

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on February 14, 1989, at 10:00 a.m., Room 331, Capitol.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator William E. Farrell, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: Senator Esther Bengtson, Senator Ethel Harding

Members Absent: None

Staff Present: Eddy McClure

HEARING ON SB 362

Presentation and Opening Statement by Sponsor:

Senator Hubert Abrams indicated SB362 is an act transferring the accounting functions from the Department of Administration to the State Auditor, amending Section 17-1-121 and 17-1-122, 17-8-302, and repealing Section 17-1-101. The remainder of Senator Abrams' testimony is attached as Exhibit 1.

List of Testifying Proponents and What Group they Represent:

Joe Lundberg, State Auditor's Office

Testimony:

Mr. Lundberg's written testimony is attached as Exhibit 2.

List of Testifying Opponents and What Group They Represent:

David Ashley, Acting Director, Department of Administration

Testimony:

Mr. Ashley testified that the Department of Administration opposes SB362. He indicated they believe the accounting division fits in with the mission of the Department of Administration, and there are some coordinating reasons for having the office of budget and program planning and the accounting division reporting to the same elected official. Mr. Ashley indicated the Department of Administration is the centralized service agency for state government, providing purchasing, printing, personnel, computer operation, telecommunications, building design and construction, tort claims defense, building maintenance, and systems development. He stated they believe the accounting system, and operating the accounting system and paying claims for state agencies, fits in with that sort of a service department, and they think the accounting division is part of the mission of the Department of Administration.

Mr. Ashley then indicated coordination is necessary between OBPP and the accounting division. Regarding the selling of tax and revenue anticipation notes each spring and summer, he indicated the general fund typically goes into a deficit situation in March and April, prior to individual income tax being received. He stated one of their responsibilities is to borrow from the tax exempt market, if that occurs, which involves a lot of coordination between the budget office, which projects revenues, and the accounting division, which projects expenditures. He indicated they get together, do the cash flow for the coming fiscal year, and decide whether to sell tax anticipation notes. Mr. Ashley noted this takes good coordination between those two agencies in that projection, but that coordination also extends to agency presentations. He then indicated the accounting division comes up with the unreserved fund balance figure they give to the budget office each year, prior to a legislative session, so the budget office can be developing the budget for submission to the coming legislative session. Mr. Ashley stated it seems to him that budgeting and accounting fit together like hand and glove, that budgeting is the up-front portion of the business that the legislature is involved in, and accounting is the back-half of that equation, where they actually make sure that the expenditures are occurring in accordance with budgetary dictates.

Questions From Committee Members:

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- Q. Senator Rapp-Svrcek indicated he would assume there is some sort of fiscal impact, and asked Senator Abrams if a fiscal note has been ordered.
- A. Senator Abrams responded he has ordered a fiscal note.
- Q. Senator Rasmussen asked Senator Abrams if the impetus for this bill come out of the fire situation.
- A. Senator Abrams responded he thinks that was a lot of it.
- Q. Senator Rasmussen then asked if there have been any other problems over the years, or if this was the first one that has come up.
- A. Mr. Lundberg responded this is the first one that came up, that they are aware of. He added he has been with the Auditor's office for just about a year, and this is the first major thing that he is aware of to give reason to question the current practice.
- Q. Senator Vaughn asked Mr. Ashley to comment on the statement that the Department of Administration does not perform any pre-audits of claims.
- A. Mr. Ashley responded that is true, that the Department of Administration, since 1978, has not done any pre-audit of claims. He indicated the state relies on 3 different ways of assuring that claims are legitimate; first, they rely on the agencies to make sure the claims are legitimate. He noted they are talking about in excess of 300,000 claims a year that are paid to private vendors, it is very difficult for a centralized agency like the accounting division to be sure that each one of those claims, prior to being paid, are legitimate, and they rely on the agencies, who typically have one person preparing the claim and another person approving the claim. He noted that is the strongest thing they can do to control it.

