

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

February 13, 1985

The twenty-fifth meeting of the State Administration Committee was called to order by its Chairman Jack Haffey on Wednesday, February 13, 1985, in Room 331 Capitol, at 10 a.m.

ROLL CALL: All the members were present with Senator Manning and Senator Tveit arriving late.

CONSIDERATION OF SENATE BILL 242: Senator Ed Smith is the sponsor of this bill entitled, "AN ACT TRANSFERRING FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE THE FUNCTIONS RELATING TO THE STATE BUILDING CODES; AMENDING ..., MCA; AND PROVIDING AN EFFECTIVE DATE." Senator Smith said that he is carrying this bill at the request of the Department of Commerce. He said that all this bill does is transfer the functions relating to state building codes, and both departments are in support of this bill.

PROPOSERS: Keith Colbo, Director of the Department of Commerce, supports this bill. This bill would transfer functions relating to the state building codes from the Department of Administration to the Department of Commerce. Mr. Colbo said this would allow his department to do licensing and code inspections. He said building code enforcement is compatible with what they do. Mr. Colbo said the move would be beneficial to the public because they would only have one department to deal with, and that department would be responsible for everything that has to do with licensing.

Ellen Feaver, Director of the Department of Administration, supports this bill. She said she agrees with everything Mr. Colbo has said.

OPPOSERS: There were no opposers.

COMMITTEE QUESTIONS: Senator Mohar asked about the fiscal impact of moving the existing staff and offices. Mr. Colbo said that the functions will be left where they are and the impact will be small.

SENATE BILL 242 is closed.

EXECUTIVE ACTION ON SENATE BILL 242: Senator Mohar moved that SENATE BILL 242 do pass. Question was called and the Committee voted unanimously that SENATE BILL 242 DO PASS.

CONSIDERATION OF SENATE BILL 171: Senator Ethel Harding, Senate District 25, Polson, is the sponsor of this bill entitled, "AN ACT TO PROVIDE THAT THE APPOINTMENT OF COUNSEL TO CONDUCT A HEARING BEFORE A BOARD ALLOCATED TO THE DEPARTMENT OF COMMERCE MUST BE AT THE REQUEST OF A PARTY AND IS LIMITED TO CONTESTED CASES; AMENDING SECTION ..., MCA." Senator Harding said the purposes of Senate Bill 171 are to relieve boards of the necessity of paying for an outside lawyer to preside over a rule-making case and to give parties litigating contested cases under board jurisdiction a choice whether to have the hearing officer or the board preside over the hearing. Under this bill, the people would have the choice of having the hearing before the boards. The bureau feels that this bill has potential to save money for both the board and the litigant in many cases and speed up the administrative process.

PROPONENTS: Geoffrey Brazier, staff Attorney, Department of Commerce, supports this bill. Mr. Brazier told the Committee that this was the first in a package of five bills introduced by the Department of Commerce. These bills are intended to apply to all the boards assigned to the bureau, except when they differ from an express statute in existence. In each instance, the object is to protect the public, reduce the cost of administration or expedite administration. Mr. Brazier then gave a brief background on how the bills came to be drafted. (For Mr. Brazier's background testimony, see Exhibit "1" attached hereto and by this reference made a part hereof.) Mr. Brazier then told the Committee about Senate Bill 171. He said that under Section 37-1-121, MCA, in its present form lawyers must be appointed to conduct hearings whenever any board holds a hearing. Two problems are recognized. Why is it necessary to have a presiding officer in a rule-making proceeding? What if a licensee or applicant in a contested case only wants to eyeball a board and does not want full formal treatment? That happens. The Administrative Procedure Act does not mandate a hearing officer for any boards. It makes them optional. What is being suggested here does not take away a right. It makes the right optional. It gives the applicant a choice. This is still more protection than provided by the Administrative Procedure Act. Under the present practice, applicants are advised by both phone and letter that, if they want a hearing, they must request one. They do so by letter. Some letters have come in on note book paper and butcher paper. That is sufficient. All the amendment would add is that, if they want a hearing examiner, they should so state. It just represents a second decision to be made by the applicant. (For more of Mr. Brazier's testimony see Exhibit "B" attached hereto and by this reference made a part hereof.)

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: There are no Committee questions.

SENATE BILL 171 is closed.

EXECUTIVE ACTION ON SENATE BILL 171: Valencia Lane, staff Attorney, suggested to the Committee that this bill needed some changes. (For the amendments see Exhibit "C" attached hereto and by this reference made a part hereof.) Senator Manning moved that the amendments do pass. Question was called and the Committee voted unanimously that the amendments to SENATE BILL 171 do pass. Senator Mohar made a motion that SENATE BILL 171 do pass as amended. Question was called and the Committee voted unanimously that SENATE BILL 171 DO PASS AS AMENDED.

CONSIDERATION OF SENATE BILL 222: Senator Jack Haffey, Senate District 33, is the sponsor of this bill entitled, "AN ACT TO GIVE BOARDS ALLOCATED TO THE DEPARTMENT OF COMMERCE AUTHORITY TO IMPOSE ALTERNATE LICENSE DISCIPLINARY SANCTIONS WITHOUT THE NECESSITY OF ADOPTING RULES: TO BROADEN THOSE SANCTIONS TO INCLUDE LICENSE SUSPENSIONS FOR MORE THAN 1 YEAR, LIMITATION OF THE SCOPE OF PRACTICE, DEFERRAL OF DISCIPLINARY PROCEEDINGS OR SANCTIONS, REQUIRING ADDITIONAL PROFESSIONAL TRAINING, AND IMPOSITION OF A CIVIL FINE IN LIEU OF OTHER SANCTIONS: AND PROVIDING FOR ENFORCEMENT OF LICENSE SURRENDER IN CASES OF LICENSE REVOCATION; AMENDING SECTION ..., MCA."

Senator Haffey deferred to Geoff Brazier for explanation.

PROPOSERS: Geoff Brazier, staff attorney for the Department of Commerce, supports this bill. This bill is the most extensive in the package. I notice the fiscal note is inclusive. In my opinion, any fiscal impact would be to save boards money. This would reflect reduced litigation costs. Mr. Brazier feels that this bill is a benevolent bill and it provides a variety of options for disciplinary treatment. It is an improvement on 37-1-136, MCA. Mr. Brazier then went into detail on the alternatives listed in the bill and how they will be implemented. Mr. Brazier said that fines have been levied for years and that this is much like the fines levied against the distributors of milk. He felt these fines have been small and have usually reflected the cost to the board in investigation and handling the case. He emphasized that these options are available only after a due process on a settlement agreement. The licensee is free to advocate an alternative as an exercise in leniency. (For more of Mr. Brazier's testimony see Exhibit "E" attached hereto and by this reference made a part hereof.)

Mary Lou Garrett, Department of Commerce, supports this bill. She appeared at the request of Shirley Miller who could not be here. She said they had had calls from a number of boards

saying that they support this bill, including the Board of Morticians, Board of Chiropractors, Board of Hearing Aid Dispensers, and Dudley Williams and Dorothy Turner of the Board of Cosmetology.

OPPONENTS: David Wistey, Optometrist in Livingston, opposes this bill. Dr. Wisty is afraid this bill will allow the licensing boards and particularly the board of optometry to obtain far too much discretionary power. If this bill passes, the boards will be able to impose fines and other penalties at their whim without any prior established rules. Mr. Wisty went on to tell how he advertizes in the paper and can consequently charge his clients less for lenses. He feels that some of his competitors may get on the board and try to drive him out of business. (For more of Dr. Wisty's testimony see Exhibit "F" attached hereto and by this reference made a part hereof.)

Farrell Griffin, Beauty College owner, opposes this bill. He feels that the bill will be restrictive. He feels that they could, if this bill passes, be like the labor industry on the federal level where high fines are imposed for minor infractions. He feels this bill makes the boards too self-serving.

