

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN BOB BACHINI, on February 18, 1991, at 7:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Members Excused: Stella Jean Hansen (D)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HOUSE BILL 350

Motion: REP. PAVLOVICH moved HB 350 DO PASS.

Motion: REP. PAVLOVICH moved HB 350 be amended.

Discussion: REP. PAVLOVICH explained that the first amendment on line 5 is to insert "provide certain exemptions". He also proposed to change it to a civil penalty on line 6 after "provide a" penalty will be a civil penalty. On page 1, line 10, following line 9, insert a new section, section 1, definition as used in sections 1 through 4. The following definitions apply.

REP. WALLIN said it still requires specialists to accept assignment.

Vote: Motion CARRIED unanimously.

Motion: REP. PAVLOVICH HB 350 be amended. On page 1, line 24, following "." Insert "The term does not include an ambulance service or a surgical supply company." This takes ambulance service and surgical supply companies out of this bill.

Vote: Motion CARRIED unanimously.

REP. CROMLEY asked why ambulance services and surgical supply companies were eliminated. REP. PAVLOVICH explained otherwise they might be put out of business. Mr. Verdon, researcher, asked if Greg Petesch, Chief Legal Counsel, Legislative Council, was aware of the first amendment when he prepared this short one. REP. PAVLOVICH thought he had. Mr. Verdon said he was having trouble putting these amendments together. He thought the short amendment should go at the bottom of the page. REP. BACHINI advised Mr. Verdon to put the amendment in its proper place.

Motion: REP. BACHINI moved HB 350 be amended.

Discussion: REP. BACHINI explained that an amendment to page 2 in the new section 6 would provide an effective date of July 1, 1993. He explained this act will only take affect if social security records show that there isn't a 20% increase in assignment acceptance by Montana doctors. REP. MCCULLOCH wanted to know what the Montana numbers are on this 20% increase. REP. HANSON suggested that the Montana Gold card be increased by percentage. He also explained that we have to be specific about the comparison between dates. The increase from what date to what date. The relationship should be calculated. For example, January 1, 1991 to December 31, 1992. The Medicare office would have the statistics. Mr. Verdon explained that the dates should be July 1, 1990 through December 31, 1992.

Vote: Motion CARRIED unanimously.

Discussion: REP. ELLIS stipulated that although he was opposed to the bill, he agrees that the problem is quite large in Montana. He read the following statement: "When we think of the many unfortunate Americans who cannot afford adequate insurance to cover their health care costs, we are convinced that the country needs a national health care program. It should be financed by our government. Please work toward that goal not just for seniors, but for other interests also. Thank you. Joliet XYZers, Senior Citizen's Group". They meet once a week with at least 70 people in attendance. The Red Lodge senior citizens feel the same way, and that is a larger group. My personal opinion about this kind of legislation is that this will create more problems than it helps. We have a high percentage of senior citizens in this state without coverage. One third of this

percentage is young people under 18 years of age. Seniors demand a great deal more care.

REP. CROMLEY said that there was much opposition to the bill originally, including the AARP, but the opposing groups have not been heard from since the amendments were made, so he was uncertain how these people feel about the bill in its amended form.

REP. BENEDICT, stated that the amendments did help the bill, but there is another area of perception that many have not mentioned. For instance, young doctors coming to Montana to take the place of retiring doctors would not care for this bill and would, perhaps, not relocate because of this bill.

REP. SCOTT said this is a misconception. This bill sets the prices for Medicaid, but doctors do not have to choose patients on Medicaid if they decide not to. REP. LARSON stated that Medicaid costs were slated to raise 34% in 1992. This could make it very attractive to practicing medicine in rural communities.

REP. RICE maintained the bill has been "skinnied" down as much as possible. It's a tough bill, but a needed bill in Montana.

Vote: Motion FAILED on a tie vote with REPS. BARNETT, BENEDICT, CROMLEY, ELLIS, HANSON, KNOX, TUNBY, WALLIN, and BACHINI voting No. Roll call vote # 1.

Motion/Vote: REP. CROMLEY moved HB 350 be tabled. Motion FAILED on a tie vote.

Mr. Verdon stated that House Rule 30-40, subsection 3, states that the Committee will not report a bill to the House without recommendation. If a bill is withdrawn from a Committee and brought to the House floor without a Committee recommendation, the bill must include amendments only adopted by the Committee action as reflected in Committee hearings for debate on Second Reading.

REP. BACHINI said the Committee cannot report this bill without a recommendation, however, the House members can vote to bring it out with 60% of the membership.

Motion/Vote: REP. BENEDICT moved HB 350 be tabled. Motion FAILED on a tie vote (9-9)

No further action was taken on HB 350 at this time.

HEARING ON HOUSE BILL 538

Motion: HB 538 do pass.

Motion: HB 538 be amended. (See Standing Committee Report dated 2/18/91.

Discussion: Steve Juskin, Past President Western Petroleum Association, said there are two primary sections to this bill. One is to change the cost of doing business for a wholesaler from 3% down to 1%. Amendment No. 1 is a housekeeping amendment basically because one of the paragraphs later on gets eliminated. The second amendment, on page 2, line 15, strike 3%, insert 1%. Page 7, line 14, following the word "same", strike "article at cost" and it becomes "or a similar product of like grade and quality". Number 3, strikes from "is" to rendering the same type of service and is. So that sentence, when it is modified reads "A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price in good faith to meet the price of a competitor who is selling the same or a similar product of like grade quality". Those were amendments 3 and 4. Amendments 6 inserts the following paragraph, "upon presentation by an offended party of evidence of a violation of section 4, the Department of Justice or a County Attorney shall issue to the suspected retailer or wholesaler a demand by certified mail to cease the violation. If the violation is not corrected within 24 hours after the suspected retailer or wholesaler receives the notification, the Department or County Attorney may bring an action to enjoin the violation." Upon conviction, a retailer or wholesaler is subject to a civil penalty of not more than \$1000 per day. If the action is brought by the Department of Justice, one-half of the amount of the penalty must be deposited in the general fund of the county where the action was brought and the remainder in the state general fund or if it is brought by a County Attorney, the entire amount of the penalty must be deposited in the General Fund of the county where the action was brought.

Beth Baker, Assistant Attorney General, Department of Justice, said if this is the Legislature's intent, to have the Department of Justice enforce these provisions, they would be glad to take on that responsibility provided that they have the resources to do it with. She said she thought this bill was consistent with the other antitrust proposals that are before the Legislature, which are designed to put antitrust enforcement either on a private level or in the Department of Justice. She said this bill does not provide any private remedy so the enforcement would be exclusively with County Attorneys and the Department of Justice. For that reason, unlike HB 261 which did provide for private enforcement, she said she thought there would have to be an allocation of resources to whatever state agency ultimately ends up with this responsibility.

REP. ELLIS said the penalty goes to the state and general fund and, as a result, the Department of Justice gets no money. He asked Ms. Baker what kind of funding should thought this would require?

Beth Baker said the fiscal note prepared by the Department of Commerce included 3 FTEs. The fiscal note prepared by the Department of Justice for other antitrust legislation included 3

FTEs. Our fiscal note was approximately \$250,000 for the biennium on the other antitrust bill.

REP. ELLIS asked if can 3 FTEs could handle this? Will it be cumulative and should there be some funding here?

Beth Baker said, assuming that this bill stands on its own, some funding would be necessary. We would have no staff to undertake any enforcement.

Vote: Motion to amend CARRIED unanimously.

Motion: **REP. PHILLIPS** moved HB 538 be amended with regard to a ceiling on prices and a floor.

Discussion: **REP. KILPATRICK** said a business selling gasoline when they are in competition with others, they have to have a certain percentage to break even. If it is a regular business that does not have a convenience store, they go up to 17 or 18 cents to make it. At the low, it would cost 7 cents. If you have a convenience store, they take about 5 percent to make it. The point is that at one percent a business would force another average business out.

