

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Jan Brown, on March 7, 1989, at 9:00 a.m.

#### ROLL CALL

Members Present: All present, except:

Members Excused: Reps. Moore and Russell

Members Absent: None

Staff Present: Judy Burggraff, Secretary; Lois Menzies, Staff Researcher

Announcements/Discussion: Chairman Brown announced that Sen. Yellowtail had requested to have SB 325 rescheduled.

#### HEARING ON SB 171

Presentation and Opening Statement by Sponsor: Sen. R. J. Pinsoneault, Senate District 27, Lake County, introduced the bill. This is an agency bill requested by the Department of Justice. It clarifies that the State Medical Examiner serves as the administrator of the Office of Forensic Pathology and the Laboratory of Criminalistics. The bill also changes the title of the Director of the Laboratory of Criminalistics to Manager of the Laboratory of Criminalistics. In addition, the bill clarifies the duties of the State Medical Examiner and the Manager of the Laboratory of Criminalistics.

Sen. Pinsoneault said that there have been a couple of developments subsequent to his introduction of the bill, which prompted him to ask the Committee to table the bill.

#### Testifying Opponents and Who They Represent:

Peter Funk, Assistant Attorney General, Department of Justice

#### Opponent Testimony:

PETER FUNK, representing the Department of Justice, said that the recent developments concerning the Forensic Science Division in Missoula have prompted the Attorney General to ask that this bill be tabled. He noted that his office has had some problems with the crime lab, particularly in the last couple

of months since the Legislature started. The Attorney General feels that a much more extensive rewrite of the laws concerning the forensics lab is necessary than is contained in the bill that is before the Committee at the present time. As of yesterday, the Joint Appropriations Subcommittee on General Government had agreed to introduce a bill that would embody the Attorney General's current feelings about this particular statute and what needs to be done with it. He said, "Our options were to try and come in and substantially amend this bill, which we didn't feel was appropriate given the relatively minor changes which the bill currently faced, or to try and get a new bill introduced which would be accepted by both houses. That is the route we have chosen to pursue. Based on that fact, we request that this bill be tabled."

Testifying Opponents and Who They Represent: None

Questions From Committee Members: None

Closing by Sponsor: None

#### DISPOSITION OF SB 171

Motion: Rep. O'Connell moved that SB 171 BE TABLED.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

#### HEARING ON SB 200

Presentation and Opening Statement by Sponsor: Sen. Richard Manning, Senate District 18, Great Falls, introduced the bill. This is an agency bill requested by the Department of Commerce. It increases the salary of the five-member Board of Horseracing from \$25 a day to \$50 a day.

Sen. Manning said that the bill is a housekeeping one. He said, "In the last session, salaries of Board members were increased from \$35 to \$50. In some cases, this was not done to all of the boards as some of the laws that were enacted covered individual boards." He also said that they are being paid \$50 now; this bill would make it legal.

Testifying Proponents and Who They Represent:

Harold E. Gerke, Chairman, Montana Board of Horseracing

Proponent Testimony:

HAROLD E. GERKE, representing the Montana Board of Horseracing, said all the bill does is to correct an inequity that was overlooked in a past legislative session. It was thought that all of the boards were included in the legislation; some had their own legislation and got left out. We just want to bring the Board up to the standard of the other boards.

Testifying Opponents and Who They Represent: None

Questions From Committee Members:

REP. O'CONNELL said that she believes that it was two sessions ago that the salary of the boards was raised from \$35 to \$50. It is true that some were inadvertently left out; this must have been one of them.

Closing by Sponsor: Sen. Manning thanked the indulgence of the Committee, and asked that the Committee to concur in the bill.

#### DISPOSITION OF SB 200

Motion: Rep. O'Connell moved SB 200 BE CONCURRED IN.

Discussion: REP. DEBRUYCKER said, "If they are going ahead and paying them anyway, and there is no penalty, what is the need of the bill?" Ms. Menzies said she presumes that they would prefer to be in conformity with the law rather than against it.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 15 - 1, with Rep. Campbell voting no. Rep. Nisbet will carry this bill on the floor of the House.