Mr. Ashley indicated the second thing is that the state-wide budget and accounting system has internal edits which will sometimes kick out a claim it is having a problem with and, in that instance, they get back with the agency and question it. He indicated the third thing is the Legislative Auditor's office that is in charge of the post-audit.

- Q. Senator Hofman asked what kind of transfer of FTEs are we talking about, from one department to the other, to do this work.
- A. Mr. Ashley responded the fiscal note, when it does come out, will indicate 10 FTEs being transferred from the accounting division to the State Auditor's office.

Closing by Sponsor:

Senator Abrams indicated he originally thought this bill was supported by everyone involved, and that he guesses the Department of Administration has changed their philosophy. He noted that, although he is not educated on the functions of the departments, to him it makes good sense, and looks like it is a case whereby it will be more efficient, since the Auditor is the one who runs the audit. Senator Abrams indicated that, if there are some problems with this that can be worked out, they will take at it.

Chairman Farrell announced the hearing on SB362 as closed. He then turned the meeting over the Vice Chairman Hofman.

HEARING ON SB 381

Presentation and Opening Statement by Sponsor:

Senator Bill Farrell stated that SB381 is a bill to raise the annual license fee on attorneys in the State of Montana. He indicated the fee has not been raised since 1910, or 1918. He stated this bill proposed to raise the fee to \$250 per year, and dedicate that fee to the Supreme Court Justices and the District Court Judges, to help pay their salary for a bill just passed through the Senate. Senator Farrell indicated that, based on the assumptions that were in the fiscal note in 1987, on a similar bill he introduced at that time, there were approximately 2,442 attorneys in the State of Montana. He added he assumes it will be fairly close to that number now, noting the fiscal note on SB381 is not yet available. Senator Farrell indicated the committee will hear arguments regarding constitutionality, user system, etc., and that he has talked to some attorneys who believe this is not unconstitutional. He noted the section in the Constitution states that attorneys and the court system will be under the Constitution, and that there is nothing mentioned in that section of the law regarding fees; it simply states attorneys and the Montana Bar Association will be under the jurisdiction of the courts for practice, and rules and regulations.

List of Testifying Proponents and What Group they Represent:

None.

List of Testifying Opponents and What Group They Represent:

Representative Gary Spaeth, President-elect, State Bar of  
Montana

Doug Olson, attorney, representing himself

Faye Bergan, attorney, representing herself

Testimony:

Representative Spaeth testified he is appearing on behalf of the President of the State Bar of Montana, and on behalf of their organization. He reported he has discussed this bill with Senator Farrell, that he was not able to come up with any substantial arguments at that time, but would like to discuss it with the members of the committee.

Representative Spaeth noted it is hard to appear before a committee when testifying on self-interests, but indicated he would like to point out some of the problems they have with the bill, from a philosophical point. He stated the State Bar is opposed to SB381, that they think the bill is inappropriate policy, unfair, and probably unconstitutional.

He indicated they feel the philosophy underlying the bill is that lawyers control and, therefore, are responsible for funding the court system, adding he thinks that is erroneous philosophy because, although they work in the court system, they do not control the court system, noting it is not just their domain, that the courts belong to all the people of Montana, and not to any interest group, including the interest group of lawyers. Representative Spaeth indicated the court system is the third branch of government, and he thinks it would be unfair to say that any particular group, such as lawyers, is responsible for maintaining one particular branch of government, that being judiciary. He noted that, if this philosophy is adopted, they could argue that doctors should be funding more of the Department of Health and health care costs, that doctors do not maintain hospitals, but practice in hospitals. He noted that is their main place of practice, such as the court room is for the lawyers, and that doctors do not necessarily pay for all of the hospital costs. He added that teachers teach in the schools, but teachers are not required to help maintain the schools, noting that responsibility is placed, rightfully, where it should belong. He

then indicated that truckers do not necessarily always maintain all the roads of the State of Montana, when they probably could be called upon to maintain the roads, noting that would be the same kind of philosophy.