REP. LARSON said this bill is intended to get after the big companies that undertake predator pricing mechanisms to drive the competition out. It is a bill that small independent retailers need and he encouraged the members to oppose the amendment and pass the bill out with a do pass recommendation.

Vote: Motion to amend FAILED.

Discussion: **REP. CROMLEY** said it is difficult to see how it would be good for the consumer to set a minimum price and a minimum profit on selling something. The grocers have not asked for a break and groceries are more important than gasoline.

REP. BARNETT said a benefit to the consumer would be to drive out all the competition and then the prices would go up drastically and this bill gives consumer protection against that.

REP. ELLIS said he talked to poll service stations and all perceived some problem in this area.

Motion/Vote: HB 538 do pass as amended. Motion CARRIED with **REPS. KNOX, BENEDICT, STEPPLER, CROMLEY, HANSON AND BACHINI** voting no.

REPORT FROM SUB-COMMITTEE ON HB 169

REP. DOWELL said a consensus was not reached on this bill. Some discrepancies were noted however. Loggers would bring logs into the mill and they thought they were being given credit for fewer logs than they had. They wanted the state to set up some way of

having those scaling procedures checked by the state. I think an agreement has been reached that on the fact that this is a desirable option for the state to put a scaling system in place. The discrepancy came about how this was going to be funded. It would be about \$150,000. Secondly, there was no enforcement provision. The people involved should provide the funding. There is a procedure in place that outlines a fire hazard reduction agreement that would be reached between the mill and the logger. They could actually negotiate who would pay for the eventual scaling. The second area was one that was just outlined here.

The first one says that the state will work with the mill to help correct any scaling deficiencies. If there is a problem, the first thing would be a warning. The second violation may impose a civil penalty. We came up with a \$5,000 figure for the scaler's employer. The third or subsequent violations would be an increase penalty of \$10,000 on the scaler's employer and a final provision that says the Department covering this shall consult with the board before imposing a civil penalty of any kind. First, we need to fund this program if we decide to do this; and secondly, enforcement for noncompliance should be provided.

Discussion: REP. BENEDICT said he thought it was a good sub-committee and that they did a lot of work on the bill. It went through 3 different revisions and they concluded that although the Environmental Quality Council didn't feel like there was enough of a problem to warrant any action or any recommendation, that it still would be a good idea to come up with something that didn't create a new department of state government, but still presented the availability that if there was a problem, there would be relief or a remedy for the independent logger to go. There has been some disagreement as to how to fund the bill. The Montana Logging Association had some concerns. They felt they could live with the first grey bill. The Montana Wood Products Association is primarily the mills. The Montana Logging Association has 750 members and they are primarily 85% to 90% small loggers, contractors etc. They are the people that, if there is a problem, they would have the problem. Their response was: "The provision to impose a fee on some of the timber industry by way of increasing hazard reduction fees, which is the third grey bill, is unacceptable." The reason was that approach could jeopardize the legislation that is being introduced to help fund the extension forestry program. If we put a hazard reduction fee on the industry and then tried to help fund the extension forestry program coming down the line with a hazard reduction fee, too is just too much to try and put on an industry that just laid off 1,100 people in Western Montana.

REP. LARSON said the concept is good. He strongly encouraged that the check scaler position be a position that gathers information and develops a mode of study for the next biennium so that he can come back in two years and tell us that yes there is a real problem and yes there are some recommendations for cleaning up scaling and modernizing. There are some positives and negatives with the bill, but if it is passed out to the floor, it can be presented to the whole body for consideration.

EXECUTIVE ACTION ON HB 169

Motion: REP. DOWELL moved HB 169 do pass.

Discussion: REP. BENEDICT commented that REP. DOWELL'S motion is on the original bill without any amendments. Without any amendments, or without a major revision of the bill, he said he could not support it. The people in my district, by and large, haven't responded enough to suggest that we start a new department of state government.

REP. SCOTT said this bill is not perfect, but if we pass this bill as is, in two years we'll know where we stand. We are not going to create another bureaucracy in state government.

REP. DOWELL said, in Section 9 on page 6, where it talks about the timber scaling fees, this a fairly common sense approach. It talks about the assessment of fees and collecting reasonable fees from the harvester and the purchaser named in the timber purchase contract. If this is a problem it would seem reasonable that the people involved would take care of funding any kind of enforcement procedure. I believe that by putting any type of general funding into the bill would be just saying the problem is not worth addressing because the appropriation is going to cause the bill to die.

REP. BENEDICT said there are a number of reasons why there are problems with this bill. The Environmental Quality Council did not feel there was enough problem to warrant addressing it and we have had 1,100 layoffs in western Montana. We have a major problem in Western Montana in the timber industry.

REP. THOFT (sponsor of HB 169) said the third grey bill was a compromise in this issue. First, it changed the source of funding to coincide with the slash disposal which means there is no bureaucracy set up to collect the money. Secondly, it has some teeth in it, without teeth it would be worth absolutely nothing. This bill is here because there is a problem in the industry. It has been with us since the first tree was cut. I know for a fact that you can take a load of logs to 3 different mills and get 3 different scales. They will vary by about as much as 1000 ft. per mill. The men who are out in the woods working and delivering are suffering, along with the state. The loggers want a fair and consistent scale. Many people did not testify for fear of losing their jobs. The funding is 4 cents per thousand from the mill and 4 cents per thousand from the logger. An average load of logs at 4000 ft. is 16 cents from each person. That will not hurt the mills or the loggers financially. It would be good for the mills and the loggers to get some uniformity.

REP. BACHINI said the issue has been confusing about the varied problems out there.

REP. DOWELL said he would proposed amendments to fund this bill with of mechanism where the loggers and the mills pay an equal share.

REP. BENEDICT said the Montana Logging Association, which makes up the majority of the people who are affected by this bill, do not feel that this is the way to do this. They think it threatens another program they are trying to establish, the best management practice.

REP. WALLIN said one of the big problems is that in order to get an active scale, they would have to unload the logs and lay them out where they could physically scale them. So many of the mills did not have the room to do that kind of thing.

REP. THOFT said that is the compromise in the third grey bill. The log scaler will scale in the yards at random and there will not be any special provision for keeping all those logs aside. He will not scale in the woods. He will simply go to the mills and random scale these logs and check their scales.

REP. BENEDICT said what we are doing right now is amending the original bill for a funding measure. We will have to completely adopt the third grey bill. Otherwise, we would have so many problems with this particular bill in terms of the small mill owners that they are going to have to buy 20 to 30 more acres to lay out logs in.

Substitute Motion/Vote: REP. STEPPLER made a substitute motion that HB 169 be TABLED. Motion FAILED on a tie vote with REPS. KNOX, BENEDICT, STEPPLER, CROMLEY, BARNETT, WALLIN, ELLIS, BACHINI, and TUNBY voting AYE.

Motion: REP. PAVLOVICH moved that HB 169, the third grey bill version, do pass.

Discussion: REP. DOWELL asked the Committee to postpone any further action on this bill until everyone had a chance to review the grey bill.

The committee agreed and REP. PAVLOVICH withdrew his motion. No further action was taken on HB 169 at this time.

HEARING ON HOUSE BILL 625

Presentation and Opening Statement by Sponsor:

REP. LINDA NELSON, HD 19, Medicine Lake said this bill was requested by the Montana Hospital Association. It would expand the borrowing powers of a hospital district. Both the state and federal governments reimbursement to health care facilities has not kept pace with actual cost of providing services. Insufficient funding from the state and federal government has increased the need for funding at a local level, especially in

rural areas. Although a hospital district provides an avenue to produce funding, it's borrowing powers are limited. This bill would grant borrowing powers, in a simplified manner, to hospital districts when a transaction is fully secured. Passage of this bill will expedite the borrowing process. The trustees of a hospital district have a fiduciary responsibility to residents in a district and must insure that transactions are secured. This bill would help to insure the availability of an adequate vehicle to provide funding for health services at a local level. There are proponents here who will address this in more detail and they will also be the ones to answer your questions.