#### HEARING ON SB 259

Presentation and Opening Statement by Sponsor: Sen. Bob Williams, Senate District 15, Judith Basin, introduced the bill. In 1987, the Legislature enacted a "sunrise" law concerning the establishment of new boards that regulate and certify or license an occupation. The 1987 law requires that a proposal for establishing a new board must be submitted to the Legislative Audit Committee for review at least 180 days before the first day of the next regular legislative session. A bill providing for the establishment of a new board may not be reported out of committee during a legislative session unless a Legislative Audit Committee report assessing its merits is attached to the bill.

This bill provides an exemption to the 1987 "sunrise" law. It exempts a proposal for the establishment of a licensing

program required by federal law from the requirement that the Legislative Audit Committee review the proposal and issue a report assessing its merits. The bill further provides that an agency subject to the exemption must, before issuing a license, file a report with the Legislative Audit Committee containing the same information required of an applicant proposing state licensing for an occupation or profession who is subject to the "sunrise" law.

Sen. Williams presented written testimony (Exhibit 1).

Testifying Proponents and Who They Represent:

Adrian C. Howe, Chief, Department of Health and Environmental Sciences

Proponent Testimony:

ADRIAN C. HOWE, representing the Department of Health and Environmental Sciences, presented written testimony (Exhibit 2).

Testifying Opponents and Who They Represent: None

Questions From Committee Members:

REP. SQUIRES said she was sympathetic to the need to have this legislation because of federal requirements, but there are some people that have been excluded through the "sunrise" legislation (i.e., the midwives, the naturopaths and others). She asked if he anticipated some "repercussions" if we chose to let the state be exempted from the particular criteria that has been set up by the "sunrise" legislation versus these folks that we have said "no to licensing this time because they have not met the requirements." Sen. Williams said that we are mandated by the federal government to create these boards, so we have to do something within the 180-day period.

Mr. Howe said that this bill does allow an exemption for any state agency that has a federally mandated program. He said he foresees within the next two years that the federal government will require certification of people inspecting for radon, and also require radon inspections in schools.

Closing by Sponsor: Sen. Williams thanked the Committee for their time. He said that this bill passed the Senate 49 - 0. He asked the Committee for their concurrence.

DISPOSITION OF SB 259

Motion: Rep. Spring moved that SB 295 BE CONCURRED IN.


Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 15 - 1, with Rep.  
Campbell voting no. Rep. Harper will carry this bill on the  
House floor.

ADJOURNMENT

Adjournment At: 9:30 a.m.

  
\_\_\_\_\_  
REP. JAN BROWN, Chairman

JB/jb

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## DAILY ROLL CALL

## STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date March 7<sup>th</sup>, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais	✓		
Rep. Janet Moore			✓
Rep. Angela Russell			✓
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 200 (third reading copy -- blue) be concurred in .

Signed: \_\_\_\_\_

Jan Brown  
Jan Brown, Chairman

[REP. NISBET WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 259 (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_

Jan Brown  
Jan Brown, Chairman

[REP. HARPER WILL CARRY THIS BILL ON THE HOUSE FLOOR]



EXHIBIT 1

DATE 3-27-89

SB 259

142

PROPOSED INTRODUCTION FOR SB 259

*By request of Dept of Health approved by Gov office,*

The purpose of SB 259 is to exempt state agency licensing proposals, which are mandated by Federal law or which may be an integral part of a regulatory program receiving delegation of primary regulation enforcement authority for a program established by State and Federal law from the provisions of the "Sunrise Law". Two bills which will be affected by this legislation and are of particular interest to the Department of Health and Environmental Sciences are: HB 537 (Licensed Underground Tank Installers) and SB 270 (Asbestos Workers Certification).

In 1987, the Legislature passed Senate Bill 138. This bill enacted what is commonly referred to as a "Sunrise Law" entitled "Committee Assessment of Boards". Section 2-8-203, MCA, requires the Legislative Audit Committee to "review and assess the merits of" any proposed legislation either creating a new professional and occupational licensing board. Section 5-4-207, MCA, requires that a written report of the Legislative Audit Committee assessing the proposed licensing legislation be attached to the proposed licensing legislation when it is reported out of any legislative committee.