Max Evans, Bozeman, opposes this bill. Mr. Evans feels that since he is just starting he will have a lot of years to be working under these rules, which he said are restrictive. He feels that maybe the fines should not go back to the Department of Commerce, or the boards, or they may turn out like the police who get part of the fines and impose them over the least little thing.

COMMITTEE QUESTIONS: Senator Lynch told Mr. Brazier that he has trouble with this bill. This idea of not having rules to follow. Mr. Brazier replied that what the boards do now is to cause an investigation to be made because they lack jurisdiction. They need to be able to impose some type of fine or something. Senator Hirsch said that he felt they were by-passing the Administrative Code Committee's ruling that there be a hearing. Mr. Brazier replied that he felt that he had done his job in bringing to the Committee's attention the fact that the boards have no power. Senator Haffey said that he had heard the word gestapo mentioned twice, and he wondered why they felt that these were the tactics being used--was it simply because they could impose fines without any rules to follow? Mr. Brazier thought it was. Senator Haffey asked if this had ever been brought before the legislature before. Mr. Brazier said "no it had not". There was more discussion regarding fines and where the fine money was earmarked to go. Mr. Brazier said that in order to do a bill, you have to say where the money will go. He did not care if it went into the general fund.

SENATE BILL 222 is closed.

EXECUTIVE ACTION ON SENATE BILL 222:

Senator Haffey asked Valencia Lane, staff Attorney, to work on Senate Bill 222 as to the question of rule making and where the fine money would go.

CONSIDERATION OF SENATE BILL 248:

Senator William Farrell, Senate District 31, Missoula, is the sponsor of this bill entitled, "AN ACT TO REQUIRE EACH BOARD ASSIGNED TO THE DEPARTMENT OF COMMERCE TO MEET AT LEAST TWICE A YEAR; AMENDING SECTIONS ...,MCA." Senator Farrell said this bill simply requires professional and occupational licensing boards to meet at least twice a year. Experience has shown that, if they meet once a year or less, they are ineffective. They don't keep current with changes in the profession, they don't adopt necessary rules and they have difficulty enforcing the law. This is an attempt to help them become more effective.

PROPOSERS: Geoff Brazier, staff Attorney for the Department of Commerce, supports this bill. Mr. Brazier said this bill speaks to the fact that professional regulatory boards can't get the job done if they don't meet more than once a year. As pointed out, some boards don't get around to rule making-- they spend all day on an enforcement case and that's all that gets done. If Boards can't afford to meet more often, they should all be brought under a different board with a broader professional base, so they can accomplish more at their meetings. (For more of Mr. Brazier's testimony see Exhibit "H" attached hereto and by this reference made a part hereof.)

OPPOSERS: There were no opponents.

COMMITTEE QUESTIONS: There was some question about whether the sunset provision would apply if they meet more than once per year. Mr. Brazier felt that it has the potential of giving them firmer evidence to kill the boards if they are not doing their jobs.

SENATE BILL 248 is closed.

EXECUTIVE ACTION ON SENATE BILL 248: Senator Lynch moved that the title be amended to read Occupational and Licensing Boards instead of each board. Question was called and amendment

was carried unanimously. Senator Lynch moved that SENATE BILL 248 Do Pass as amended. Question was called and with Senator Hirsch voting no, SENATE BILL 248 DO PASS AS AMENDED.

CONSIDERATION OF SENATE BILL 263: Senator Ethel Harding, Senate District 25, Polson, is the sponsor of this bill entitled, "AN ACT PROVIDING THAT A LAPSED OCCUPATIONAL OR PROFESSIONAL LICENSE WHICH IS NOT RENEWED WITHIN 3 YEARS OF THE MOST RECENT RENEWAL DATE AUTOMATICALLY TERMINATES AND MAY NOT BE RENEWED." Senator Harding said that this problem is one of lapsed licenses that have not been renewed for a number of years and suddenly the person wishes to return to work. There may have been substantial changes in the practice in the meantime. The object is to protect the public by assuring that the practitioner is qualified. Senator Harding said Mr. Brazier can explain this better.

PROPOSERS: Geoff Brazier, staff Attorney, Department of Commerce, supports this bill. Mr. Brazier reiterated the same statement that Senator Harding said above, and then went on to give examples. One example was about a nurse returning to practice after 20 years. A child under her care had a relapse. The nurse didn't even know C.P.R. and the child died. This is an extreme example, but it serves to dramatize the problem that the bill addresses. Incidentally, there is no magic in the three-year term. It is strictly arbitrary, but recognizes a sufficient passage of time for a change to take place in the profession.

OPPOSERS: Farrell Griffin, Beauty College owner, opposes this bill. He said he wouldn't have any problem with this bill as far as medicine goes, but in cosmetology, a lot of women drop out to take care of their families and then 5 or 10 years down the road decide to go back to work. He feels that if they pay their back license up, they should be able to go right back to work without having to take a year of school over again.

Max Evans, beauty shop owner, opposes this bill. He has the same problem Mr. Griffin has. He feels that it is no problem for the women to come back to work after 5 or 10 years without retraining.

COMMITTEE QUESTIONS: Senator Lynch asked how much it costs to get an original license. Mr. Evans replied \$25.00. Senator Lynch asked how much to renew your old license. Mr. Evans replied that you had to pay back years at \$25.00. Senator Lynch said you could get a new license and it wouldn't cost as much, and under this bill that's what you can do. Mr. Evans said that he read it to mean that you would have to go back to school for a year. Mr. Brazier felt that they may have to take a test. Senator Mohar asked why it didn't

list a statute that it effects. Mr. Brazier said that this would be a technicality only

SENATE BILL 263 is closed.

EXECUTIVE ACTION ON SENATE BILL 263: Action on Senate Bill 263 will be deferred until Thursday, February 14, 1985.

CONSIDERATION OF SENATE BILL 274: Senator William Farrell, Senate District 31, is the sponsor of this bill entitled, "AN ACT PROVIDING THAT GROUNDS FOR DISCIPLINARY ACTION AGAINST A HOLDER OF AN OCCUPATIONAL OR PROFESSIONAL LICENSE ARE GROUNDS FOR DENIAL OF A LICENSE TO AN APPLICANT; PERMITTING A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD TO ATTACH CONDITIONS TO NEW LICENSES ISSUED." Senator Farrell said that this bill addresses problems that come up when an applicant is in "pipeline" for qualifying for a license to practice and when an applicant from another state applies for a license to practice a profession. There have been recent instances where new license applicants became involved in conduct which would be grounds for license revocation if they had licenses, but the same conduct was not grounds to deny a license. Section 2 corrects the problem of out-of-state people who have had revocations or suspensions, but have corrected the problem. This would take care of this problem. The Committee will note that under the bill, boards are given discretion to exercise the authority granted. The bill is not mandatory in all cases.

PROPONENTS: Geoff Brazier, staff Attorney, Department of Commerce, supports this bill. Mr. Brazier said that undesirable persons have applied for licenses and they have entered the "pipeline" for qualification. Under the present statutory framework there is no way that the conduct could serve as a basis for denying the license. The other section of the bill permits boards to attach conditions to a new license. (For more of Mr. Brazier's testimony see Exhibit "L" attached hereto and by this reference made a part hereof.)

OPPONENTS: Dr. David Wisty, Optometrist, opposes this bill. He feels that this is another way for them to get their hands on licenses.

COMMITTEE QUESTIONS: Senator Mohar was concerned with the language talking about denial of licenses in certain sections.

SENATE BILL 274 is closed.

February 13, 1985

EXECUTIVE ACTION ON SENATE BILL 274: Executive action will be deferred until Friday, February 15, 1985.