Proponents' Testimony:

Katherine Donnelly, Attorney, Helena, appearing on behalf of the Montana Hospital Association, said HB 625 is designed to give hospital districts added flexibility in their financing. Currently, the only way hospitals supported by a hospital district can borrow money is by the issuance of its bonds and this vehicle is not appropriate for certain borrowing needs. The law that stipulates that hospitals may only borrow money by the issuance of their bonds was reinforced last year by an Attorney General Opinion that hospital districts may not make commercial loans and may not register their warrants for counties to invest in. The reason for this is that there is no express statutory authority for hospital districts to borrow money in any way other than issue bonds. The most important part of the bill is the proposed amendment to Sections 21 and 22 (9), which would allow hospital districts to "borrow money by the issuance of its mortgage and note or by another fully secure transaction". The other changes are minor or stylistic. One change would allow counties to invest in hospital district warrants. Currently counties can invest in school districts, municipal and county warrants and we see no reason why they cannot invest in hospital district warrants as well.

Jay Pattenger, Administrator, Teton Medical Center, Choteau said they are a 14-bed hospital and a 32-bed nursing home. On June 1, 1990, the management firm terminated the lease and the hospital district took over the operation and ownership of the district. One of the problems that was created by the district's new ownership operation of the facility was that the hospital did not borrow any funds. The hospital could through a termination agreement borrow funds only because of the termination agreement, because it was a lease. This is a big problem, not being able to borrow money and HB 625 would allow us to borrow money. It gives us more flexibility and for small rural facility that operates at a limited margin. It would be real helpful for us.

Beverly Gibson, Montana Association of Counties, said they support HB 625.

Questions From Committee Members:

REP. WALLIN asked if these district hospitals would be poor profit hospitals.

Katherine Donelly answered that all hospitals are operated on a not-for-profit basis.

REP. LARSON asked if this means that a hospital district could theoretically issue bonds and issue enough borrowing capacity to build a 32 bed facility.

Katherine Donelly said the hospital act currently has a bonding scheme, which is probably what they would do if they wanted to build a hospital and that requires a vote or approval of the voters. This would be just when a commercial or some other small loan is needed and they have adequate resources to fully secure it.

REP. LARSON said the proposed amendments say: "borrow money by the issuance of the bonds as hereinafter prescribed"; however, he said they were not referred to again in the bill.

REP. NELSON said the provisions for the issuance of hospital district bonds are contained in statutes that follow this statute in the act. There are 3 or 4 of them and it basically works the way the school district bonds work.

REP. WALLIN asked if this would enable a church home, a retirement home, a convalescent home to borrow money through this district.

REP. NELSON said this bill applies just to hospitals that are supported by a hospital district, which are mostly county owned hospitals. I don't think that district hospitals could be church owned hospitals or hospitals owned by churches.

REP. BACHINI said there has never been any problem with this bill.

Closing by Sponsor:

REP. NELSON thanked the Committee and told them the Hospital Association will get any necessary information to them.

EXECUTIVE ACTION ON HB 625

Motion/Vote: Motion HB 625 DO PASS. Motion CARRIED unanimously.

HEARING ON HOUSE BILL 626

Presentation and Opening Statement by Sponsor:

REP. NELSON, HD 19, Medicine Lake, said this is another bill proposed by the Hospital Association. Many hospitals in Montana are facing a severe shortage of nurses. In some areas this has

been made worse by the call of RNs to active duty in the Persian Gulf. In my area, we simply have a shortage of nurses because we have a shortage of people. Yet our hospitals and nursing homes have an increasing need for nurses because of our aging population. The intent of HB 626 is to allow Canadian nurses whose first language is English to practice in Montana without taking the English proficiency exam, which I understand is not easily accessible. Actually, the Canadian nurses, who are apt to come to Montana, while not being many in number, would be mainly from British Columbia and Alberta, not from the French provencials of the east. These Canadians, and I have met many and known many of them personally, often speak better English than we do. Then there is the matter of reciprocity with the United States/Canadian free trade agreement. Federal restrictions have removed the requirement that Canadian nurses take the cultural exam. This is part of the process to promote better cooperation between our countries. She distributed proposed amendments - EXHIBIT 1 - and referred the members to the fiscal note. It would cost the state approximately \$8,000. If we charge \$160 for the exam, there would be 50 nurses taking the exam. We would then make up that \$8,000 and the hospitals would be happy to pay this for them in order to get the nurses. So the fiscal note would be wiped out. She asked the Committee for their support.

Proponents' Testimony:

Jim Aherns, President, Montana Hospital Association, submitted written testimony. EXHIBIT 2. He also distributed a letter Jere Schaub, R.N., Nursing Manager, Kalispell Regional, Kalispell. EXHIBIT 3.

Jay Pattinger, Administrator, Teton Medical Center, Choteau, said he has been an administrator in Poplar at the Community Hospital and Nursing home and also in Wolf Point at Trinity Hospital and have been the administrator on the highline. As the administrator of a small rural hospital, it is always hard to recruit nurses and retain nurses in small rural areas. It's also difficult to attract nurses and if you are to lose one or two nurses, it becomes almost difficult to staff your facility and keep it open. HB 626 is to encourage and facilitate nurses from Canada. We don't want to hurt the valuation problem. We just want to facilitate them being able to come here and staff our facilities.

Steve Browning, Attorney representing, Montana State Hospital Association distributed a newspaper article. EXHIBIT 4.

Informational Testimony:

Steve Meloy, Bureau Chief, Professional and Occupational Licensing, Department of Commerce, said the Board is attached to the Bureau for administrative purposes only. He submitted information regarding concerns about administrative problems, if

this bill is passed. EXHIBITS 5 and 6.

Opponents' Testimony:

Barbara Booher, Executive Director, Montana Nurses Association, is opposed to the bill for a number of reasons. The first of which is that the Board of Nursing has already expressed a willingness to address this issue through the administrative process and rule making authority that it has. It seems redundant to bring such a matter to the legislature when it can be handled administratively. They did meet twice with the Montana Hospital Assoc., once in November and once in their recent meeting just last week. A motion number 35 passed on the 13th of this month indicates what the Board of Nursing is willing to do. One of which is to explore alternatives to shorten the time frame for this particular feature of the exam by either finding experts in the state to do this work for them or by contracting out of state. That kind of work need research done for it to be implemented. The Assoc. was asked to withdraw this bill so that the board could have time to do this research and the response was that the Board of Nursing doesn't work fast enough to come up with this research and give us an answer. The Board only meets four times a year. It is not for lack of willingness on the Board's part. They just want to do the research and find out a mechanism to meet the needs and still be in compliance with the standards department.

The second reason we are opposed to the bill is that the Board of Nursing does not currently require a proficiency exam. It requires the CGFNs exam which has a lot more to it than just English proficiency which you heard in previous testimony. That curriculum examination and the nursing piece is important, as well as that INS work permit. The cost right now for that examination is \$110.00. Right now we are talking about a very conservative estimate of replacing just one portion of that exam and that is the curriculum evaluation portion could cost \$160.00 plus the \$35 currently in process. That is \$195 without getting the same amount for your dollars. Even if we could charge it to the applicants, it seems to be reinventing the wheel.

The Board is also opposed to this bill because there is no evidence whatsoever that the process will be speeded up by internalizing it, either within the state or contracting it out. In fact, if this bill passes, it is liable to delay the process that we currently have in place until we can find a replacement procedure, or develop a contract that would allow for the Board of Nursing to do these curriculum evaluations. There is no information or evidence that there is an overwhelming need from foreign nurses seeking licensure here in Montana. When asked, the Hospital Association could give only a couple of examples of nurses from Canada asking the procedures to become licensed in Montana.

There is a shortage of nurses in the state. While the state is

beautiful, they don't have the pay scale or work environment that some of the large areas do. That we see as being a problem we face. For years now we have been trying to deal with the nursing shortage. The shortage does need to be addressed, but this is a poor way to do it.