The Department of Health and Environmental Sciences has requested two professional and occupational licensing bills. HB 537 prohibits the installation or closure of an underground storage tank by any owner or operator of the tank unless the tank is installed or closed by a person licensed by the department to do the installation or closure. SB 270 would prohibit persons from inspecting for presence of asbestos, designing management plans, installing, or removing asbestos, without a permit and certification issued by

EXHIBIT 1  
DATE 3-07-89  
SB 259  
262

the Department of Health and Environmental Sciences.

The Federal "Asbestos Hazard Emergency Response Act of 1986" (AHERA-PL 99-519) requires that each state adopt an accreditation plan for asbestos contractors and consultants which is at least as stringent as the EPA accreditation plan. This plan must be adopted within 180 days after the beginning of the first regular session of the legislature in each state following the date on which the EPA completes development of the Model Plan. The "Model Plan" was published by EPA on October 30, 1987 so this means during the 1989 session in Montana.

At this time, no study of HB 537 or SB 270 has been conducted by the Legislative Audit Committee. Because the "Sunrise Law" apparently applies to professional and occupational licensing by the Department of Health and Environmental Sciences, Section 5-4-207, MCA, may prevent a legislative committee from reporting out HB 537 and SB 270, unless the Sunrise Law is amended to allow it.

EXHIBIT 2  
DATE 3-07-89  
SB 259  
1065

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TESTIMONY

on

SENATE BILL NO. 259

Presented by Adrian C. Howe

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT A BILL ESTABLISHING LICENSURE OR CERTIFICATION REQUIREMENTS FOR UNDERGROUND STORAGE TANK INSTALLERS OR THOSE WORKING WITH ASBESTOS FROM THE REQUIREMENT THAT THE LEGISLATIVE AUDIT COMMITTEE REVIEW THE BILL AND ISSUE A REPORT ASSESSING ITS MERITS BEFORE A LEGISLATIVE SESSION; AMENDING SECTION 5-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

The purpose of SB 259 is to exempt HB 537 (Licensed Underground Tank Installers) and SB 270 (Asbestos Workers Certification) from the provisions of Section 5-4-207, MCA.

The Legislative Auditor has determined that the proposed certification of asbestos related occupations is subject to Title 2, Chapter 8, Part 2, MCA, commonly referred to as a "Sunrise Law" and entitled "Committee Assessment of Boards"(See Attachment). The reason that SB 270 and HB 537 are subject to the provisions of the "Sunrise Law" is because of the definition of "License" and "Licensing Board".

A "License" is defined as a "permit, certificate, approval, registration, charter, or other form of permission required by law as a condition of practicing a profession or occupation" and "Licensing Board" is defined as "an

office, position, commission, or any other entity or instrumentality of the executive branch of state government that is responsible for the licensing of an occupation or profession"(See Attachment). Section 2-8-203, MCA, requires the Legislative Audit Committee to "review and assess the merits of" any proposed legislation either creating a new professional and occupational licensing board or requiring an existing licensing board to license a different occupation or profession. A separate section of law, Section 5-4-207, MCA, requires that a written report of the Legislative Audit Committee be attached to the proposed legislation when it is reported out of any legislative committee.

The Department of Health and Environmental Sciences has requested two bills which are subject to the provisions of the "Sunrise Law". HB 537 is intended to prevent or reduce improper installation and closure of underground storage tanks by prohibiting the installation or closure of an underground storage tank unless the tank is installed or closed by a person licensed by the Department to do the installation or closure. The Department of Health and Environmental Sciences is seeking regulatory primacy for underground storage tanks of which licensure of installers is an integral part and subject to review by the U.S. Environmental Protection Agency prior to granting regulatory primacy. SB 270 is intended to prevent or reduce airborne asbestos as a cause of lung cancer and other diseases by prohibiting persons from inspecting for presence of asbestos, designing management plans, installing or removing asbestos without a permit and certification issued by the Department.