EXECUTIVE ACTION ON SENATE BILL 213: Senator Mohar explained the amendments that he felt should be made to this bill. (Attached hereto marked Exhibit "1" and by this reference made a part hereof. The other Committee members felt that this bill is too broad and would end up with them never voting on a bill and with President of the Senate, Bill Norman, having pieces of paper piled to the sky of people that couldn't vote on a certain bill. Senator Mohar made a motion that SENATE BILL 213 do pass as amended. Senator Mohar also moved that the amendments pass. Senator Haffey called for a roll call vote on the amendments. The Committee voted 5 to 4 in favor of the amendments. Senator Mohar moved that SENATE BILL 213 do pass as amended. Senator Haffey called for a roll call vote (attached hereto marked Exhibit "3"), and the Committee voted 6-3 against the motion and the motion failed. Senator Haffey asked if the vote could be considered reversed on a "do not pass" motion. It was, so an adverse committee report went out on Senate Bill 213. SENATE BILL 213 DO NOT PASS AS AMENDED.

EXECUTIVE ACTION ON SENATE BILL 247: Mike Walker of the Montana State Firemen's Association, asked to be removed and explained that firemen usually retire at 50 and get other jobs, so they would not be in a lower tax bracket. That's why they wish to be removed from this bill. Senator Manning moves that the amendments do pass (amendments attached marked Exhibit "4"). Senator Mohar called question and the Committee voted unanimously that the amendments to SENATE BILL 247 do pass. Senator Manning made a motion that SENATE BILL 247 do pass as amended. There was some discussion regarding the cost and impact to the general fund. Question was called by Senator Conover and with Senator Tveit voting no, SENATE BILL 247 DO PASS AS AMENDED.

Senator Haffey informed the Committee that Valencia Lane and Senator Mazurek were still working on SENATE BILL 207 and we would defer action until tomorrow, February 14, 1985.

The meeting was adjourned at 12:10 p.m.

  
SENATOR JACK HAFFEY, CHAIRMAN



ROLL CALL

STATE ADMINISTRATION

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2-13-85

NAME	PRESENT	ABSENT	EXCUSED
SEANTOR JACK HAFHEY, Chairman			✓
SENATOR LES HIRSCH, Vice-Chairman	✓		
SENATOR JOHN ANDERSON	✓		
SENATOR MAX CONOVER	✓		
SENATOR WILLIAM FARRELL	✓		
SENATOR ETHEL HARDING	✓		
SENATOR J. D. LYNCH			
SENATOR DICK MANNING			✓
SENATOR JOHN MOHAR	✓		
SENATOR LARRY TVEIT		✓	

DATE February 13, 1985

COMMITTEE ON State Administration

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Andy Pish	Commerce Dept	SB 242	✓	
Molly Munro	MONTANA	SB 263 274	✓	
Jim Kumbel	Bldg Codes Div DOA	SB 242	✓	
David A. Wintz	self	SB 222 274		X
Kurt S. Colby	Commerce	SB 242	✓	
Mary Ann Carver	Commerce	SB 171 274, 222 263, 242	✓	
Bruce K. Bragier	"	"	✓	
Max Wilson	Self	SB 222		X
Kristine Evans	Self	"		X
Mike Evans	"	"		X
Tom Clark	Self	SB 242		X
Ed Smith		SB 242	✓	
Don Allen	Mont. Hospital Assoc	SB 222		X
J. T. Gentry	Sidney Charter of Comm			
Ellen Ferver	Dept of Administration	SB 242	✓	

(Please leave prepared statement with Secretary)

MY NAME IS  
I AM STAFF ATTORNEY FOR DOW.  
I PROVIDE SERVICES TO APPROXIMATELY 20 BOARDS

EXHIBIT 1  
2-13-85  
I AM APPEARING ON BEHALF OF POL TO SUPPORT 5 BILLS.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. YOU HAVE BEFORE YOU A PACKAGE OF 5 BILLS INTRODUCED AT THE REQUEST OF THE PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU OF THE DEPARTMENT OF COMMERCE. THE CHAIRMAN AND COMMITTEE MEMBERS HAVE BEEN KIND ENOUGH TO SPONSOR THE BILLS.

I WOULD LIKE TO GIVE A BRIEF, ONE-TIME ONLY DISCUSSION OF THE HISTORY OF THE BUREAU AND ITS FUNCTIONS BEFORE DISCUSSING THE INDIVIDUAL BILLS. THIS IS FOR THE PURPOSE OF AIDING YOUR UNDERSTANDING THE INDIVIDUAL BILLS IN THE PACKAGE.

OVER THE YEARS CONGRESS AND THE VARIOUS LEGISLATURES, INCLUDING THIS LEGISLATURE, HAVE RECOGNIZED THAT CERTAIN PROFESSIONS AND OCCUPATIONS PRESENT SUCH HEALTH AND SAFETY RISKS TO THE PUBLIC THAT PRACTITIONERS SHOULD BE REGULATED FOR THE PROTECTION OF THE PUBLIC, BY ASSURING THAT ONLY QUALIFIED PERSONS PRACTICE AND THAT THOSE PERSONS MAINTAIN STANDARDS OF PRACTICE.

IN MONTANA APPROXIMATELY 30 OF THOSE OCCUPATIONS ARE REGULATED BY BOARDS ALLOCATED TO THE DEPARTMENT OF COMMERCE. THE DEPARTMENT, THROUGH THE BUREAU, PROVIDES CENTRAL EXECUTIVE SERVICES, SUCH AS RECORD KEEPING, LICENSE PROCESSING, DAILY CORRESPONDENCE, AND LEGAL SERVICES. THE BENEFITS ARE COST SAVING AND UNIFORMITY. INSTEAD OF A SEPARATE STAFF FOR EACH BOARD, ONE PERSON PROVIDES SERVICES TO SEVERAL BOARDS. FOR EXAMPLE, I PROVIDE SERVICES TO APPROXIMATELY 20 BOARDS.

BEFORE REORGANIZATION IN THE EARLY 1970'S, THE BOARDS DID OPERATE INDEPENDENTLY. THEY WERE BROUGHT TOGETHER AS A SEPARATE DEPARTMENT IN THE ORIGINAL REORGANIZATION. IN 1981 THERE WAS A MINI-REORGANIZATION WHICH PLACED PROFESSIONAL AND OCCUPATIONAL LICENSING UNDER THE DEPARTMENT OF COMMERCE.

AT THAT TIME THE LEGISLATURE ADOPTED A PACKAGE OF STATUTES WHICH WERE INTENDED TO APPLY UNIFORMLY TO ALL BOARDS ASSIGNED TO THE BUREAU. THESE STATUTES WERE DRAFTED WITH THE PARTICIPATION OF THE SUNSET REVIEW AND LEGISLATIVE AUDIT PEOPLE. THEY ARE CODIFIED IN CHAPTER 1 OF TITLE 37 OF THE CODES.

THIS PACKAGE OF BILLS IS SUGGESTED FOR THE PURPOSE OF REFINING THOSE STATUTES IN THE LIGHT OF ADMINISTERING THE LAWS SINCE 1981 AND IN THE LIGHT OF TRENDS IN PROFESSIONAL REGULATION NATIONALLY.

THE BILLS ARE INTENDED TO APPLY TO ALL BOARDS ASSIGNED TO THE BUREAU, EXCEPT WHEN THEY DIFFER FROM AN EXPRESS STATUTE IN EXISTENCE. IN EACH INSTANCE THE OBJECT IS TO PROTECT THE PUBLIC, REDUCE THE COST OF ADMINISTRATION OR EXPEDITE ADMINISTRATION.

AS FAR AS I KNOW, THE BOARDS INVOLVED EITHER SUPPORT THE BILLS OR TAKE NO POSITION ON THEM.

