

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON SENATE RULES

Call to Order: By Chairman Gage, on February 4, 1989 at 9:45 a.m.  
in Room 331 of the State Capitol.

ROLL CALL

Members Present: Senators: Del Gage, Jack Galt, Bruce Crippen,  
Bill Farrell, Judy Jacobson, Bill Norman, Fred Van Valkenburg

Members Excused: None

Members Absent: None

Staff Present: None

SUNRISE STATUTES DISCUSSION

Senator Gage started the meeting by stating that Section 5-4-207 MCA indicates a legislative audit committee report provided for in the Sunrise statutes must be attached to bills reported out of a legislative committee. This is in regard to occupational or professional licensing and similar boards.

Chairman Gage told the committee that Representative Hal Harper's interpretation of Section 5-4-207 MCA is the audit report can be attached during the bill process not specifically when it comes out of committee. Chairman Gage that if the audit report is not attached to the bill when it comes out of committee the committee has not had the opportunity to study the report.

State Administration committee has requested a committee bill to be drafted that considerably waters down the Sunrise statute. The bill is in the drafting process.

Senator Galt brought up a question of how, after an issue has been defeated in the Senate, can you introduce another bill on the same subject?

Senator Jacobson reviewed the draft copy of the proposed bill and she agreed that it does deal with the same subject. However the bill revises, as opposed to repeals, the statutes. It does repeal Section 2-8-206 MCA dealing with the application fee. The final outcome would be a report to the legislature as opposed to an actual audit.

Senator Van Valkenburg told the members the bill that was killed in the Senate was to repeal the Sunrise statutes. The State Administration bill modifies the statutes therefore it is not the same bill. He feels that Senator Galt's question literally applies only to virtually identical legislation coming from the House of Representatives.

Senator Jacobson pointed out that the proposed bill would not have any effect on bills before the current legislature. It will only apply to bills that are introduced in the next legislative session as the effective date would be October 1, 1989.

Chairman Gage said the Rules Committee needs to determine if Senate bills that the Legislative Auditor have deemed subject to the Sunrise statutes are properly introduced before the Senate. The House of Representative Rules Committee will make their own determination. Chairman Gage feels Senate bills that are subject to Sunrise statutes which do not have audit reports attached to them are dead in committee.

Senator Van Valkenburg asked for discussion on whether a preceding legislature can bind a subsequent legislature in terms of procedure. He believes if a bill has a provision asking for an exemption from Section 5-4-207 MCA, comes out of committee, the bill can proceed through the legislative process. He feels there is a general rule stating a preceding legislature cannot bind a subsequent legislature.

SENATE RULES COMMITTEE

February 4, 1989

Page 3 of 3

Senator Jacobson made a point the Senate did consider a bill to repeal the Sunrise statutes which was defeated. She feels that this clearly states the Senate wanted the Sunrise statutes upheld.

Senator Crippen agreed with Senator Van Valkenburg. He feels if the legislature wants a bill passed that is in direct violation of a previous act the legislature should be able to change the procedure.


Senator Norman said that the current Senate voted to follow the law of the previous session concerning the Sunrise statutes as Senator Jacobson pointed out. He does not want to adjourn and wait and wonder as to what a legislative audit committee might find after adjournment when no one can no longer vote on the bill. It would turn the prerogative of the Senate over to an audit committee.

Senator Van Valkenburg feels if a bill with the exemption is passed by both Houses and is signed by the Governor it is law. He believes the Senate did not want a blanket repeal of the statutes but would consider an exception on a case by case basis. The Senator made a motion that the Rules Committee take a position on Senate Bills 74, 133, 187, 270, 277, 288, and 303. These bills have been identified as being subject to Sunrise statutes. An exception to Section 5-4-207 MCA must be approved by committee before the bill may be reported out to the Senate and considered on Second Reading.

Motion Failed

Senators Van Valkenburg and Crippen voted yes, Senators Galt, Jacobson, Farrell, Norman and Gage voted no.

The meeting was adjourned at 10:20 a.m.

