777. January 24, 1983. Lawyers Alert No. 32-53 (14 pages).

RECEIVED 2/25
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FFR 2/2 1983

BOARD OF PERSONNEL APPEALS

SUBMITTED BY: Bert Boughton, 3/18/83, EXHIBIT NO. 5
(This sheet to be used by those testifying on a bill.)

NAME: Bert Boughton ^{Pres} Mont Horse Council DATE: 3-18-83

ADDRESS: Rt 1 Box 2385 - Miles City Montana
59301

PHONE: 406 232-0351

REPRESENTING WHOM? Montana Horse Council

APPEARING ON WHICH PROPOSAL: HB 853

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

COMMENT: HB 853 has been in the process of
Drafting & Development for almost 2 yrs.

The Horse Industry (including all Breeds) (HBPA)
Support the Concept of (No Conflict of Interest)
(5 member public Board) (Owners incentive)

(✓ Reestablishment of the Board of Horse Racing)
I Support This HB 853 Basically as it came
To you from the House of Representatives)

P.S.

The Horse Industry Strongly (Oppose) Harness Racing.
off track Betting etc. Thank you

Bert Boughton
Montana Horse Council, Montana

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LINDA KING DATE: 3/18/83

ADDRESS: PO Box 5804 HELENA

PHONE: 458-5736 (h) 449-5316 (o)

REPRESENTING WHOM? MT Board of Horse Racing

APPEARING ON WHICH PROPOSAL: HB 853

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

COMMENT: This bill was developed by representatives of Montana's horse racing industry as an alternative to HB 553, the Sunset Review Comm's bill. This bill was drafted to meet the concerns of the audit committee and the racing industry. This bill (853) was passed over HB 553 in committee, and supported during debate on the House floor by two members of the audit committee - including Rep. McBride, sponsor of 553. This bill passed the House on 3rd reading by a vote of 94-2.

As a public member of the current board, I feel HB 853 will very adequately address the concerns raised during the Sunset review, while at the same time give a much-needed shot-in-the-arm to Montana's growing horse racing industry.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

House Bill #853

The people whose names appear on these sheets of paper, can not appear in person at the present time but do ask that you consider a favorable vote of do pass to House Bill #853 as you have received it from the ~~House of Representatives~~.

(O/B/T. Owner, Breeder, training
representing)

	ADDRESS	
1. ALBERT E. GOKE	HELENA, MT.	O/B/T.
2. ARROD. BENJAMIN	Rosebud, MT.	O/B/T.
3. CHRIS W. BRONGER	Roscoe, MT	O/B.
4. DWIGHT. MACKAY	B. Hings, MT	O/B/T.
5. SIM BENJAMIN	Miles City, MT	O/B/T.
6. TOM BENJAMIN	Miles City, MT	O/B/T.
7. JAY HOPKINS	RONAN, MT	O/B/T.
8. GUY HOPKINS	RONAN, MT	O/B/T.
9. RICHARD MILLER	B. Hings, MT	O/B/T.
10. DONALD GRUEL	HELENA, MT	O/B.
11. AL CARTHERS	Butte, MT	O/T.
12. RAY TRACY	Miles City, MT	O/B/T.
13. PAULINE BAUGLTON	Miles City, MT	O/B/T.
14. SEFT PIET A.	Miles City, MT	O/B/T.
15. JERRY BACKLAND	Miles City, MT	O/B/T.
16. ROSEMARY GOKE	HELENA, MT.	O/B/T.
17. LEE GENTRY	HELENA, MT	O/B/T.
18. JACK GENTRY	HELENA, MT	O/B/T.
19. MR. & MRS. BILL BARRET	HELENA, MT	O/B/T.
20. HAROLD STERNHAN	GLENDIVE, MT	O/B/T.
21. MARGARET STERNHAN	GLENDIVE, MT	O/B/T.
22. IRON RIVER	HELENA, MT	O/B/T.