THERE IS NO PARTICULAR ORDER OF IMPORTANCE TO THE BILLS.

\* WE HOPE THAT THE COMMITTEE WILL TREAT THE BILLS FAVORABLY.  
THERE IS NO PRIDE IN AUTHORSHIP. CONSTRUCTIVE AMENDMENTS  
ARE WELCOME.

ONE THING WE HOPE TO DO HERE IS TO ESTABLISH A CONTINUITY  
IN HANDS-ON MONITORING BY A LEGISLATIVE BODY. IN THIS  
INSTANCE IT IS THIS COMMITTEE.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I WOULD NOW  
LIKE TO ADDRESS \_\_\_\_\_.

\* THESE PROPOSALS ARE THE RESULT OF  
EXPERIENCES OF THE REVISED STAFF  
IN TRYING TO IMPLEMENT THE LAWS IN  
THE PAST 4 YEARS. SUGGESTIONS ALSO  
REFLECT WHAT OTHER STATES ARE DOING WITH  
THE PROBLEMS.

IT IS POSSIBLE THAT FUTURE EXPERIENCE  
WILL LEAD TO OTHER ~~LEGISLATIVE~~ PROPOSED  
LEGISLATIVE SOLUTIONS

Exhibit "A"  
SB. -171  
2-13-85

SB 171

THE PURPOSES OF SB 171 ARE TO RELIEVE BOARDS OF THE NECESSITY OF PAYING FOR AN OUTSIDE LAWYER TO PRESIDE OVER A RULE-MAKING CASE AND TO GIVE PARTIES LITIGATING CONTESTED CASES UNDER BOARD JURISDICTION A CHOICE WHETHER TO HAVE THE HEARING OFFICER OR THE BOARD PRESIDE OVER THE HEARING. SOME LITIGANTS DON'T WANT THE ADDED EXPENSE AND DELAY OF TWO ROUNDS OF ADMINISTRATIVE HEARINGS AND FEEL THEY WOULD HAVE A BETTER CHANCE OF GETTING THE RESULTS THEY WANT BY PRESENTING THEIR CASES DIRECT TO THE BOARDS. THEY HAVE THE CHOICE UNDER THIS BILL. THE BOARDS WOULD BE BOUND BY THAT CHOICE. UNDER THE PRESENT STATUTE THERE IS NO CHOICE.

UNDER THE BILL LITIGANTS WOULD STILL HAVE MORE RIGHTS THAN DO LITIGANTS WITH OTHER DEPARTMENTS.

THE BUREAU FEELS THIS BILL HAS POTENTIAL TO SAVE MONEY FOR BOTH THE BOARD AND THE LITIGANT IN MANY CASES AND SPEED UP THE ADMINISTRATIVE PROCESS.

Exhibit B  
SB-171  
2-13-85

SB 171 IS INTENDED AS A COST SAVING MEASURE FOR BOARDS ASSIGNED TO THE BUREAU. IT ALSO HOLDS SOME PROMISE FOR COST SAVING FOR LITIGANTS.

UNDER SECTION 37-1-121, MCA, IN ITS PRESENT FORM LAWYERS MUST BE APPOINTED TO CONDUCT HEARINGS WHENEVER ANY BOARD HOLDS A HEARING. TWO PROBLEMS ARE RECOGNIZED. WHY IS IT NECESSARY TO HAVE A PRESIDING OFFICER IN A RULE-MAKING PROCEEDING? WHAT IF A LICENSEE OR APPLICANT IN A CONTESTED CASE ONLY WANTS TO EYEBALL A BOARD AND DOES NOT WANT FULL FORMAL TREATMENT? THAT HAPPENS.

RULE-MAKING DOES NOT INVOLVE THE RULES OF EVIDENCE, FORMAL PLEADING, DISCOVERY, OR CROSS-EXAMINATION. IT HAS BEEN ESTABLISHED THAT ONE DOESN'T NEED MUCH FORMAL TRAINING OR EXPERIENCE TO PRESIDE OVER A RULE-MAKING PROCEEDING. THE BUREAU HAS FORMS AND CHECK LISTS IN PLACE. THEY ARE IN PLAIN ENGLISH. UNDER THE PRESENT STATUTE, EVEN WHEN A BOARD MEMBER IS A LAWYER, A SEPARATE PRESIDING OFFICER MUST BE APPOINTED AT AN ADDED COST TO THE BOARD. IT IS SUBMITTED THIS SHOULD NOT BE NECESSARY. A SOLUTION WOULD BE TO LIMIT THE REQUIREMENT OF A HEARING OFFICER TO CONTESTED CASES. THAT ACCOUNTS FOR THE INSERTION OF "CONTESTED CASE" ON LINE 18 OF PAGE 1 OF THE BILL.

THE OTHER ASPECT OF THE BILL, WHICH IS AT LINE 16 ON PAGE 1, ADDRESSES THE PROBLEM OF FORCING A MORE FORMAL HEARING ON A LICENSE APPLICANT THAN HE OR SHE WANTS. I HAVE HAD SEVERAL CASES THAT HAVE TAKEN A COUPLE YEARS, THAT ARE IN COURT, AND THAT ARE COSTING APPLICANT'S THOUSANDS OF DOLLARS THAT THEY DIDN'T ANTICIPATE WHEN THEY APPLIED. I'VE GOTTEN TO KNOW SOME OF THESE PEOPLE QUITE WELL, ~~THE CASES PROCEEDED~~ WE AGREE THAT IN SOME CASES THERE HAS BEEN TOO MUCH DUE PROCESS AND THAT THERE HAS GOT TO BE A BETTER WAY.

HAVE TALKED ABOUT THE PROBLEM OF EXTENDED LITIGATION

THE ADMINISTRATIVE PROCEDURE ACT DOES NOT MANDATE A HEARING OFFICER FOR ANY BOARDS. IT MAKES THEM OPTIONAL. WHAT IS BEING SUGGESTED HERE DOES NOT TAKE AWAY A RIGHT. IT MAKES THE RIGHT OPTIONAL. IT GIVES THE APPLICANT A CHOICE. THIS IS STILL MORE PROTECTION THAN PROVIDED BY THE ADMINISTRATIVE PROCEDURE ACT.

UNDER THE PRESENT PRACTICE, APPLICANTS ARE ADVISED BY BOTH PHONE AND LETTER THAT, IF THEY WANT A HEARING, THEY MUST REQUEST ONE. THEY DO SO BY LETTER. SOME LETTERS HAVE COME IN ON NOTE BOOK PAPER AND BUTCHER PAPER. THAT IS SUFFICIENT. ALL THE AMENDMENT WOULD ADD IS THAT, IF THEY WANT A HEARING EXAMINER, THEY SHOULD SO STATE. IT JUST REPRESENTS A SECOND DECISION TO BE MADE BY THE APPLICANT.

THERE IS NO BIG BURDEN TO MAKING A REQUEST.

THIS IS <sup>LIKE</sup> ~~COMPARABLE~~ TO THE RIGHT TO A JURY TRIAL IN COURT.  
EVERYONE IS ENTITLED TO ONE. BUT IF YOU WANT ONE, YOU  
HAVE TO REQUEST IT. REQUEST IS MADE BY ONE SENTENCE ADDED  
TO A FORMAL PLEADING.

WHAT THIS PART OF THE BILL WOULD DO IS SPEED UP THE PROCESS  
BY NOT FORCING A FORMAL CASE ON THOSE THAT DON'T WANT ONE.

WE <sup>Ask</sup> URGE THE COMMITTEE'S CONCURRENCE.

*Exhibit "D"*  
*SB-222*  
*2-13-85*

SB 222

THE MAIN PURPOSE OF SB 222 IS TO GIVE THE PROFESSIONAL LICENSING BOARDS MORE OPTIONS FOR DISCIPLINING LICENSEES WHO HAVE VIOLATED PRACTICE STANDARDS.