Finally, the bill does not address Canadian educated nurses. It just says nurses that are in Canada. We can definitely see where nurses could move from any country to Canada, just to get around this requirement and come in that way. The Montana Nurses Association has no reason or motive to keep well qualified English speaking Canadian educated nurses from being processed in an efficient and timely manner, but this bill does nothing to enhance or expedite the current process. We believe it will further hinder the process. We would like to continue working and observing the administrative process. The Board of Nursing does have the expertise to look at this and do so in a fair and productive manner and not bother the Legislature with it. If we can't arrive at a solution then coming back to you does seem the appropriate thing to do. We seem to be here prior to working out our administrative remedies first. EXHIBIT 7.

Milly Gulkoski, Nurse Educator, Bozeman, submitted written testimony. EXHIBIT 8.

Teresa Henry, RN, Great Falls, submitted written testimony. EXHIBIT 9.

Questions from the Committee:

REP. PAVLOVICH asked how many Canadian nurses come into the United States.

Jim Ahrens said they don't have that data. This process takes place in 23 other states. Our purpose is to just expedite the process. If it works other places, it should work in Montana.

Diane Wickam, Executive Secretary, Board of Nursing, said one of the problems in Canada is that from province to province they themselves do not have reciprocity with their own Canadian nurses. In the United States, we have national standards, In Canada, they do not. Some of the provinces have gotten together and accepted similar standards, but nurses in Canada may have to re-examine in their own country if they are going from province to province.

REP. DOWELL, asked Barbara Booher to clarify her statements regarding the shortage of nurses.

Barbara Booher responded that there is a nursing shortage in Montana. We just don't believe this bill will address the shortage. Across the country there are 10,000 students waiting to be placed in nursing education programs and right now one of the problems we would have with this particular bill is finding

someone in nursing academia to try and do the transcript evaluation. Already there is a shortage in getting qualified faculty to teach in nursing programs to place students that want to be placed. The shortage does in fact exist, but we are hard pressed to think that this bill is going to do anything about alleviating the shortage in an appropriate way. In Montana there are two nursing schools that offer 4 year programs and two nursing schools that offer 2 associate degrees for registered nurses. They are located in MSU, Bozeman, with extended campuses in Great Falls, Missoula, and Billings. There is a private school in Helena, Carroll College. Those are the 4 year programs. The two year programs are Havre and Miles City.

REP. STEPPLER asked why the English proficiency part of the test couldn't be separated from the rest of the test.

Diane Wickam said they can be separated. It is made up of 3 basic parts, the nursing examination, the English examination and the credential review of education. They do not issue scores to the states that the licensee is going to. Simply, the applicant would come to us with a certificate. I get a certificate that says they passed the nursing exam, they passed the English exam and their credentials meet the national standards for this country. As a service, they do not separate it out. I called and asked if they would contract only part of the service and they said no. They have on staff 17 experts in foreign nurse education in curriculum.

REP. STEPPLER referred to Mr. Ahren's testimony where he stated that a number of other states including North and South Dakota, Utah and Wyoming already waive the requirement that Canadian nurses take the English proficiency exam. He asked why we can't do this in Montana.

Diane Wickam said the CGFNs is only the first part of what we require for nurses coming into the state. We also require that they take the National Council Licensing Examination, which is the exam given to all professional nurses in the United States and Guam and other provinces in order to practice. What North Dakota has done is they have a residency requirement, so right there they are eliminating anyone passing through who would want to get licensed on their way through. They have foregone the CGFN exam and the NCLX exam. What they have done is if a Canadian nurse took what is called a CNAT exam, which is what some provinces in Canada use, then they will accept the CNAT exam. They also have made provisions on their own to do the credential review. I don't know exactly how much that costs, I don't know where the service is provided from. Utah is doing a backward thing. They have their applicants begin the CGFN process and withdraw. After the credential review is done, the applicant receives a refund on half their money. I have a problem with that. I can't foresee a requirement that you start the process when the credential review is done, you withdraw.

REP. WALLIN asked if the problem could be solved with adequate funding at the schools of nursing.

Diane Wickam said that is part of the problem, but we also have to find reasons to make it attractive for nurses in this state to practice. Right now we have close to 13,000 nurses licensed in the State of Montana. They are not all working and for whatever reason they leave or whatever. Our own people are not practicing in the state. There is also a third associate degree program in the state, so we now have 3 two year programs. We are trying to extend nursing education.

REP. WALLIN said the Minot State College has a School of Nursing and they have a traveling school that goes to various cities in Eastern Montana to train LPNs. Would it be feasible for Montana to have such a program?

Diane Wickam said Minot is trying to do that, however, their program infringed on some of Montana's programs and the Board has asked them not to come in. One of the things that the Board did last week is approve Miles City Community College Nursing Program to provide an extended campus in the city of Glasgow. We do have several extended programs in the State.

REP. ELLIS asked how many registered nurses in the state are not practicing.

Diane Wickam estimated approximately 50% are practicing, and commented that may be a high estimate.

Closing by sponsor:

REP. NELSON said the opponents questioned why we would want the Canadians to do this instead of the nurses that come from Ireland or Australia. We are not talking about the whole United States. We are only talking about Montana, which borders Canada. There was a question on the fiscal note. The Hospital Association addressed that and took a realistic figure that will work. The nurses said that this can be handled administratively and that the Legislature should not be involved. The Legislature would not be involved if they had managed this in an expedient manner. We do need more nurses in Montana. North Dakota has a process that works well for them to use Canadian nurses. We have many small Canadian communities that are right across the line and they do come across and do business with us on a daily basis. They are basically one of us. They could help us out. We need more nurses.

HEARING ON HB 686

Presentation and Opening Statement by Sponsor:

REP. TOM KILPATRICK, House District 85, Laurel, said he was carrying this bill for the automotive trades of Montana and it is

called the shrinkage bill. In the current law, we have a shrinkage provision. They are given a rebate because of natural evaporation in the tanks. The person who stores gasoline in a tank, then it shrinks by natural evaporation, they can't sell it. For example, if you had 5000 gallons of gas, by the time it was gone, you wouldn't have 5000 gallons. There is a rebate on your taxes. The question is who gets the rebate. It should be, according to this bill, the person who stores it. If you pick up 5000 gallons of gas, put it in a truck, drop it in your tank, and it sits there for a week or two before it's gotten rid of, there is a shrinkage and you should get the money. It seems right now that the jobber is taking that money.

Proponents' Testimony:

John Taggart, President of Automotive Trades of Montana, said previous to the 1989 Legislature, the existing laws regarding shrinkage provided a 1% allowance of the existing 6% gas tax which existed in Montana at that time. We are dealing only with state tax in this issue. In 1987, Senator Eck introduced SB 224 which we called the shrink bill, which has to do with the evaporation of gasoline. The dealers were going to testify against the bill because the dealers were not getting shrink money. In Montana, the pipe line from the Billings and Laurel refineries roughly parallels Interstate 90 and so do all our big markets and our big towns; therefore, all our big jobbers. These towns are the ones selling the vast majority of gas. We are not trying to say that there are jobbers in the rural areas who don't have storage of their own and they haul it to the local dealer. We don't want to do that. Senator Eck introduced the bill for the jobbers. We were told that in the appropriate situations on passage of SB 224, it changed the rate to 2% of the existing tax. The tax has gone up from the 6 cents at that time. We were told that we would get our fair portion of it. In many cases, the jobbers in terminal towns have no storage. They are getting the shrink money, which is an allowance from the state that allows them to fail to transmit 100% of the tax money. The state is leaving that money on the table. Dealers believe that the people who have the gasoline physically in storage that is evaporating, as the bill provides, should have that money in their cash flow. My particular jobber told me that it was such a small amount of money that he wouldn't give it to me. That \$1,000 to a service station dealer in my case, is a lot of money in my cash flow. Other dealers here where it is \$2,000 in their cash flow and we are pretty resentful providing money to the jobbers for Hawaii trips or whatever they use the money for, especially when they have no storage for gasoline from which to evaporate the gas. He distributed copies of testimony from the 1987 Session regarding SB 224, and notes from a telephone conversation with Les Hirsch on the subject. **EXHIBITS 10 and 11.**