3.	Keith Stine	MALTA	O/B.
4.	Al. A. Phelps	GLENDIVE	O/B.
5.	Chuck Swanson	GALLATIN GATEWAY	O/B.
6.	Julie Swanson	GALLATIN GATEWAY	O/B
7.	SUSAN BLOHM	HELENA, MT.	O/B/T.
8.	Doug Allen	GREAT FALLS, MT.	O/B.
9.	Kay Nelson	GERALDINE, MT.	O/T
0.	Becky. Holding	AKLEE, MT.	O/B.
1.	LARRY Collins	HELENA, MT.	O/B/T.
2.	DARLEEN. Collins	HELENA, MT.	O/B/T.
3.	MARVIN KRON.	LAUREL, MT.	O/B.
4.	SUSAN KRON.	LAUREL, MT.	O/B
5.	Norman Field	LAUREL, MT.	O
6.	LOW. MARSH.	BILLINGS, MT.	O
7.	MARGE MARSH	BILLINGS, MT.	O
8.	SID ERICKSON	BILLINGS, MT.	O/B
9.	KAREN ERICKSON	BILLINGS MT.	O
1.	Ron Meyers	LAUREL, MT.	O/B
1.	MARGE MEYERS	LAUREL-MT.	O/B
13.	Mike Gruell	S. LESIA, MT.	O/B/T.
13.	VERN SCHULTE	BILLINGS - MT	O/B/T.
14.	KARY KRUG	S. LESIA. MT.	O/B.
15.	LOWELL GRUELL	HELENA, MT.	O/B/T.
16.	CHESTER MUNSON	DEER LODGE MT.	O/B/T
17.	MARSHA ALDRISH	HELENA, MT.	O/B/T.
18.	BOB. KELLY	BLGS, MT.	O
19.	TRISH. KIRBY	BLGS MT.	O.
20.	Don Kurth	BLGS, MT	O/B/T.
21.	Kelly Mickel	BLGS, MT	O
22.	Richard Barnby	BLGS, MT	O/B

-9. G.S. Assay.	Bigs Mt.	O/B.
-10. LEON ASSAY.	Bigs, Mt.	O/B.
-11. LEE DAVIDSON.	Bigs, Mt.	O/B/T
-12. JOE SANDSOL	HELENA, MT	O/B/T
-13. STEVE BAETCH.	HELENA, MT	O/T.
-14. MARGARET BARTCH	HELENA, MT	O/B/T.
-15. FOREST BARTCH	HELENA, MT	O/B/T.
-16. GREY. EGERT	HELENA, MT	O/B/T.
-17. SUSAN EGERT	HELENA, MT	O/B/T.
-18. Roy Kauffman	HELENA, MT	O/B/T
-19. BONNIE MARIS	HELENA, MT	O/B/T
-20. JOHN MARIS	HELENA, MT	O/B
-21. FRAN NELSON	GREATFALLS, MT	O/B
-22. CHARLES NELSON	GREATFALLS, MT	O/B/T
-23. S. W. DEPITTIS	LAUREL, MT.	O/B
-24. J. JERRY SCOTT	HELENA, MT	O/B/T
-25. DANNY KISTLER	HELENA, MT.	O/T.
-26. JERRY TEFOE	HELENA, MT	O/T.
-27. DAN ANDERSON	HELENA, MT	O/H/B.
-28. MARYLE SMITHSON	HELENA, MT	O/B/T
-29. BOBBIE GRUIC	HELENA, MT	O/B/T
-30. LARRY ANDERSON.	HELENA, MT	O/B/T
-31. DEE ANDERSON.	HELENA, MT	O/B/T
-32. LEO TAYLOR	TOWNSEND, MT	O/B/T
-33. DAZIO TAYLOR	TOWNSEND, MT	O/B/T
-34. ROBERT CRAWFORD	HELENA, MT	O/B/T
-35. EVA. CRAWFORD	HELENA, MT	O/B/T
-36. ANDY BLOTHN.	KALISPELL, MT.	O/B/T
-37. BEE THOMASKE	HELENA, MT	O/B/T
-38. JOHN THOMASKE	HELENA, MT.	O/B/T

(This sheet to be used by those testifying on a bill.)