Public Law 99-519 "Asbestos Hazard Emergency Response Act of 1986" (AHERA) requires that "Each state shall adopt a contractor accreditation plan at least as stringent as the model plan developed by the Administration...within 180 days after the commencement of the first regular session of the legislature of such state which is convened following the date on which the administrator

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Ex. #2

completes development of the Model Plan." The "Administration" is the administrator of the EPA. The "Model Plan" was published by EPA on October 30, 1987.

In both cases concerning HB 537 and SB 270, the Department was not aware that the definitions of "license" and "licensing board" contained in Section 2-8-202, MCA, which may subject these bills to the provisions of the "Sunrise Law", until after the July 1, 1988 deadline for submittal to the Legislative Audit Committee.

At this time, no review of HB 537 or SB 270 has been conducted by the Legislative Audit Committee. SB 259 fulfills the urgent need to allow HB 537 and SB 270 to be reported out of committee without the Legislative Audit Committee's written report, as is now required by the law. SB 270 has been tabled by the Senate Public Health Committee until SB 259 is signed by the Governor. SB 259 would in effect exempt all bills of the executive branch of government proposing regulation of an occupation or profession which is federally mandated or for which the regulation of such is an integral part of a regulatory program receiving delegation of primary enforcement responsibility from federal agencies.

On behalf of the Department of Health and Environmental Sciences, I urge the committee's favorable consideration of SB 259.

(2) No more than one agency or program may be continued or reestablished in any bill for an act, and the agency or program shall be mentioned in the bill's title.

History: En. 82-4608 by Sec. 8, Ch. 562, L. 1977; R.C.M. 1947, 82-4608; amd. Sec. 8, Ch. 321, L. 1983.

## Part 2

### Committee Assessment of Boards

**2-8-201. Purpose.** (1) The legislature finds that the number of licensed occupations and professions has increased substantially and that occupational and professional licensing boards occasionally have been established without a determination that the police power of the state is reasonably exercised by establishing them or a determination that existing licensing boards could provide the necessary regulation.

(2) It is the intent of the legislature to improve its ability to evaluate the need for new licensing boards by establishing criteria and procedures for reviewing proposed new occupational and professional licensing boards. To this end it is a purpose of this part to ensure that no new licensing board is established unless:

(a) the unregulated practice of the profession or occupation directly and immediately endangers the public health, safety, or welfare;

(b) practice of the profession or occupation requires specialized skill or training, and nationally recognized standards of education and training exist;

(c) a substantial majority of the public lacks the knowledge or experience to evaluate whether the practitioner is competent; and

(d) the public is not protected effectively by other means.

(3) It is also a purpose of this part to allow for the smallest number of licensing boards consistent with adequate regulation of appropriate occupations and professions.

History: En. Sec. 1, Ch. 266, L. 1987.

**2-8-202. Definitions.** In this part, the following definitions apply:

(1) "Applicant" means the persons or organization proposing state licensing for an occupation or profession.

(2) "Committee" means the legislative audit committee.

(3) "License" means a permit, certificate, approval, registration, charter, or other form of permission required by law as a condition of practicing a profession or occupation.

(4) "Licensing" means a regulatory process that includes but is not limited to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(5) "Licensing board" means an office, position, commission, or any other entity or instrumentality of the executive branch of state government that is responsible for licensing members of an occupation or profession.

History: En. Sec. 2, Ch. 266, L. 1987.

**2-8-203. Committee review and report.** (1) The committee shall review and assess the merits of any proposal to:

## VISITORS' REGISTER

## STATE ADMINISTRATION COMMITTEE

BILL NO. SB 200DATE March 7, 1989SPONSOR SEN. MANNING

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Harold E. Gerke</i>	<i>Board Horse Racing</i>	<i>X</i>	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER  
STATE ADMINISTRATION COMMITTEE

BILL NO. SB 259

DATE March 7, 1989

SPONSOR REP. WILLIAMS

NAME (please print)	<del>RESIDENT</del> REPRESENTING	SUPPORT	OPPOSE
Adrian Howe	DHES	✓	
LARRY Lloyd	DHES	✓	
Jean Riley	DHES	✓	
Steve Browning	SBA	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.