THE HISTORIC ALTERNATIVES OF REVOCATION OR SUSPENSION HAVE PROVED TO BE TOO HARSH AND PERMANENT IN MANY CASES AND HAVE FOSTERED EXPENSIVE AND PROTRACTED LITIGATION BY LICENSEES TO SAVE THEIR CAREERS. AND WHEN THEY WERE SUCCESSFUL, UNDESIRABLE PERSONS WERE ABLE TO CONTINUE PRACTICE.

THIS BILL GIVES BOARDS A NUMBER OF ALTERNATIVES TO DISCIPLINE AND STILL PROTECTS THE PUBLIC. ALTERNATIVES INCLUDE DEFERRED IMPOSITION OF PENALTY, A FINE IN LIEU OF OTHER PENALTIES, RESTRICTED PRACTICE AND ADDITIONAL TRAINING.

THE USE OF THESE OPTIONS COULD VERY WELL SAVE TIME AND MONEY FOR BOARDS WITHOUT ABDICATING PROTECTIONS FOR THE PUBLIC.



Exhibit E  
SB-222  
2-13-85

SB 222

THIS BILL <sup>IS</sup> ~~MAY BE~~ THE MOST <sup>EXTENSIVE</sup> ~~FAR REACHING~~ IN THE PACKAGE.  
I NOTICE THE FISCAL NOTE IS INCONCLUSIVE. IN MY OPINION,  
ANY FISCAL IMPACT WOULD BE TO SAVE BOARDS MONEY. THIS  
WOULD REFLECT REDUCED LITIGATION COSTS.

THIS BILL IS AIMED AT LICENSE REVOCATION OF PROFESSIONALS  
WHO VIOLATE PRACTICE STANDARDS. UNDER THE HISTORIC SCHEME  
OF THINGS, WHEN A VIOLATION WAS ESTABLISHED IN A HEARING,  
MOST BOARDS HAD THREE CHOICES, REVOKE, SUSPEND OR DO NOTHING.  
DOING NOTHING BROUGHT SUNSET REVIEW DOWN ON THE BOARDS.  
REVOCATION OR SUSPENSION PUT PEOPLE OUT OF BUSINESS. MANY  
TIMES IT INVOLVED THE ONLY CAREER THEY WERE TRAINED FOR AND  
LOSS OF SUBSTANTIAL CAPITAL INVESTMENT. MANY TIMES THE  
VIOLATION WASN'T SEVERE ENOUGH TO JUSTIFY SUCH HARSH RESULTS.  
THE SITUATION LED TO PROTRACTED LITIGATION IN A FIGHT FOR  
SURVIVAL.

IN THESE RESPECTS, THIS BILL IS A BENEVOLENT BILL ~~IN THAT~~ IT  
PROVIDES A VARIETY OF OPTIONS FOR DISCIPLINARY TREATMENT.  
IT IS AN IMPROVEMENT ON 37-1-136, MCA, ~~IN THAT RESPECT.~~

IT IS IN KEEPING WITH TRENDS IN PROFESSIONAL REGULATION  
NATIONALLY. IT IS IN KEEPING WITH A PARALLEL IN CRIMINAL  
JUSTICE -- TRYING TO TAYLOR THE PENALTY TO ~~SUIT THE SITUATION.~~  
SITUATION.

ADDRESSING THE VARIOUS ASPECTS OF THE BILL, THE CHANGES  
STARTING AT LINE 22 ON PAGE 1 MERELY ELIMINATE THE REQUIRE-  
MENT THAT BOARDS ADOPT A RULE BEFORE THE STATUTE BECOMES  
EFFECTIVE. 37-1-136 HAS BEEN IN EFFECT FOR 4 YEARS AND SOME  
BOARDS HAVEN'T GOTTEN AROUND TO IT. THEY JUST DON'T MEET  
OFTEN ENOUGH. SB 248 SPEAKS TO THIS PROBLEM. ~~IT'S RULE MAKING~~ <sup>REQUIREMENT</sup>  
~~NOTHING, IT HAS BEEN A BARRIER TO GETTING THINGS DONE.~~

SUBSECTION 1(c) AT LINE 4 ON PAGE 2 WOULD BE AMENDED SO THAT  
A LICENSE COULD BE SUSPENDED FOR AN UNLIMITED TIME. IN  
ACTUAL PRACTICE THIS WOULD BE CONCURRENT WITH A JAIL SENTENCE  
OR ~~DRUG~~ REHABILITATION. THIS CHANGE TIES IN WITH SUBSECTION  
(g) AT LINE 10 ON PAGE 2.

SUBSECTION (f) AT LINE 8 ON PAGE 2 PROVIDES SOME BOARDS AN  
OPTION OF PERMITTING SOME LICENSEES TO PRACTICE UNDER LIMITED  
CIRCUMSTANCES, SUCH AS A DENTIST BEING ABLE TO PRACTICE GENERAL  
DENTISTRY BUT NOT ORAL SURGERY. ~~OTHER EXAMPLES IN NURSING~~  
~~AND OTHER HEALTH CARE FIELDS COME TO MIND. OBVIOUSLY THIS~~  
~~OPTION DOES NOT LEND ITSELF TO SOME PROFESSIONS.~~

SUBSECTION (g) AT LINE 10 ON PAGE 2 COULD BE VERY USEFUL.  
THIS IS A MODERN DAY COUNTERPART TO PROBATION. THE BIG  
DIFFERENCE IS THAT IT GIVES THIS LICENSEE A CHANCE TO AVOID  
AN IMPAIRMENT ON HIS LICENSE RECORD BY MEETING BEHAVIORAL  
STANDARDS FOR A SPECIFIED PERIOD OF TIME. IN THESE DAYS OF  
PROFESSIONAL MOBILITY THIS IS IMPORTANT TO A LOT OF PEOPLE.  
IF THERE IS AN IMPAIRMENT ON THEIR LICENSE RECORD, THEY MAY  
NOT BE ABLE TO GET A LICENSE IN ANOTHER STATE. THIS PROVIDES  
AN OPTION. OF COURSE IF THE LICENSEE BREAKS THE TERMS OF THE  
DEFERRMENT, OTHER SANCTIONS WOULD BE IMPOSED, ~~PER~~ AUTOMATICALLY.

SUBSECTION (h) AT LINE 12 ON PAGE 2 PERHAPS SHOULD BE AT THE END OF THE LIST. IT APPLIES TO THE SITUATION WHEN THE LICENSE IS REVOKED AND THE LICENSEE REFUSES TO SURRENDER THE LICENSE. PEOPLE HAVE BEEN KNOWN TO CONTINUE TO PRACTICE WITH REVOKED LICENSES AND TO ATTRACT THE PUBLIC BY DISPLAYING THE LICENSE. THIS IS A SITUATION RECOGNIZED AROUND THE COUNTRY. THE SUBSECTION IS A SIMPLE PROPOSAL FOR A PROCEDURE TO FIX THE PROBLEM.

SUBSECTION (i) AT LINE 18 ON PAGE 2 WOULD WORK BEST IN CONJUNCTION WITH OTHER SANCTIONS, SUCH AS A SUSPENSION. IF IT IS CONTEMPLATED THAT THE LICENSE WILL EVENTUALLY BE RESTORED, THEN THE PRESIDING BOARD CAN MAKE AN APPROPRIATE ORDER THAT WILL BE INTENDED TO KEEP THE ~~LICENSEE~~ <sup>PRACTITIONER</sup> CURRENT WITH THE STATE OF THE ART IN THE PROFESSION.