Ron Leland, an independent service station dealer, Helena said, in the original bill, there is a pertinent item that we have been talking about: an allowance for evaporation. No bookkeeping, no

cost of business, no transportation, no spillage, nothing. Mr. Paul Verdon produced a report on gas shrinkage allowance for retail dealers. This was done in a joint interim sub-committee of the marketing motor fuels this summer. Montana law makes no provisions for the shrink from the distributor to subsequent dealers who handle the gasoline before its delivery to the fuel tanks of the ultimate consumers vehicle. The loss of fuels stored prior to sale is shared by the retailers. Yet unless a distributor voluntarily passes on the shrink allowance, the retailer receives none of this benefit. It is strictly the retailers loss. The proceedings we are talking about is 2 cents of a gallon for every gallon that retailer purchases. How much money does this refer to? Our point is the person that stores the gasoline should be allowed the shrink money. How much does that mean to an individual retailer? An actual example in 1990 one dealer in evaporation loss with 3,176 gallons of gasoline was gone and he couldn't sell it. This related to 2.64 tenths of a cent per gallon, less than .3 of a percent of a gallon he lost. Industry average is like .5 of a percent. We take that as an average cost of \$1.25. That retailer lost \$3,970. He bought gasoline, paid the state of Montana tax on it and was not able to sell it. If the shrink was passed on to this retailer as stated in testimony in the last session, the retailer would have received back \$2405 to offset this evaporation. The net loss would have been \$1565.

Opponents' Testimony:

Steve Visscan, petroleum jobber, Helena, and Past President of the Western Marketer's Association, said their Association is made up of wholesalers in the state of MT. As indicated, we aren't talking about all of the fuel that is wholesaled in Montana or all the fuel that is retailed in Montana. We are talking about the fuel that goes through the major cities, where there is pipeline delivery. Bozeman, Helena, Great Falls, places where you can pick the fuel up directly and not put it into secondary storage. Ron indicated there was \$885,000 shrinkage in the whole state. I would anticipate there is a significant amount of that already going through secondary storage. Therefore, that \$885,000 would be reduced significantly. The jobbers already consider all of their costs in determining what to sell their fuel for. One of their costs is their tax cost, which is calculated including the shrinkage allowance. As you heard in earlier testimony concerning other bills, a typical wholesaler makes a margin in the range of 1% on sales. If he is making 1% on gasoline at \$1.00 a gallon he is currently making about a penny a gallon. We are talking about 2/10 of a cent or 20% of his existing profit and cost of doing business the amount he marks the fuel up. I contend that if this bill was passed and if there are instances where a dealer is not directly passing that through, he has certainly considered in his cost of doing business and what he charges his customers and what will happen, he will simply raise his price by 2/10 of a percent to offset the 2/10 of a percent lost in additional price for tax on the fuel.

It nets out to nothing for the dealer and it raises the price of gasoline 2/10 of a percent. If you are only making a penny a gallon now, you increase your cost of doing business by 2/10 of a percent. That other 20% obviously has to come from somewhere and it's going to come from raising the price of the fuel. Thirdly, Ron indicated that there was no discussion before about the cost, and the bookkeeping involved in preparing the tax reports that the state requires. I can not tell you the amount of discussion was held on that during the committee hearing, but I can tell you that is a strong consideration of ours in figuring what profits we make. This is one months fuel tax report that I do for one of my companies. There are pages and pages of detail that the state makes us provide. It is not an easy matter to keep up with the tax reporting as required by the state. We do it because we are required to. I would submit that if you feel the dealers should obtain a shrinkage allowance that it be done directly from the state. Give them the same alternative that you give to us. Let them be bonded and let them fill out a report every month and allow them to do the same thing we do in order to get the shrinkage allowance.

Questions From Committee Members:

REP. DOWELL asked Mr. Taggart if this bill causes gas prices to increase because their cost of doing business would go up on the wholesale side. or would it go down on your side and, therefore, there would be no net increase.

Mr. Taggart said with the total mix of gasoline sold by the wholesalers, the amount sold to retail dealers is such a small portion that we have a real hard time going along with their fight on this. For example, it is my understanding in Helena that there are 5 dealer operated stations in the whole town. All the other gas that is sold is subject to somebody else besides dealers getting the shrink. I don't think their bookkeeping should be subsidized by the state any more than my bookkeeping is subsidized by the state. We have to include that as a cost of doing business. There is plenty of money left on the table for them to get shrink money from other areas of sales. This would be for them to cover the cost of bookkeeping instead of getting the money from the dealers who are experiencing shrink in these express situations where the jobber has no storage at all.

REP. TUNBY said it seems that the cost would really be passed on and it wouldn't make any difference, except that is it fair between dealers. There is a fairness issue here as some jobbers would handle it differently than others.

Mr. Taggart said we have no problem with the situation. In an outlying community where the jobber does have storage and pulls gasoline for the dealer when he orders it out of his storage that he owns, they could make an agreement to split the shrink money.

REP. BENEDICT said there is no provision for that in this bill.

It basically says that the distributor shall remit to the retailer. I don't see a provision if the distributor has his own tanks than he could keep the money.

Mr. Taggart said he was not aware that that had not been provided for in the bill.

REP. BACHINI referred members to page 2, line 9. It says not withdrawn from the distributors storage tank.

REP. CROMLEY asked Steve Viscan for an approximate number of size of and number of payments.

Steve Viscan said there are 85 licensed distributors in the state of Montana. There are some people who are licensed who do not actively market fuel in Montana, but remain licensed. If I was to estimate, I would guess 70 making those payments. I, as a purchaser, make one payment for all of the fuel I purchase. If a service station was doing 500,000 gallons a year, that would be a medium size station. That would represent \$1,000 per year. It would be the number of service stations that are served directly out of towns which currently have terminals or refineries.

Closing by Sponsor:

REP. KILPATRICK said you put gasoline into a tank, 5000 gallons, and it evaporates. May 10 gallons, 15 gallons, whatever it is. The person cannot sell it. He is only selling 4,900 gallons or whatever it may be. Now the state is saying because you didn't sell it we are going to give you a break on your taxes. Who gets the break - the one who does the paperwork? No! You want the guy who loses that money and it sounds to me like the retailer is losing his money. He is the one who has lost the gallons. Why should the jobber get the money? Whether it is 50 cents or \$1,000 the man deserves his money. I believe it is a good law.

HEARING ON HOUSE BILL 741

Presentation and Opening statement by sponsor:

REP. BRENT CROMLEY, HD 94, Billings, explained the bill.

Proponents' Testimony:

Steven C. Bahl, Professor, University of Montana School of Law, Missoula, submitted written testimony. EXHIBITS 12 and 12A.

Bob Pyfer, member, Montana Bar Association, Committee on Revision of Corporate Laws, said for-profit business corporations have one basic structure that is common to all of them. Non-profit organizations have at least three different types. That is a central issue in the bill. In terms of how we deal with existing non-profit organizations and how we make the transition. The bill is effective Jan. 1, 1992.

Jock Michellotti, Partner, Crowley Law Firm, Billings, said with respect to directors, this bill provides for standards of conduct very similar to the profit act. It deals with conflicts of interest, in that it provides mutual benefit corporations with standards that are very similar to business corporations. It provides higher standards as well for public benefit and religious type of non-profit corporations. It assures that directors do not profit from the relationships and yet provides non-profit corporations with the ability to work with those institutions or companies or businesses those directors are involved in. Additionally, as far as officers are concerned, this law provides standards of conduct for officers that are very similar to those that apply to directors. What is significant about that is, as we have noted, many of you are probably members of non-profit boards. You're volunteers. In the case of those non-profit organizations, often times full-time employees are conducting significant acts and this law will provide those non-director employees to be subject to the same standards of conduct that directors are involved in. Finally indemnification is also provided for similar to what is provided in the profit act. It gives you guidance which will balance the protections that are needed, directors as well as the public they serve.