Representative Spaeth indicated they hear about the \$10 fee, that it has been around a long time. He stated the State Bar is under the auspices of the Supreme Court, noting he is not sure if they are a quasi-state agency or not, but indicated they are mandated to be members of the State Bar and, in order to be a member of the State Bar, they have to pay \$120. He indicated that, in essence, lawyers pay \$130 in order to practice in the state, and that they have no choice. He added they are members, like most professions, of other professional voluntary organizations, but that they have to pay the \$130. He pointed out that the next highest licensing fee to practice in Montana is paid by physicians, optometrists and morticians, who pay \$125 to renew their annual license, noting that, by contrast, veterinarians pay \$120, psychologists \$110; engineers \$100, and other professions less than that. Representative Spaeth stated he would like to have included in the statute what they are required to pay, noting the \$10 fee is somewhat misleading.

Representative Spaeth indicated it also must be recognized that, of their 2,500 members, approximately 400 are inactive, and do not practice law, but are still members of the State Bar. He noted they may be teaching school, or engaged in a number of occupations unrelated to law. He indicated that they further estimate about 20% of their active members are employed in government agencies; state, county, city, or federal government. He noted that state attorneys, for example, are not reimbursed for their fees, and that a tax of \$250 would bring the total up to \$370 that they would have to pay, in order practice law in the State of Montana. He indicated this would be placing a substantial burden on state attorneys, as they can not pass that on because they do not have clients. Representative Spaeth stated he thinks that is an unfair tax to be placed on governmental attorneys. He noted they have looked to see if the State, and governmental entities, could help pay it, but that it is a substantial amount of money, because there are a substantial number of attorneys in state government, and it would be an unfair burden.

Representative Spaeth acknowledged that committees do not like to hear about the constitutionality of a bill, but indicated the reason he is concerned about the constitutionality of this bill is that, if the bill were to pass, it would be with the

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understanding that this will be plugged into the budget. He further indicated he understands the reason is to raise a little over \$1 million to help pay for the judicial salary increases, and noted the State Bar strongly supported increasing the judicial salaries, but that they were not alone in their support. He stated there were a lot of people outside the legal profession, including the business community, the rural community, and governmental community, that a broad cross-section of Montanans supported that view, indicating this also lends credence to the fact that the court is not just the domain of lawyers, that it is the domain of everyone in the State of Montana.

Representative Spaeth further acknowledged that committees do not like to be threatened, but, indicating he does not mean this as a threat, he knows the lawyers of the State of Montana are a litigious disagreeable group of people, at times, and stated he can not say this bill will not be challenged. He indicated the State Bar has no intention, right now, to challenge it, but stated that, out of 2,500 lawyers, noting there is always some lawyer suing the State Bar over something, he thinks this bill probably would be challenged. He stated he wanted to look at copies of several decisions which involved the interpretation, noting he thinks Senator Farrell is correct in his analysis of what the statutes said, because he thinks they should look at what the court says. Representative Spaeth cited several examples, and then stated it can be argued that these are not the same, totally on point, but he thinks it is close enough that the Supreme Court would take a very serious examination of the constitutionality of this question. He noted that, if they were to decide that this is not constitutional, from a budget perspective, there is a \$1.4 million hole that we would have a hard time filling at that moment.

Representative Spaeth indicated he thinks the constitutionality is a serious question, it would pose a quandary, if this were to pass, and then found to be unconstitutional, and he would strongly oppose SB381, noting that, on behalf of the State Bar, he feels it is bad policy, is unfair to the legal profession in the State of Montana, and is likely unconstitutional.

Testimony:

Mr. Olson reported he appeared before the committee 2 years ago, when Senator Farrell offered a similar bill increasing the fees to \$2,000, and indicated he appears today to oppose it for the same reasons. He distributed copies of written

testimony to the committee, a copy of which is attached as Exhibit 7, and noted Representative Spaeth had utilized some of the same arguments he was going to make relative to the fairness of the concept of taxing, adding that he thinks it has to be looked at a tax upon attorneys to pay for the costs of employing the judges that serve the state as a whole. He stated the bill, itself, strikes the term "fee", and tries to insert "tax", and that it is really a tax.