THE CIVIL FINE PROVIDED IN SUBSECTION (j) AT LINE 20 ON PAGE 2 COULD BE A USEFUL OPTION. YOU WILL NOTE THAT IT CAN BE APPLIED ONLY IN LIEU OF OTHER SANCTIONS, NOT IN COMBINATION. IN SOME CASES, SOME LICENSEES CAUGHT WITH THEIR HANDS IN THE COOKIE JAR WOULD JUST AS SOON PAY A FINE AND GET ON WITH ~~WHAT THEY~~ <sup>WHAT THEY ARE</sup> DOING. IN SOME PROFESSIONS, REMOVING A LICENSE WOULD REMOVE THE SERVICE FROM THE COMMUNITY AND THAT MIGHT DO MORE HARM THAN GOOD. THE APPROPRIATE TREATMENT WOULD BE IN THE DISCRETION OF THE BOARD.

AFTER THE 1981 ACT THERE WAS SOME OPINION THAT THE CATCHALL PROVISION (SEE LINE 22 ON PAGE 2) PERMITTED FINES. THE CONSENSUS OF THE NEW LEGAL STAFF WAS CONTRARY THAT AUTHORITY HAS TO BE SPELLED OUT.

THERE IS PLENTY OF PRECEDENT FINES. CALIFORNIA DOES IT WITH PLUMBERS AND ELECTRICIANS NOW. MONTANA HAS DONE IT WITH MILK CONTROL FOR 20 YEARS. BEFORE THEN, THERE WERE PROBLEMS. THE PURPOSE OF MILK CONTROL WAS TO GUARANTEE AN ADEQUATE SUPPLY OF MILK. THERE WERE A HANDFUL OF DISTRIBUTORS. HOW COULD YOU GUARANTEE AN ADEQUATE SUPPLY OF MILK BY REVOKING A LICENSE?

*IN ACTUAL PRACTICE FINES HAVE BEEN RELATIVELY SMALL AND HAVE USUALLY REFLECTED THE COST TO THE BOARD IN INVESTIGATING AND HANDLING THE CASE.*

*I WANT TO EMPHASIZE THAT THESE OPTIONS ARE AVAILABLE ONLY AFTER A DUE PROCESS FAIR ON A SETTLEMENT AGREEMENT. THE LICENSEE IS FREE TO ADVOCATE AN ALTERNATIVE AS AN EXERCISE IN LENIENCY.*

Exhibit 7  
SB-222  
2-13-85

Date: February 13, 1985  
From: David A. Wistey, O.D.  
POB 1258  
Livingston, MT 59047  
To: Senate Committee for State Administration  
Re: Senate bills: 222, ~~247~~ 274

The reason I am here to voice my objection is because I fear that this bill will allow the licensing boards and particularly the board of optometry to obtain far to much discretionary power. If this bill is passed, the boards will be able to impose fines and other penalties at their whim without any prior established rules. This is a direct contradiction to the Montana Administrative Procedure Act.

For most of this century price advertising has been traditionally frowned upon by most professional groups. There have even been state laws to prevent price advertising by professionals. This has in effect kept most of the fees for professional services over-inflated to say the least.

In recent years the Federal Trade Commission has issued regulations which have superceded state laws restricting advertising by professionals. When the FTC did this, I decided that I would experiment with a few ads for contact lenses. I have been very surprised at the result. Often, I have been able to reduce my fees for contact lenses and services to at least one half as much as my competitors. Of course my competition does not like my advertising, but I think that most of my clients appreciate not having to pay the over-inflated prices which have been traditional. Some clients have even mentioned that they felt I was truly making a humanitarian gesture to offer contacts at such a low price.

I am sure that many of my fellow optometrists feel threatened by the success that I have seen by offering lenses and services at lowered fees. I am now worried by the fact that should some of these optometrists be appointed to the board, they will use their position of power to try to eliminate their competition at their discretion. SB-222 will give them an open door.

SB-~~247~~<sup>274</sup> is also an affront to due process. It provides for revocation of license by "Knee Jerk".

May I suggest Killing both bills. The threat of usurpation is too great to allow this kind of power to pass to an appointed committee.

Respectfully yours,

David A. Wisty, O.D.

*Exhibit "G"*  
*SB-248*  
*2-13-85*

SB 248

SB 248 SIMPLY REQUIRES PROFESSIONAL AND OCCUPATIONAL  
LICENSING BOARDS TO MEET AT LEAST TWICE A YEAR.

EXPERIENCE HAS SHOWN THAT, IF THEY MEET ONCE A YEAR OR  
LESS, THEY ARE INEFFECTIVE. THEY DON'T KEEP CURRENT WITH  
CHANGES IN THE PROFESSION, THEY DON'T ADOPT NECESSARY  
RULES AND THEY HAVE DIFFICULTY ENFORCING THE LAW.

THIS IS AN ATTEMPT TO HELP THEM BECOME MORE EFFECTIVE.

Exhibit "H"  
SB-248  
2-13-85

SENATE BILL 248 SPEAKS TO THE FACT THAT PROFESSIONAL REGULATORY BOARDS CAN'T GET THE JOB DONE IF THEY DON'T MEET OFTEN ~~ENOUGH~~.

AS POINTED OUT WITH RESPECT TO SB 222, SOME BOARDS HAVEN'T GOTTEN AROUND TO NECESSARY RULE-MAKING. THEY HAVE SPENT ALL DAY ON AN ENFORCEMENT CASE AND NEVER DONE ANYTHING ELSE.

THIS IS ~~THE SAME AS NOT BEING IN EXISTENCE~~ <sup>EFFECTIVE</sup>

I FRANKLY DON'T THINK THAT TWO <sup>MEETINGS</sup> ~~TIMES~~ A YEAR IS ~~GIVEN~~ ENOUGH, BUT THIS <sup>IS</sup> A STEP IN THE RIGHT DIRECTION.

IF BOARDS CAN'T AFFORD IT, <sup>TO MEET THAT OFTEN</sup> THERE ISN'T A BROAD ENOUGH <sup>PROFESSION</sup> LICENSEE BASE TO JUSTIFY A SEPARATE BOARD AND THEY SHOULD BE BROUGHT UNDER A DIFFERENT BOARD WITH A BROADER PROFESSIONAL BASE. ~~THIS AMENDMENT BASE WILL PROVIDE INFO ON THAT POINT.~~ <sup>MAKE THAT CLEAR.</sup>

THE BALANCE OF THE BILL IS AIMED AT PARTICULAR BOARDS.

THERE IS NO PROBLEM WITH AMENDING THE TITLE.

*Exhibit "I"*  
*SB-263*  
*2-13-85*

SB 263

THE PROBLEM ADDRESSED BY SB 263 IS ONE THAT HAPPENS WHEN A PROFESSIONAL LICENSEE LETS HIS OR HER LICENSE LAPSE FOR A PERIOD OF YEARS AND LATER DECIDES TO RETURN TO PRACTICE.

THERE MAY HAVE BEEN SUBSTANTIAL CHANGES IN THE PRACTICE IN THE MEAN-TIME. THE OBJECT IS TO PROTECT THE PUBLIC BY ASSURING THAT THE PRACTITIONER IS QUALIFIED. IF A PERSON CAN STEP BACK IN AFTER A PERIOD OF YEARS WITHOUT DEMONSTRATING CURRENT QUALIFICATIONS, THEN SOME MEMBERS OF THE PUBLIC MAY BE IN TROUBLE.

MANY BOARD STATUTES DO NOT COVER THIS SITUATION.

SB 263 GIVES ALL BOARDS A USEFUL TOOL FOR PROTECTING THE PUBLIC BY REQUIRING THAT PERSONS LAPSED LICENSES OVER 3 YEARS OLD MUST OBTAIN A NEW ORIGINAL LICENSE TO RETURN TO PRACTICE.