  
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DELWIN GAGE, Chairman

DG/mo



SENATE RULES

EXHIBIT NO. 1

DATE 02-04-89

BILL NO. \_\_\_\_\_

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL  
HELENA, MONTANA 59620  
406/444-3122

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON  
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LEGISLATIVE AUDITOR:  
SCOTT A. SEACAT

LEGAL COUNSEL:  
JOHN W. NORTHEY

February 2, 1989

Senator Judy Jacobson  
Senator Delwyn Gage  
Representative Hal Harper  
Capitol Station  
Helena, Montana 59620

Dear Senators Jacobson and Gage  
and Representative Harper:

Attached is memorandum containing the information you requested on professional and occupational licensing bills introduced so far this session. We have reviewed the bills to determine, in our opinion, which ones are subject to Sunrise provisions. The first part of the memorandum is just a listing of licensing bills. The rest of the memorandum contains a brief discussion of what each bill does and why it does or does not fall under Sunrise. There are some additional licensing related bills that were reviewed, but we only included the ones where there may be some question whether the Sunrise law applies.

If you need any additional information please, contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jim Pellegrini".

Jim Pellegrini  
Deputy Legislative Auditor

Attachment

Office of the Legislative Auditor

BILLS SUBJECT OR NOT SUBJECT TO SUNRISE LAW

February 2, 1989

The following are bills related to professional or occupational licensing. We analyzed the bills to see which ones appear to fall under the Sunrise law (Title 8, Chapter 2, Part 2, MCA). Only the bills where there is some question of whether they are subject to Sunrise are listed. Other bills related to licensing boards have been introduced, but clearly do not fall under Sunrise provisions. For example, HB 222 would only revise laws related to disciplining of licensed barbers.

SUMMARY OF BILLS UNDER SUNRISE

HB 284	Radiation Therapy Technologists
HB 287	Massage Therapists
HB 476	Taxidermy
HJR 16	Study of Umbrella Board
SB 74	Adult Foster Care Home Operators (if interpreted to cover operators)
SB 133	Naturopathic Physicians
SB 187	Psychologist Associates
SB 270	Asbestos Workers (if SB 259 does not pass)
SB 277	Electrologists
SB 288	Persons Who Assist in the Practice of Nursing
SB 303	Escrow Agents (no final decision yet)

DESCRIPTION OF ALL BILLS

House Bills

HB 118	Revising the Law on the Practice of Funeral Directing and Mortuary Science	<ul style="list-style-type: none"><li>- Does not appear to fall under Sunrise</li><li>- Provides for licensing of a new mortuary facility after an inspection by the board; but no new licensing of a profession or occupation.</li></ul>
HB 199	Temporary Licenses for Graduate Manicurists (Board of Cosmetologists)	<ul style="list-style-type: none"><li>- Does not appear to fall under Sunrise</li><li>- Provides for temporary licensing of manicurists. The board already licenses manicurists. No new licensing is proposed.</li></ul>

- HB 211           Licensing of Nursing Home Administrators
- Does not appear to fall under Sunrise
  - Only amends the qualifications to become a licensed nursing home administrator
- HB 239           Licensing of Occupational Therapists and Occupational Therapist Assistants
- Does not appear to fall under Sunrise
  - Only amends the qualifications to become licensed as an occupational therapist or an occupational therapist assistant
- HB 258           Creates Board of Passenger Tramway Safety
- Does not appear to fall under Sunrise
  - Transfers registration of passenger tramways from the Department of Commerce to a new Board of Passenger Tramway Safety
  - Registers the tramways rather than the operators of the tramways - a bill requiring registration of the operators would have fallen under Sunrise
- HB 284           Licensure of Radiation Therapy Technologists
- Appears to fall under Sunrise
  - Bill would add responsibility for licensing another profession (radiation therapy technologists) to an existing licensing board (the Board of Radiologic Technologists)
  - 3/21/88 OLA letter to Adrian Howe indicated the proposal did not appear to be subject to Sunrise under the assumption "the proposed changes would not add a new profession for licensure by (the) board".
- HB 287           Licensure of Massage Therapists
- Appears to fall under Sunrise
  - Provides for licensing of massage therapists by the Department of Commerce which would fall under the definition of "licensing board" under the Sunrise law
  - The department already exists, but the bill would "add to the duties of an existing licensing board responsibility for licensing another occupation or profession"

HB 396 Renaming Board of Speech Pathologists and Audiologists to the Board of Speech-Language Pathologists and Audiologists