NAME: Steve Pitcher DATE: 3/18/83

ADDRESS: Helena, Montana

PHONE: 443-2642

REPRESENTING WHOM? Self (licensed race horse owner-trainer)

APPEARING ON WHICH PROPOSAL: HB 853

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

COMMENT: HB 853 represents a cooperative effort of the entire horse racing industry, owners, trainers, MT. Bd. of Horse Racing, Track management, fair board etc. The bill in its current form has been reviewed with sponsors of the leg. audit committee bill and minor amendments were made in the House to make it acceptable to them. It satisfies the concerns of the ^{Sunset} Audit Report. Changes to the Board of Horse Racing composition will only re-create the conflict of interest.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

COMMITTEE ON

BUSINESS AND INDUSTRY

DATE

VISITORS' REGISTER

(This sheet to be used by those testifying on a bill.)

NAME: Bill Turner DATE: 3/18-82

ADDRESS: Box 30236 Billings 59107

PHONE: _____

REPRESENTING WHOM? Yellowstone Excelsior

APPEARING ON WHICH PROPOSAL: F53

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: John Beaubien DATE: 3-18-83

ADDRESS: 1217 Wilder

PHONE: 411-6647

REPRESENTING WHOM? Mont. Twp. M.A.

APPEARING ON WHICH PROPOSAL: H.B.-290

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

COMMENT: As per Testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Carl Rieckmann DATE: 3/18/83

ADDRESS: Billlys

PHONE: 252-3871

REPRESENTING WHOM? Mast. Pet. Assoc.

APPEARING ON WHICH PROPOSAL: HB 290

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENT: Need time to talk to
proponents about amendments.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Norman Nichols DATE: 3/18

ADDRESS: Digit of Revenue 14, Tchell 1325

PHONE: 449-3474

REPRESENTING WHOM? Dept of Rec & Co

APPEARING ON WHICH PROPOSAL: 06.13. 280

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: BILL CHIESA DATE:

ADDRESS: PO 1524 Coeur d'Alene

PHONE: 406-452-6401

REPRESENTING WHOM? STATE + AIR

APPEARING ON WHICH PROPOSAL: AB 853

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

(This sheet to be used by those testifying on a bill.)

ADDRESS: 323 Bench Blvd Billings Mt

PHONE: 252-9366

REPRESENTING WHOM? Yellowstone Competition

APPEARING ON WHICH PROPOSAL: HB 853

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

COMMENT : _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Doris Poppler DATE: 3/18/83

ADDRESS: 805 1st Bank Bldg, Billings, MT

PHONE: 248-9156

REPRESENTING WHOM? Yellow County Commissioners and Yellowstone Exhibitors
(Fair Board)

APPEARING ON WHICH PROPOSAL: HB 853

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Chuck Akin DATE: 3/8/83

ADDRESS: Box 901

PHONE: 222-6489

REPRESENTING WHOM? Horsemen Benevolent & Protective Assn

APPEARING ON WHICH PROPOSAL: H.B. 853

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

AME: Bob Cartwright

DATE: 3-18-83

ADDRESS: 265 North Maiden Rd. Kalispell, Mont.

PHONE: 755-5300 EXT 275

REPRESENTING WHOM? Northwest Montana Fair & Racing

APPEARING ON WHICH PROPOSAL: HB 853

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

ME*i*

Varle Addy

DATE: 3/18/83

2DREF

814 Broadway

PHONE:

443-4511 64

REPRESENTING WHOM?

Self -

APPEARING ON WHICH PROPOSAL:

~~1188533~~

DO YOU: SUPPORT?

AMEND?

OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.