*Exhibit "g"*  
*SB-263*  
*2-13-85*

SB 263 IS FOR THE PROTECTION OF THE PUBLIC. IT IS INTENDED TO PROVIDE A MEANS OF ASSURING THAT THE PRACTITIONERS ARE QUALIFIED TO DELIVER THE SERVICE THEY ~~GIVE~~ SELL.

THERE IS A SITUATION THAT OCCURS IN THE LICENSING FIELD WHEN PERSONS, FOR A VARIETY OF REASONS, LET THEIR LICENSES LAPSE. SOME OF THEM DECIDE AT A LATER TIME THAT THEY WANT TO RESUME THE PRACTICE.

TWO PROBLEMS ARE PRESENTED. ONE IS WHAT IS THE STATUS OF THE LAPSED LICENSE? IS IT TERMINATED? OR IS IT JUST DORMANT? THE OTHER PROBLEM IS WHETHER THE WOULD BE PRACTITIONER HAS LOST TOUCH WITH THE STATE OF THE ART IN HIS PROFESSION SINCE HE LET HIS LICENSE LAPSE?

IF THE PRACTITIONER IS NOT CURRENT, THEN HE OR SHE SHOULD NOT BE PERMITTED TO PRACTICE UNTIL HE OR SHE IS CURRENT-- ESPECIALLY IN THE HEALTH CARE PROFESSIONS.

AN ACTUAL WORST CASE EXAMPLE INVOLVED A NURSE WHO RETURNED TO PRACTICE AFTER 20 YEARS. A CHILD UNDER HER CARE HAD A RELAPSE. THE NURSE DIDN'T EVEN KNOW C.P.R. THE CHILD DIED.

THIS IS AN EXTREME EXAMPLE, BUT IT SERVES TO DRAMATIZE THE PROBLEM THAT THE BILL ADDRESSES.

INCIDENTALLY, THERE IS NO MAGIC IN THE THREE-YEAR TERM. IT IS STRICTLY ARBITRARY, BUT RECOGNIZES A SUFFICIENT PASSAGE OF TIME FOR A PERSON TO REINSTATE A LICENSE, AND FOR SUBSTANTIVE CHANGES TO TAKE PLACE IN THE PROFESSION.

*Exhibit "A"*  
*SB-274*  
*2-13-85*

SB 274

SB 274 ADDRESSES PROBLEMS THAT COME UP WHEN AN APPLICANT IS IN "PIPELINE" FOR QUALIFYING FOR A LICENSE TO PRACTICE AND WHEN AN APPLICANT FROM ANOTHER STATE APPLIES FOR A LICENSE TO PRACTICE A PROFESSION.

THERE HAVE BEEN RECENT INSTANCES WHERE NEW LICENSE APPLICANTS BECAME INVOLVED IN CONDUCT WHICH WOULD BE GROUNDS FOR LICENSE REVOCATION IF THEY HAD LICENSES, BUT THE SAME CONDUCT WAS NOT GROUNDS TO DENY A LICENSE. THE RESULT WAS THAT THE BOARDS HAD TO GRANT LICENSES TO CANDIDATES WHOSE CONDUCT WAS QUESTIONABLE. SECTION 1 OF THE BILL IS INTENDED TO CORRECT THIS PROBLEM.

IN ANOTHER SERIES OF CASES, APPLICANTS FROM OTHER STATES HAD SUSPENSIONS OR REVOCATIONS, OR OTHER PENALTIES AGAINST THEIR LICENSES IN OTHER STATES, BUT APPEARED TO HAVE CORRECTED THE PROBLEMS. BOARDS DIDN'T WANT TO DENY LICENSES, BUT THEY DIDN'T WANT TO LOSE CONTROL OF THE SITUATION EITHER. SECTION 2 OF THE BILL COVERS THIS PROBLEM.

THE COMMITTEE WILL NOTE THAT, UNDER THE BILL, BOARDS ARE GIVEN DISCRETION TO EXERCISE THE AUTHORITY GRANTED. THE BILL IS NOT MANDATORY IN ALL CASES.



Exhibit 2  
SB-274  
2-13-85

SB 274 ADDRESSES CONCERNS THAT HAVE OCCURRED SEVERAL TIMES SINCE THE MINI-REORGANIZATION OF 1981.

UNDESIREABLE PERSONS HAVE APPLIED FOR LICENSES AND THEY HAVE ENTERED THE "PIPELINE" FOR QUALIFICATION. CERTAIN PAST CONDUCT OF THE APPLICANT HAS BECOME KNOWN. THAT CONDUCT WAS AND IS SUCH THAT, IF THE APPLICANT HAD A LICENSE AT THE TIME, THE CONDUCT WOULD HAVE BEEN GROUNDS FOR REVOKING THE LICENSE. BUT, UNDER THE PRESENT STATUTORY FRAMEWORK THERE IS NO WAY THAT THE CONDUCT COULD SERVE AS A BASIS FOR DENYING THE LICENSE. THE RESULT IS THAT UNDESIREABLE OR QUESTIONABLE APPLICANTS MUST BE LICENSED AND PERMITTED TO PRACTICE.

LOGIC SUGGESTS THAT, <sup>✓</sup>THE LICENSE ~~SHOULD~~ BE REVOKED, IT SHOULD NOT BE GRANTED.

UNFORTUNATELY THERE IS NO CASE LAW THAT I CAN FIND ON THIS POINT. IF I HAVE TO, I WILL ARGUE THAT THE AUTHORITY IS THERE BY IMPLICATION FOR BOARDS TO DENY LICENSES ON THE SAME GROUNDS THAT JUSTIFY REVOKING THEM. HOWEVER, I WILL NOT BET ON HOW THE COURTS WILL REACT TO THAT ARGUMENT.

THE BETTER APPROACH WOULD BE TO MAKE THIS POINT CLEAR BY LEGISLATION.

THE OTHER SECTION OF THE BILL PERMITS BOARDS TO ATTACH CONDITIONS TO A NEW LICENSE, SO THAT THEY CAN KEEP "HANDS-ON" CONTROL OF THE SITUATION OF A SUSPECT APPLICANT FOR A LICENSE. THIS COULD OPERATE IN MUCH THE SAME AS PROBATIONARY STATUS OF NEW EMPLOYEES.

PERSONS COMING UNDER THESE PROVISIONS ARE SUSPECT NEW APPLICANTS AND APPLICANTS WHO HAVE BEEN LICENSED IN OTHER STATES, BUT WHO HAVE BEEN SUBJECTED TO LICENSE DISCIPLINARY PROCEEDINGS THERE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit "A"  
SB-213  
2-13-85

PROPOSED AMENDMENTS TO SB 213, INTRODUCED (WHITE)

1. Title, line 7.  
Following: "SECTIONS"  
Insert: "2-2-112,"

2. ~~Title, line 7.~~  
Following: "2-2-125,"  
Strike: "AND"

3. Title, line 8.  
Following: "2-2-131,"  
Insert: "AND 2-2-132,"

4. Page 1, line 11.

Following: line 10

Insert: "Section 1. Section 2-2-112, MCA, is amended to read:

"2-2-112. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office...

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he ~~should consider-disclosing-or-eliminating~~ shall disclose or eliminate the interest creating the conflict or ~~abstaining~~ abstain from the official action. In making his decision, he ~~should-further~~ shall consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator ~~elects-to-disclose~~ discloses the interest creating the conflict, he shall do so ~~as-provided in-the-joint-rules-of-the-legislature~~ in writing to the leadership of the house in which he serves. The house leadership shall make all disclosure statements available to the secretary of state, who shall keep them pursuant to 2-2-132.

Renumber: subsequent sections

5. Page 4, line 3:

Following: "nature"

Strike: "remainder of line 3 through "serves" on line 5

6. Page 4, line 6.

Following: line 5

Insert: "Section 5. Section 2-2-132, MCA, is amended to read:

"2-2-132. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to ~~voluntary~~ disclosure statements;

(3) make rules for the conduct of his affairs under this part."