- Does not appear to fall under Sunrise
- Only renames the board and the profession from speech pathologist to speech-language pathologist

HB 476 Create Board of Taxidermy

- Appears to fall under Sunrise
- Creates a new Board of Taxidermy and transfers the licensing of taxidermists from the Department of Fish, Wildlife, and Parks to the Department of Commerce

HJR 16 Study Need and Feasibility of an Umbrella Board to License Alternative Health Care Providers

- Appears to fall under Sunrise
- Resolution is a proposal to "initiate a legislative ... study of the need for a new licensing board"

#### Senate Bills

SB 26 Licensure of Physician Assistants-Certified

- Does not appear to fall under Sunrise
- Present law governing the practice of physician assistants does not directly license physician assistants but does require approval by the Board of Medical Examiners before they can practice.
- Bill essentially amends a current licensure law

SB 74 Licensure of Adult Foster Family Care Homes

- Could be interpreted either way - would appear to fall under Sunrise if the bill were interpreted to license the operators of adult foster family care homes - would not appear to fall under Sunrise if the bill were interpreted to license the homes
- Under the Sunrise law, a license is any form of permission required by law as a condition of practicing a profession or occupation. Therefore, the bill could be interpreted as licensing the occupation of "operation of adult foster family care homes" and



establishing the department as a new licensing entity.

- The title and section four of the bill appear to indicate the home is licensed rather than the operator of the home.

SB 114 Restore the Fifth Dentist Member to the Board of Dentistry

- Does not fall under Sunrise
- Bill only increases the size of an existing licensing board (the Board of Dentistry)

SB 133 Establish a Board of Naturopathic Physicians

- Appears to fall under Sunrise
- Bill establishes a new licensing board (the Board of Naturopathic Physicians)

SB 151 Expand Membership of the Board of Cosmetologists and Provide for Booth Rental Licenses

- Does not appear to fall under Sunrise
- Bill expands the Board of Cosmetologists from four members to seven
- The booth rental license should not be considered adding "licensing (of) another occupation or profession".

SB 153 Allow Professional Guide to Act as an Independent Contractor

- Does not appear to fall under Sunrise
- Bill provides that an independent contractor of a licensed outfitter must have a professional guide's license the same as a guide who is an employee of an outfitter
- A contracted guide should not be considered adding "licensing (of) another occupation or profession".

SB 179 Revise Qualifications for Licensure as a Cosmetologist

- Does not appear to fall under Sunrise
- Bill only revises qualifications for licensure as a cosmetologist

- SB 187           Licensure of Psychologist Associates
- Appears to fall under Sunrise
  - Bill adds to the duties of an existing licensing board (the Board of Psychologists) the responsibility for licensing another profession (psychologist associate)
- SB 259           Exempt Licensing Proposals Established Pursuant to Federal Law
- Does not appear to fall under Sunrise
  - Bill exempts licensing proposals required by federal law from the Sunrise process
- SB 270           Accreditation of Asbestos Workers
- Does not appear to fall under Sunrise as long as SB 259 passes (see above)
  - Bill provides for accreditation (licensing as defined in Sunrise law) of asbestos workers by the Department of Health and Environmental Sciences
- SB 277           Transfer Licensing of Electrologists from the Board of Cosmetology to the Board of Medical Examiners
- Appears to fall under Sunrise
  - Bill adds to the duties of an existing licensing board (the Board of Medical Examiners) the responsibility for licensing another profession (electrologists)
- SB 288           Allow Board of Nursing to Establish Qualifications for Persons Who May Assist in the Practice of Nursing
- Appears to fall under Sunrise
  - Bill adds to the duties of an existing licensing board (the Board of Nursing) the responsibility for licensing another profession (persons who may assist in the practice of nursing)
  - Bill provides for the Department of Health and Environmental Sciences to maintain a registry of the persons discussed above - registration falls under the definition of license in the Sunrise law)

SB 299 Generally Revise Laws Relating to Regulation of Hearing  
Aid Dispensers

- Does not appear to fall under Sunrise
- Bill would not add any additional professions or occupations to the Board of Hearing Aid Dispensers

SB 303 License Escrow Agents

- (BILL NOT REVIEWED YET)