Mr. Olson stated he has been licensed to practice law for over 10 years, and indicated that most of his professional life as an attorney has been spent working in what he considers the public sector, noting he served as an attorney with the State Department of Health for a number of years, following which he served as an attorney under contract with the Governor's office on behalf of senior citizens, and worked with the state's long-term care ombudsman. Mr. Olson reported that, for the last 2 years or so, he has served as a business manager, or attorney, for one of the Helena area churches, indicating that he, and a number of other attorneys working in this capacity, work for either non-profits, or governmental entities. He stated he thinks it is fair to say that most of the attorneys who work for governmental entities are not going to eagerly agree to pay \$250 out of their own pockets, noting that someone will have to pay it, and that some of the attorneys will seek to ask the state agencies. Mr. Olson indicated he thinks that holds true for the attorneys working for the Legislative Council.

Mr. Olson indicated that not all attorneys actively have a litigation practice, or trial practice, noting many attorneys have an office practice planning estates, working for corporations, etc., that not all attorneys equally utilize the court systems, and he thinks it is unfair to apply the increase across the board to all attorneys. He noted he believes that, if you try to differentiate between governmental attorneys and private attorneys, this is trying to regulate the practice of law. He indicated that you have to ask yourselves if you are regulating the practice of law by differentiating between who will pay it and who will not, and then ask yourself what is the appropriate role of the court.

Mr. Olson noted attorneys do pay a fee to the State Bar in the way of annual dues, in addition to the license fee, and that attorneys who are not actively practicing law in the state are required to pay a fee of \$50 per year, just to maintain their status as an attorney, should they, at sometime in the future, desire to actively practice law again. He reiterated that attorneys, as a class, do pay fees in addition to the \$10



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licensing fee, noting that the only real function that the Clerk of the Montana Supreme Court performs, in order to collect that \$10 fee, is to send out a license certificate, which is basically a handling fee for postage and staff time to prepare that. He noted the decision on whether or not an individual is issued a license to practice is based upon information given to the Supreme Court by the State Bar of Montana. Mr. Olson stated that, since they have a unified bar, and all attorneys are required to belong to the State Bar of Montana, it is through that entity that the Supreme Court relies upon for information as to whether or not an individual is entitled to practice law. Mr. Olson closed by indicating he knows there are a number of state attorneys that this bill will affect.

Testimony:

Ms. Bergan reported she is an attorney employed by the Department of Natural Resources and Conservation and, although she is appearing today representing herself, she is sure that her views are shared by a number of state employees on this issue. Ms. Bergan stated she would agree with everything Representative Spaeth said on this bill in general, but pointed out that, specifically, as it regards state employees, they are not like private attorneys, and have no way of passing on fees. She indicated that, if this was assessed, they would be paying it out of their own pockets.

Ms. Bergan stated they are salaried employees, and go to court only as incidental to their employment with the agency, noting she only goes to court, usually, when someone sues the DNRC. She indicated that they go to court representing the DNRC, defending statutes that the Legislature has passed, defending rules the agency has passed, or defending employees who have gotten the department into trouble, and stated that taxing them is somewhat like killing the messenger that brings bad news. She stated they are salaried employees, that they pay bar dues licensing fees out of their own pockets, and that \$250 for a salaried state employee is a lot of money. Ms. Bergan pointed out that, with the hidden taxes, such as a tax to practice law, and with the wage freeze that is presently in effect, this makes a crunch as far as their spending power, and their ability to remain state employees. She noted that the more experience they have, the more valuable they are to the state, the less money they make, and it does not seem like a very worthwhile way to keep long-term state employees.