ROLL CALL VOTE

*Exhibit "a2"*  
SB-213  
2-13-85

SENATE COMMITTEE STATE ADMINISTRATION

Date 2-13-85 5 Bill No. 213 *amendments* Time 11:55

NAME	YES	NO
SENATOR ANDERSON		✓
SENATOR CONOVER		✓
SENATOR FARRELL	✓	
SENATOR HARDING		✓
SENATOR LYNCH		
SENATOR MANNING	✓	
SENATOR MOHAR	✓	
SENATOR TVEIT	✓	
SENATOR HIRSCH, Vice-Chairman		✓
SENATOR HAFHEY, Chairman	✓	
	5	4

Glenda Pennington  
Secretary, Glenda Pennington

Jack Haffey  
Chairman, Senator Jack Haffey

Motion: Amendments be approved

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ROLL CALL VOTE

*Exhibit a3*  
SB-213  
2-13-85

SENATE COMMITTEE STATE ADMINISTRATION

Date 2-13-85 *as Amended* Bill No. 213 Time 11:57

NAME	YES	NO
SENATOR ANDERSON		✓
SENATOR CONOVER		✓
SENATOR FARRELL		✓
SENATOR HARDING		✓
SENATOR LYNCH		
SENATOR MANNING	✓	
SENATOR MOHAR	✓	
SENATOR TVEIT		✓
SENATOR HIRSCH, Vice-Chairman		✓
SENATOR HAFHEY, Chairman	✓	
	3	6

*Glenda Pennington*  
Secretary, Glenda Pennington

*Jack Haffey*  
Chairman, Senator Jack Haffey

Motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Exhibit "4"*  
*SB-247*  
*2-13-85*

SB 247 proposed amendments, Introduced (white)

1. Title, line 8.

Following: "GAME WARDENS',"

Insert: "AND"

2. ~~Title, line 8.~~

Following: "POLICE OFFICERS'"

Strike: ", "

3. Title, line 9.

Following: line 8

Strike: "AND FIREFIGHTERS' UNIFIED"

4. Title, line 16.

Following: "19-9-601,"

Insert: "AND"

5. Title, line 17.

Following: line 16

Strike: "19-13-601, AND 19-13-1003,"

6. Page 27, line 2 through line 6, page 29.

Strike: sections 18 and 19 in their entirety

Renumber: subsequent sections

*Exhibit "5"*  
*SB-171*  
*2-13-85*

SB 171, Introduced (white), be amended as follows:

1. Title, line 9.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "37-1-121"

Insert: "AND 37-1-131"

2. Page 2, line 12.

Followin: line 11

Insert: "Section 2. Section 37-1-131, MCA, is amended to read:

**"37-1-131. Duties of boards.** Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by ~~the~~ legal counsel ~~appointed~~ when required under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6)."

Renumber: subsequent section



# STANDING COMMITTEE REPORT

.....February 13..... 19..85..

MR. PRESIDENT

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

having had under consideration.....**SENATE BILL**..... No.....**242**.....

first reading copy ( white )  
color

**TRANSFER STATE BUILDING CODES FUNCTION FROM DOA TO DEPARTMENT  
OF COMMERCE**

Respectfully report as follows: That.....**SENATE BILL**..... No.....**242**.....

DO PASS

~~DO NOT PASS~~

.....  
Chairman.

# STANDING COMMITTEE REPORT

February 13 19 65

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE BILL No. 248

first reading copy ( white )  
color

## LICENSING BOARDS TO MEET TWICE A YEAR

Respectfully report as follows: That SENATE BILL No. 248

be amended as follows:

1. Title, line 5.

Strike: "EACH BOARD"

Insert: "OCCUPATIONAL AND LICENSING BOARDS"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Chairman.

# STANDING COMMITTEE REPORT

February 13 1985

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE BILL No. 171

first reading copy ( white )  
color

**REQUIRE REQUEST BY PARTY FOR HEARING EXAMINER APPOINTMENT;  
PEO BD. HEARINGS**

Respectfully report as follows: That SENATE BILL No. 171

1. Title, line 9.  
Strike: "SECTION"  
Insert: "SECTIONS"  
Following: "37-1-121"  
Insert: "AND 37-1-131"

2. Page 2, line 12.  
Following: line 11  
Insert: "Section 2. Section 37-1-131, MCA, is amended to read:  
"37-1-131. Duties of boards. Each board within the  
department shall:  
(1) set and enforce standards and rules governing the  
licensing, certification, registration, and conduct of  
the members of the particular profession or occupation  
within its jurisdiction;  
(2) sit in judgment in hearings for the suspension,  
revocation, or denial of a license of an actual or  
potential member of the particular profession or  
occupation within its jurisdiction. The hearings shall  
be conducted by the legal counsel appointed when required  
under 37-1-121(1).  
(3) pay to the department its pro rata share of the  
assessed costs of the department under 37-1-101(6)."

Renumber: subsequent section

AND AS AMENDED  
DO PASS

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

Chairman.

# STANDING COMMITTEE REPORT

February 13, 1985

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE BILL No. 247

first reading copy ( white )  
color

**EMPLOYER PICK-UP OF EMPLOYEE CONTRIBUTIONS TO PUBLIC RETIRE-  
MENT SYSTEMS.**

Respectfully report as follows: That SENATE BILL No. 247

1. Title, line 2.

Following: "GAME WARDENS',"

Insert: "AND"

Following: "POLICE OFFICERS'"

Strike: ",."

2. Title, line 9.

Following: line 8

Strike: "AND FIREFIGHTERS' UNIFIED"

3. Title, line 16.

Following: "19-9-601,"

Insert: "AND"

4. Title, line 17.

Following: line 16

Strike: "19-13-601, AND 19-13-1983,"

5. Page 27, line 2 through line 6, page 29.

Strike: sections 18 and 19 in their entirety

Renumber: subsequent sections

**AND AS AMENDED**

DO PASS

~~XXXXXXXXXX~~

Chairman.

# STANDING COMMITTEE REPORT

Page 1 of 2

February 13 1985

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE BILL No. 213

first reading copy ( white )  
color

## MANDATORY DISCLOSURE OF CONFLICTS OF INTEREST BY PUBLIC OFFICERS

Respectfully report as follows: That SENATE BILL No. 213

1. Title, line 7.  
Following: "SECTIONS"  
Insert: "2-2-112,"  
Following: "2-2-125,"  
Strike: "AND"

2. Title, line 8.  
Following: "2-2-131,"  
Insert: "AND 2-2-132,"

3. Page 1, line 11.  
Following: line 10  
Insert: "Section 1. Section 2-2-112, MCA, is amended to read:  
"2-2-112. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office."

~~XXXXXXXX~~

~~XXXXXXXXXX~~

(continued)

Chairman.

February 13 19 85

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should ~~consider-discussing-or-eliminating~~ shall disclose or eliminate the interest creating the conflict or ~~abstain~~ abstain from the official action. In making his decision, he ~~should-further~~ shall consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator ~~elects-to-disclose~~ discloses the interest creating the conflict, he shall do so as ~~provided in-the-joint-rules-of-the-legislature~~ provided in writing to the leadership of the house in which he serves. The house leadership shall make all disclosure statements available to the secretary of state, who shall keep them pursuant to 2-2-132.

ReNUMBER: subsequent sections

4. Page 4, lines 3 through 5.

Following: "nature"

Strike: "remainder of line 3 through serves" on line 5

5. Page 4, line 6.

Following: line 5

Insert: "Section 5. Section 2-2-132, MCA, is amended to read:

"2-2-132. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

(3) make rules for the conduct of his affairs under this part."

ReNUMBER: subsequent section

AND AS AMENDED

DO NOT PASS