Bob Murdo, Attorney, Jackson, Murdo and Grant, Helena, said that this law would help non-profit corporations, attorneys for non-profit organizations and board members to understand clearly what the law is. It is vague right now and several situations haven't been modified since 1967. The old act required written notice of membership meetings. The new proposal in (section 62) indicates that fair or reasonable notice is all that is required for this type of meeting. If there is a problem with the existing articles of incorporation or the by-laws, the non-profit corporation is not certain how to get hold of all its members, there is no format for that to make certain the activities you plan at that meeting will be authorized. This law (in sections 18 and 60) authorizes application to a court to have that court specifically authorize either a ballot or a specific handling of the meeting.

Adam McLane, submitted written testimony. **EXHIBIT 13.**

Garth Jacobson, Attorney, Secretary of State's Office, said there will be some real problems if the for-profit bills pass and this one doesn't. We need to get both of these through at the same time. It is very important that the profit and non-profit bills go through together. The transition process will occur over a three year period. The Secretary of State's Office will during this period on its annual reports give people the option of making this designation. In the year 1995, that designation will become final. We will spend a lot of time educating non-profit corporations as to what this does and how it works. We will send out that information with the annual reports and in our business services bulletins. They will be informed and we will assist

them in any way possible to help them work through this transition process. The amendments you have before you are here because of needed technical changes. **EXHIBIT 14.** The first set of amendments is changing "shareholders" to "members". There are no shareholders in a non-profit corporation. The second set of amendments is for the annual reports, which are presently due April 15th, not April 1st, as the bill indicates.

Ward Shanahan, Attorney representing Carroll College, Helena, spoke in support of this legislation.

Questions from the Committee:

REP. ELLIS asked Steven Bahl to comment on Mr. McLane's written testimony.

Steven Bahl responded that Mr. McLane indicates that this is a disadvantage to small corporations because they may have to refile the articles of incorporation. That is not the case. No refiling is necessary. Yes, they may want to amend their by-laws if they want to take full advantage of this act. Non-profit corporation is not defined under existing law. We don't want the Secretary of State to get into an analysis of who is a corporation and who isn't. The IRS does that for tax purposes already and that is the primary determination that needs to be made. It is not up to the Secretary of State's office to determine if a corporation is a non-profit organization. Everyone will not incorporate as a religious corporation. A country club is not going to incorporate as a religious corporation because they could not sell memberships. There are incentives built in to incorporate into the appropriate organization. We do not define in detail what a religious organization is. We have self designation. Mr. McLane suggests Chapter 27 organizations should be incorporated. In fact, it has been incorporated in this specific bill. Chapter 27 protects officers and directors and volunteers from liability. We don't change the broad protection that, in fact, the volunteers, owners and directors have against a liability. He suggests that section 173 is too narrow. 173 is a temporary provision until corporations elect their own status. They want to elect before 1995. They can by amending their articles of incorporation. Organizations can designate that designation which they feel are most appropriate. He doesn't like a private foundation language in section 17. That is essentially identical to what the law provides for in Section 35-2-112, MCA, already. Mr. McLane suggests that a section heading is wrong. We will look at that.

Closing statements by sponsor:

REP. CROMLEY closed.

EXECUTIVE ACTION ON HOUSE BILL 741

REP. KILPATRICK moved HB 741 do pass.

Motion/Vote: REP. DOWELL moved HB 741 be amended. (EXHIBIT 14)
Motion CARRIED unanimously.

Motion/Vote: REP. DOWELL MOVED HB 741 do pass as amended. Motion
CARRIED with REP. PAVLOVICH voting no.

EXECUTIVE ACTION ON HB 626

Motion: REP. WALLIN moved HB 626 do pass.

Motion/Vote: REP. WALLIN moved HB 626 be amended. Motion
CARRIED.

Discussion on HB 626 as amended:

REP. DOWELL said that the proponents are the hospital folks and the opponents are the nurses. I have to look at the number of nurses involved compared to the number of hospitals involved. It seems like an issue of almost a labor/management thing. In not knowing whether there is a reciprocal agreement with Canada, I would have to oppose the bill.

REP. BACHINI said he had similar problems with the bill. They have an administrative ruling already to take care of this, so why should we pass legislation to do it. For the students enrolled in our nursing programs here in Montana, what will that do for them? Will it force them to leave Montana?

REP. SCOTT said one opponent to the bill said this will not help out the small community hospital. I agree with that. For instance, a registered nurse can go to Billings and just about pick his or her shift because of the shortage and I think if they go to the small hospital this would not be the case. Maybe they would start out in a small hospital and move from there as openings arise.

REP. PAVLOVICH said opposed the bill due to the fact that we have a nursing school that is very efficient and have a lot of students that want to work. It opens the door for everyone to work in a small community and then move up to the larger communities as positions open up. I think this bill draws away from the positions we have in Montana.

REP. STEPLER said Carroll College is graduating nursing students this spring. The majority of the students graduating from Carroll will not be staying in the state of Montana. There are recruiters here from Colorado, Arizona, California, Georgia, Minnesota. All of these states are paying higher wages in the hospitals. People coming from Canada are probably not going to take jobs away from Montanans. We have enough openings in Montana to accommodate everyone.

REP. BARNETT said she opposed this bill at the present time

because we need to get more people out there for those jobs. We want to create jobs for people in Montana. We have jobs for them let's keep them here and educate them along those lines.

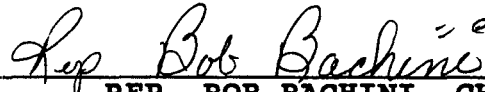
REP. SHEILA RICE said she thought they had an unworkable bill. The Board of Nursing testified that the CGFNs will not be separated between the English language requirement and the other curriculum and they testified that they have no one on staff who can provide the review of the educational curriculum standards that we have amended into this bill. This bill is not workable. It will take longer for the board to implement what the hospitals want than if they just go the administrative route. I am opposed to the bill just on that basis.

REP. BENEDICT said the Board of Nursing and Occupational Licensing are set up to make these types of decisions. If they don't feel this is a good bill, neither do I.

Substitute Motion/Vote: REP. WALLIN moved HB 626 do pass as amended. Motion FAILED.

ADJOURNMENT

Adjournment: 11:30 a.m.



REP. BOB BACHINI, CHAIR



JO LAHTI, Secretary

BB\jl

HOUSE STANDING COMMITTEE REPORT

2-18-91
3:25 P.M.
Bob

February 18, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 538 (first reading copy -- white) do pass as amended .

Signed: Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Page 1, line 15.

Page 2, lines 6 and 9

Page 6, line 11

Page 8, line 4

Strike: "7"

Insert: "6"

2. Page 2, line 15.

Strike: "3%"

Insert: "1%"

3. Page 7, lines 13 and 14.

Following: "is" on line 13

Strike: remainder of line 13 through "is" on line 14

4. Page 7, line 14.

Following: "same"

Strike: "article at cost"

Insert: "or a similar product of like grade and quality"

5. Page 8, line 6.

Following: "Penalty"

Insert: "-- disposition"

6. Page 8, line 7.

Strike: ", and upon"

Insert: "."

(2) Upon presentation by an offended party of evidence of a violation of [section 4], the department of justice or a county attorney shall issue to the suspected retailer or wholesaler a demand by certified mail to cease the violation. If the violation is not corrected within 24 hours after the suspected retailer or wholesaler receives the notification, the department or the county attorney may bring an action to enjoin the

violation.

(3) Upon "

Renumber: subsequent subsection

7. Page 8, line 10.

Following: "occurs"

Insert: ", is liable for attorney fees, and is subject to injunctive relief"

8. Page 8, line 11.

Strike: "commerce"

Insert: "justice"

9. Page 8, line 12.

Following: "4]."

Insert: "If the action is brought by:

(a) the department of justice, one-half of the amount of the penalty must be deposited in the general fund of the county where the action was brought and the remainder in the state general fund; or

(b) a county attorney, the entire amount of the penalty must be deposited in the general fund of the county where the action was brought."