Questions From Committee Members:

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- Q. Senator Hofman asked Representative Spaeth to point out what part of this bill makes it unconstitutional that was not before.
- A. Representative Spaeth responded that he is not 100% certain that this is unconstitutional, but indicated there is a strong probability. He noted the Supreme Court has been, in the decisions that have come up, very jealous regarding the practice of law, and have been very adamant about keeping lawyer fees down. He indicated that, on the basis of the decisions that have come down from Billings and Helena, they can justify the \$10, that is presently in existence to maintain the lists in the Clerk of the Supreme Court's office, he thinks there is a strong likelihood that the court would say anything beyond that is in interference with their right to regulate the profession. He noted he would say there are arguments on the other side, too.
- Q. Senator Hofman stated that does not make much sense to him, and asked, if it is not unconstitutional at \$10, why would be it be unconstitutional at \$250.
- A. Representative Spaeth responded the difference is that the \$10 is to maintain the service, the lists of attorneys that are able to practice law in the State of Montana. He indicated the majority of the other functions, in regulating of the profession, are done through the State Bar, which is a creature of the Supreme Court, itself, and nothing can be done with the fees there, without justifying and it being approved by the Supreme Court. He added that the Supreme Court views all fees that lawyers pay under their auspices, at least from the decisions, and that they jealously guard their prerogative in that area.
- Q. Senator Hofman indicated that, 2 years ago when they dealt with this problem, they were trying to negotiate this and, at that time, the \$2,000 or \$2,500 was deemed to be ridiculous. He stated they got down to where they were talking about \$100, and the screaming was still loud and long, then they talked about \$25, and still got the same kinds of answers. He indicated they got to \$15, they still heard lots of screaming, and it was testified that it was costing the state \$15 to process the \$10 payment.
- A. Representative Spaeth responded he does not like to make constitutional arguments, that lawyers do those best when

in front of the court doing the bench argument, as opposed to legislative committees, and there are other reasons he wanted to emphasize, and that he would not want it to get caught up in the constitutionality argument. He stated they pay \$130 right now, which is the highest of the regulatory kinds of bodies, and he hates to be singled out as a profession.

Representative Spaeth noted there are good arguments against this, on the basis of constitutionality, but there are other, better, arguments from a legislative perspective, and he wouldn't want to get those lost. He indicated that, as a lawyer who practices before the court, he does not always correctly predict what the Supreme Court may rule, noting they might rule that this is constitutional, but there is a good argument to be made, and a strong chance they would rule it is unconstitutional. Representative Spaeth stated he would not want to say that this is 100% unconstitutional, noting the arguments raised are valid.

- Q. Senator Hofman indicated he sees this as a fairness issue because, a couple of years ago, a lot of license fees across the state were raised, rather dramatically, yet the lawyers objected to any raise at all. He noted they had some rather compelling arguments, but he thinks if they had accepted a \$25 fee 2 years ago, or \$100 fee, they would not be here today.
- A. Representative Spaeth responded he would not argue with that statement. He then reported that the State Bar and the Supreme Court are looking at a substantial increase in the mandatory fees, for the regulation of the profession, indicating they, as a profession, have a petition before the Supreme Court. He indicated that Montana is one of the few states in the West that does not have a bar council to help with disciplinary problems and regulation of the profession, that the vast majority of other states have a bar council, and they have a petition pending which will involve a substantial increase in fees. He indicated this will be like other regulatory boards, that the fees are like other regulatory boards, which are assessed against their members. He noted this will be approved by the Supreme Court, and that these are responsible fees in the sense that they ask the board to pay their own way. Representative Spaeth stated they don't ask doctors to pay more toward the Department of Health, but they do ask them to pay the costs of their own regulation, and this is what they are

arguing here. He added they are looking at a \$50 to \$75 increase in dues, which is mandatory, and mandated, to help pay the cost of the bar council, important in disciplining and operating their profession. He noted they think this is very important for the health of the legal profession in Montana, and that it is done in other states.