10. Page 8, lines 13 through 22.

Strike: lines 13 through 22 in their entirety

Renumber: subsequent sections

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic
Development report that House Bill 625 (first reading copy --
white) do pass .

Signed: _____

Bob Bachini
Bob Bachini, Chairman

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 741 (first reading copy -- white) do pass as amended .

Signed: *Bob Bachini*
Bob Bachini, Chairman

And, that such amendments read:

1. Page 8, line 1.
Strike: "shareholder's"
Insert: "member's"

2. Page 8, line 2.
Strike: "shareholders"
Insert: "members"

3. Page 162, lines 12 and 17.
Following: "April"
Strike: "1"
Insert: "15"

EXHIBIT 7.
2/18/91
HB 626

Amendments to HB 626
White Reading Copy
Requested by Rep. Linda Nelson
Prepared by the Montana Hospital Association
February 16, 1991

1. Title, line 7.
Following: "EXAMINATION;"
Insert: "REQUIRING THE BOARD TO DETERMINE THAT APPLICANTS ARE GRADUATES OF CERTAIN SCHOOLS OF NURSING; ESTABLISHING FEES FOR NURSE APPLICANTS FROM CANADA;"

2. Page 1, line 13.
Following: "examination"
Insert: "-- fees for certain applicants"

3. Page 2, line 8
Following: "language."
Insert: "(c) is a graduate of a school of nursing that meets the educational curriculum standards established by the commission on graduates of foreign nursing schools.

(4) The board shall:
(a) establish a fee of \$160 to be paid by each applicant, upon submitting an application allowed by subsection 3;
(b) use the fee required by this subsection to pay expenses associated with a determination that the applicant meets the conditions of subsection 3."



Exhibit 2
2-18-91
HB 626

**Testimony by
James F. Ahrens, President
Montana Hospital Association
on HB 626
February 18, 1991**

Thank you Mr. Chairman.

The Montana Hospital Association, on behalf of its 58 members, supports HB 626 with the amendments proposed by Rep. Nelson. We do so because we believe this is a step toward easing the shortage of registered nurses facing many Montana hospitals.

The shortage of RNs is not news to most of you. For some time, that shortage has been around 10 percent. It is particularly acute in some of Montana's small community hospitals. In these facilities, the loss of just one RN can have a major impact on access to care.

The war in the Persian Gulf has made matters worse. MHA surveyed hospitals in December and found then that 12 nurses had been called to active duty. Since then, the list has grown.

Meanwhile, the demand for nurses continues to grow. A recent article in the Helena *Independent Record* reported that between now and 1995, RNs are third on the list of estimated annual job openings and first on the list in total estimated job growth.

MHA believes one way to meet this demand is to make it easier for Montana's hospitals to recruit nurses from Canada.

There are many highly qualified Canadian nurses who would welcome an opportunity to work in Montana. But the current licensure process makes it difficult for them to do so.

Currently, nurses from Canada are required to present a certificate that they have completed the Commission on Graduates of Foreign Nursing Schools -- it's called CGFNS -- process before they can take the Montana licensing examination.

The CGFNS process consists of an evaluation of the applicant's transcripts and the curriculum of the school they attended. Then each applicant must take a nursing and English proficiency examination.

The problem with CGFNS is that it is a lengthy and cumbersome process. Applicants must submit their applications at least three months prior to the exam. The exam itself is only given three times a year.

To take it, applicants must travel to Vancouver, Toronto or Montreal or Atlanta, Houston, Chicago, Los Angeles, Miami or New York.

The whole process can take up to six months.

MHA has no interest in tampering with the evaluation portion of the CGFNS process. We understand the need to make sure graduates of foreign nursing schools meet the standards set by Montana's Board of Nursing.

Nor are we advocating special treatment for nurses from other English-speaking countries, such as Australia, England and Ireland.

However, we do believe the English proficiency examination is not necessary for Canadian nurses who have graduated from schools where the predominant language is English.

HB 626 is designed to remove this requirement, without lowering the educational standards set by Montana's Board of Nursing.

Zx. 2
2-18-91
#B 626

Adopting HB 626 also would bring Montana into compliance with the U.S. -- Canada Free Trade Agreement.

This agreement states that "Canadian citizen registered nurses holding temporary state licenses or other temporary state authorization...shall not be required to show that they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools."

Montana prides itself on its close ties to Canada. And, in the spirit of the Free Trade Agreement, Montana wants to remove all roadblocks to tourism in Great Falls, the Flathead and the towns along the Hi-Line.

But, by maintaining the current licensure process for Canadian nurses, we continue to erect roadblocks to RNs who could make a valuable contribution to the quality and access to health care in our state's hospitals.

A number of states -- states like North Dakota, South Dakota, Utah and Wyoming -- have already waived the requirement that Canadian nurses take the CGFNS English proficiency exam. The fact that they have done so adds to Montana's recruiting difficulties.

MHA believes there is a more common sense way to license Canadian nurses than the method now used. When Montana's hospitals face a nursing vacancy, they need help immediately -- not in six months.

We believe that HB 626 -- as amended -- would remove a major roadblock to getting that help.

February 12, 1991

Jere Schaub, R. N.
Nursing Manager
Kalispell Regional
Kalispell, MT

Exhibit 3
2/18/91
HB 626

Montana House of Representatives
Helena , Montana

Dear Members,

I am writing in support of **HB 626**. This bill could certainly have only a positive affect on the current nursing shortage.

I have been involved in nurse recruitment for over ten years and personally have found it growing more difficult as years have progressed. I currently am working as a nurse manager at Kalispell Regional Hospital where my floor alone has had at least one open position for over a year. For nine years before that, I was the Director of Nurses for Liberty County Hospital in Chester, Montana. Recruitment at Liberty County Hospital was at best an exercise in futility as budget constraints and locale inhibited us from competing with higher wages, employment bonuses, and the glamorous off-shift life. The best employment pool for the small rural hospital lies with the spouses of incoming teachers or pastors. When this pool is not there, short staffing and the possibility of compromised care often results. Certainly, staffing crises continue to play a part in the closure of our hospitals.

Now with the addition of war, nurses are even more in demand. Several nurses in the communities of Montana have already been pulled into active duty in the Gulf and others have been placed on call status.

The thought in the past was that there were several nurses in the state that weren't working. At that time the focus of hospitals fighting the increasing nursing shortage was update classes to get those nurses back to work. We now know that this effort was only minimally effective. Current surveys indicate that 80% of nurses are currently working and jobs in the medical profession continue to be one of the fastest growing groups. Montana cannot keep up with nursing demands. It is estimated that there will be 385 Registered Nurse positions opening this year and only about 250 sitting for the Registered Nurse boards. It is obvious that we need to broaden the pool of R.N.'s able to work in Montana.

This bill would ease the Canadian nurses from English speaking provinces into the labor force in Montana. They have shown an interest in the State as a recent trip to Lethbridge by a local recruiting firm, yielded interest from nearly 30 nurses. I would encourage you to look at this as a viable option to assisting with the nursing shortage in Montana.

Thank you for allowing me to express the feelings of many involved with nurse recruitment in Montana.

Sincerely,

Jere Schaub, RN

Jere Schaub, R. N.

113 f 76
2/18/91

YOUR MONEY

Training for the future

A state study shows where the jobs will be

Retail sales will be the big job-growth area in Montana through 1995, according to estimates from the Montana Department of Labor & Industry.

The department projects there will be roughly 600 job openings per year in that field. Also among the top five occupations are janitors, registered nurses, truck drivers and cashiers, according to the department's estimates.

The department projects no huge annual job losses in any field, at least through 1995. It projects slight overall job losses among engineers, and flat employment or slight losses in a wide variety of industrial occupations.

IN SEVERAL HEALTH-RELATED occupations, there will be more jobs than qualified people. The demand for registered nurses, nursing aides and orderlies is expected to exceed the number of people who will complete training for those jobs. For licensed practical nurses, however, there is expected to be an overall shortage.