Representative Spaeth noted that, if they get that \$50 to \$75 increase, the mandatory fees to be a lawyer in Montana will be raised to approximately \$200, and that another \$250, on top of that, is \$450. He indicated that all they are asking is to be allowed, like other professions that have boards that operate them, to pay their own way, adding they are not asking to be subsidized, but that they do not want to be called on to subsidize a third branch of government.

- Q. Senator Rasmussen asked Representative Spaeth if he belongs to the national bar association.
- A. Representative Spaeth responded he is a member.
- Q. Senator Rasmussen then asked if that is common practice.
- A. Representative Spaeth responded that probably 60% to 70% of the lawyers in Montana are members of the American Bar Association.
- Q. Senator Rasmussen then asked Representative Spaeth what the dues are.
- A. Representative Spaeth responded they are \$180, adding he pays \$130 mandated state dues, and he pays \$180 to the American Bar Association, noting they are voluntary, that lawyers do not have to join those. He indicated other professions have voluntary organizations that they choose to join, and that they are expensive, and they are inexpensive. He added the American Trial Lawyers Association is another \$150; the Association of Defense Counsel is another \$140; Phi Delta Phi, a legal fraternity, is another \$20, and the American Judicature Society, which helps fund court-related improvement projects throughout the nation, is another \$100. Representative Spaeth reported his professional dues run about \$800 to \$1,000 a year. He indicated these are voluntary, that other professions have voluntary organizations, but he is concerned about the mandated ones,

and he likes to compare apples to apples, which is what he is trying to do here.

Closing by Sponsor:

Senator Farrell closed by stating that he and Representative Spaeth have debated this issue, other than before this committee, many times. He indicated that, after listening to the opponents, there are 2 questions the committee has to ask themselves.

Senator Farrell stated, regarding constitutionality, he thinks he can make a good argument, adding that the 2 cases Representative Spaeth referred to were cities versus attorneys, and the Supreme Court ruled that they did not want different fees for practicing law in different parts of the state, based on what cities and counties assess. He indicated that neither of those decisions indicated the state could not set mandatory fees, as long as it is uniform state-wide. He added that, in one of the decisions, the wording indicated one of the reasons was that they did not want arbitrary fees; for example, people from Helena having a lower fee than people practicing from out of town.

Senator Farrell indicated a second reason was public policy, noting he would assume they were referring to the user fee concept. He noted user fees have been used to fund a lot of different things; user fees have been used to build boat landings through the Department of Fish, Wildlife and Parks; highway user fees fund the highway system, and indicated user fees fund a lot of the programs the State of Montana runs.

Senator Farrell stated he would agree with Representative Spaeth that the boards are assessed at whatever it costs to operate those boards, noting that he proposed the only cut on the Senate floor on the budget, in the Judiciary, of general fund appropriations, because the general fund is appropriating money to operate part of the court, indicating he thinks the Commission on Practices was one of them, noting there are two or three areas that are appropriated general fund money. He stated that, therefore, he does not think the courts are paying their own way, or the attorneys are paying the same fees the other boards have to pay if they want those kinds of things.

Senator Farrell closed by indicating he thinks there are some legitimate arguments for the \$250, and he also thinks Representative Spaeth will have some legitimate arguments when it gets to the House.

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Vice Chairman Hofman announced the hearing on SB381 as closed.

ADJOURNMENT

Adjournment At: 10:55 A.M.

  
WILLIAM E. FARRELL, Chairman

WEF/mhu  
SB362.214

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE:

February 14, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON			✓
WILLIAM E. FARRELL	✓		
ETHEL HARDING			✓
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

STATEMENT ON  
SENATE BILL 362  
SENATOR ABRAMS

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 2/14/89

BILL NO. SB 362

Currently the responsibility for the central state accounting functions are located in the Department of Administration. This bill would transfer the accounting functions, related personnel, and budget to the State Auditor's Office.

Before 1970, the independent State Auditor maintained the accounting records for all funds, accounts and appropriations. The Auditor also maintained the records of all receipts and expenditures made by all state agencies.

Since the establishment of the Accounting Division in the Department of Administration, the Auditor no longer maintains any accounting records and consequently the State Auditor has no way of knowing whether the warrants issued by the State Auditor are issued in payment of legitimate claims.

The Department of Administration does not perform any pre-audits of claims prior to processing other than to verify that funds in the appropriation are adequate to cover the claim presented. Pre audits of claims involves random testing of claims to ensure that a claim is proper and is being charged against the corrected account. Lack of the pre-audit function represents the loss of a good internal accounting control.

I believe that moving the accounting function back to the State Auditor's Office, which is independent of other executive branch agencies will replace needed checks and balances over state expenditures.

I have asked a representative of the State Auditor's Office to be present this morning and provide comments on the bill.

JL/blm(415)



COMMENTS ON SENATE BILL 362  
JOE LUNDBERG  
STATE AUDITOR'S OFFICE

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 2/14/89

BILL NO. SB362 PFT

Chairman Farrell and members of the committee, for the record my name is Joe Lundberg, I am representing the State Auditor's office at the request of Senator Abrams.

As stated by Senator Abrams, the State Auditor maintained extensive accounting records prior to 1970. These records enabled the State Auditor to examine claims and question claims that appeared to be improper.

Last summer, two legislators called the State Auditor questioning the expenditures related to fire suppression costs and requesting the State Auditor withhold payment. The State Auditor was unable to respond to the request because of lack of information and authority.

When the 11.4 million dollars of general fund money was appropriated for fire suppression costs through a budget amendment, the Department of Administration's accounting division entered the information in to the accounting system. By entering the budget amendment in to the accounting system the department was then able to authorize claims to be paid on warrants issued by the State Auditor.

The current process does not provide any way for the State Auditor to determine if a claim presented is indeed valid and if the State Auditor should authorize an expenditure from the treasury. If the

state accounting functions were under the direction of State Auditor, he could review all budget amendments such as the one for \$11.4, and other obligations and claims for appropriate compliance with state law. In this instance, the State Auditor would not have processed the amendment until the issue had been resolved with the legislature as to how the costs should have been paid. Without having the budget amendment processed, no warrants could have been issued since state law prohibits the State Auditor from issuing a warrant against an appropriation if the balance is not available or adequate.

We discussed this bill with a lobbyist for the Governor's office a couple of weeks ago and he indicated that they were neutral on the effects of this legislation.

As a result of an internal audit by the State Auditor's Office, we discovered that a state agency - as part of an employee awards program was purchasing gift certificates, savings bonds and other gift items to reward employee performance. The agency charged the expenses to training and education rather than other employee compensation. We believe the pre-audit function that was formerly part of the State Auditor's accounting system would prevent such instances from occurring.

At this time the state accounting system is converting to an on-line edit and entry for processing claims, making paper claims unnecessary. Therefore some type of pre-audit function is even important to ensure that the claims are correct, that appropriations exist, and that the proper accounts are being charged.

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 2/14/89

BILL NO. SB362

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: JOE LUNDBERK

DATE: 2-14-89

Address: STATE AUDITOR

Phone: 444-2040

Representing whom?  
\_\_\_\_\_

Appearing on which proposal?  
SB 362

Do you: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

Comments:  
see Exhibit #2  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 4

DATE 2/14/89

BILL NO. 36362

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

David Ashley

DATE:

2-14-89

Address:

Helena

Phone:

444-2032

Representing whom?

Dept of Admin

Appearing on which proposal?

SB 362

Do you: SUPPORT?  AMEND?  OPPOSE?

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH  
HELENA, MONTANA 59620-2602  
(406) 444-6570

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 2/14/89

BILL NO. SB 362

COMMISSIONER OF HIGHER EDUCATION

TO: Senator Bill Farrell, Chairman  
State Administration Committee

FROM: Jack Noble *JN*  
Deputy Commissioner for Management  
and Fiscal Affairs

DATE: February 14, 1989

SUBJECT: Senate Bill 362

The University System wishes to voice not so much our opposition to SB 362 as our wholehearted support of the Department of Administration Accounting Division. The Accounting Division currently operates efficiently with a highly competent, knowledgeable staff who have received national recognition for their excellence in financial reporting. Their policies are motivated by Generally Accepted Accounting Principles and State Statute rather than political reasons. They are helpful and conciliatory yet insist on a strict adherence to their policies.

So, although we don't express strong objection to moving Accounting under the direction of the State Auditor, we hate to see any disruption of Accounting's operations. "If something ain't broke, why fix it?"

JN:dkh

c: State Administration Committee Members

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 2/14/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB381

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Beryl A Spetch

14 Feb 89

Address:

Box 183

Soliet, MT 59041

Phone:

5 4223

Representing whom?

Appearing on Behalf of State Bar

Appearing on which proposal?

SB381

Do you: SUPPORT?  AMEND?  OPPOSE?

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DOUGLAS B. OLSON  
ATTORNEY AT LAW  
P.O. BOX 1695  
HELENA, MONTANA 59624

February 14, 1989

Senators  
State Administration Committee  
Montana Senate  
51st Legislative Assembly  
State Capitol  
Helena, Mt. 59620

re: Senate Bill 381

Dear Mr. Chairman & Committee members:

My name is Doug Olson, I reside here in Helena, I am a licensed as an attorney by the Montana Supreme Court and I am appearing before you today on my own behalf in opposition to Senate Bill 381. This bill as sponsored by Senator Farrell and others would if enacted into law increase the Montana annual license fee for attorneys from \$10 per year to \$250 per year. This fee is presently collected for purposes of defraying the costs incurred by the Clerk of the Montana Supreme Court for issuing an annual licensing certificate to attorneys.

Attorneys under the state constitution are regulated by the Montana Supreme Court and not by any other licensing entity or board. The Montana Supreme Court currently mandates that all attorneys desiring to practice law in Montana must join and pay annual dues to the State Bar of Montana. These dues for attorneys who desire to "actively" practice law are \$130 per year and they are in addition to the \$10 annual license fee payable to the Clerk of the Montana Supreme Court.

Attorneys exist to service the legal needs of our citizens whether this service is provided in an office or in the courtroom. Doctors exist to service the medical needs of our citizens whether this service is provided in an office or in a hospital. Teachers exist in our society to educate our society's children in our public schools. No one would seriously suggest that we should increase the annual license fee of doctors to pay for the costs of maintaining hospitals or that we should as a state base the costs of certifying teachers in relation to the costs of operating schools. Therefore, it is irrational to tax only attorneys to pay for the costs of employing our state's judges.

As an attorney who works full-time for a Helena church as its business manager, I cannot increase my hourly rate of compensation to pay this increased tax. Nor can the hundreds of attorneys in this state who serve the public in federal, state, county or city governments or who work for non-profit organizations. Senate Bill 381 is an unfair and most likely unconstitutional bill that your committee should not dignify by passing out of committee. I would ask you to personally examine the fairness of this bill before you act. Thank you.

Sincerely,

*Doug Olson*  
Douglas B. Olson

EXHIBIT NO. 8

DATE 2/14/89

BILL NO. SB381

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DOUGLAS B. OLSON

DATE:

FEB. 14, 1989

Address:

P.O. BOX 1695

Helena, MT. 59624

Phone:

442-5825

Representing whom?

self

Appearing on which proposal?

SB 381 - increase attorney license fees.

*\*10 \$250*

Do you: SUPPORT?  AMEND?  OPPOSE?

Comments:

please see typewritten testimony - exhibit #7

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



SENATE STATE ADMIN.

EXHIBIT NO. 9

DATE 2/14/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB381

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

FAYE BERGAN 2-14-89

Address:

125 Park  
Helm MT

Phone:

443-5666

Representing whom?

Self

Appearing on which proposal?

SB 381

Do you: SUPPORT?  AMEND?  OPPOSE?

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