Among service jobs, there is expected to be a shortage of trained people for the job openings in several fields: vehicle operators, food production, food service and management, custodial and maintenance service.

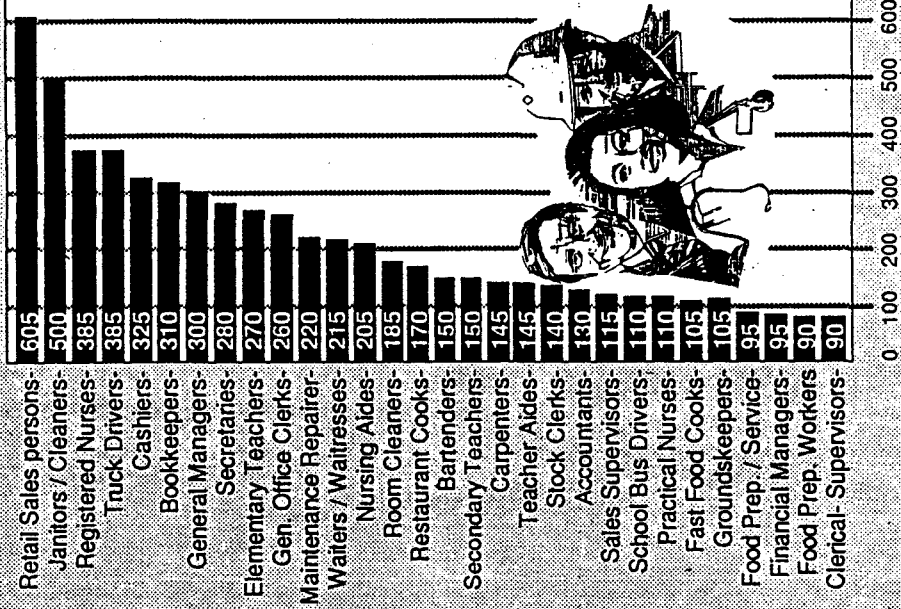
There will continue to be an overabundance of people who are trained to work as teachers, mechanics, welders, electrical or electronic technicians, secretaries, clerks, barbers or cosmetologists, and in architectural or civil technology careers.

NATIONALLY, SAYS THE REPORT, "there is a gap between basic skills that businesses need and qualifications of entry-level workers available to business... Managerial, professional and technical occupations which require the most education will have faster growth nationally than occupations with lowest educational requirements, some of which are even projected to decline.

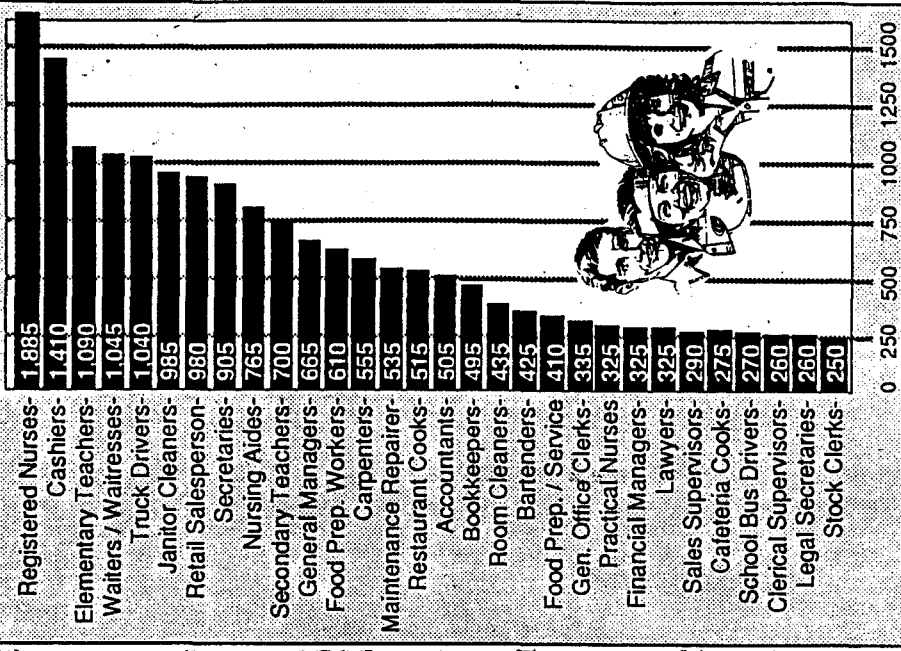
"More than half of the jobs created between now and the year 2000 will require some education beyond high school, and almost a third will be filled by college graduates.

"From now until the year 2000, employment growth and labor-

Montana's estimated annual job openings 1986 - 1995



Montana's total estimated job growth 1986 - 1995



IRW/linhel

force growth will be slower than during the past 12 years. The growth will slow primarily because of the declining number of people in the 16 to 24-year-old age group... Competition among employ-

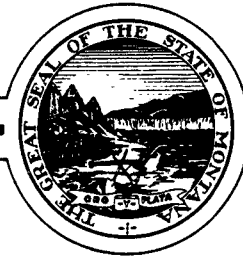
ers for these workers will have an impact on colleges and universities, the military, and industries that recruit young entry-level workers," says the report.

U.S. - Canada Free Trade Agreement

214.6 (c) (3) Registered nurses. Professional status may be demonstrated by a provincial or state license; however, in order to be admitted as a registered nurse, the Canadian citizen must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered or graduate nurse, issued by the State Board of Nursing in the state of intended employment. *Canadian citizen registered nurses holding temporary state licenses or other temporary state authorization...shall not be required to show that they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS).* (emphasis added.)

DEPARTMENT OF COMMERCE

Exhibit # 5
2-18-91
HB 626
1424 9TH AVENUE



STAN STEPHENS, GOVERNOR

STATE OF MONTANA

(406) 444-3494

HELENA, MONTANA 59620-0501

TESTIMONY OF DEPARTMENT OF COMMERCE ON
HOUSE BILL 626 REGARDING LICENSURE OF
CANADIAN NURSES WITHOUT TAKING
AN ENGLISH PROFICIENCY EXAMINATION

Presented by Stephen Meloy, Bureau Chief,
Professional and Occupational Licensing Bureau,
Department of Commerce

The Board of Nursing has requested that I appear on its behalf to provide information regarding House Bill 626, which purports to be an act to allow nurses from Canada to apply for a license to practice as a registered professional nurse in Montana without taking an English proficiency examination.

This bill was promoted by the Montana Hospital Association. The Board has had discussions with MHA which disclosed their interest in finding a shorter process for licensure of foreign nurses. The discussion has centered around their interest in circumventing the examination of the Commission on Graduates of Foreign Nursing Schools (CGFNS). In fact, the English language section is only one part of the examination. It also includes a credentials evaluation and a substantive nursing section. It also arranges for an INS work permit which is necessary for a foreign nurse to begin work.

The Board has agreed to continue its discussion with the Montana Hospital Association and do research to find another means to evaluate foreign nurses. In the event this bill would pass, we would have to consider another means for doing so. In the interim, the Board would have to attempt to evaluate the qualifications of foreign nurses on their own. Actually, imposing this additional work load which the Board does not have the qualified staff to perform, may substantially delay the process longer than it is already.

The Board has asked me to provide the following information to you regarding House Bill 626:

- 1) The bill is deceptive since it only speaks to the obvious provisions that Canadian nurses probably do not need to

EX. 5
2-18-91
HB 626

pass an English proficiency examination. However, the CGFNS examination is an inseparable and indivisible whole unit. If the bill were interpreted to prohibit the administration of this examination, we would also be losing the curriculum and credentials evaluation section and the substantive nursing section.

2) If the bill would be interpreted to prohibit administration of the CGFNS examination, the applicants would be losing the assistance of CGFNS in obtaining an INS work permit.

3) This bill appears to be constitutionally defective as a possible violation of equal protection by specifying its application to Canadian nurses only, although there is no rational basis for distinction in consideration of other English speaking nurses such as Irish, British or Australian. There would also, perhaps, be no rational basis for distinction between a Canadian nurse who speaks English as a first language and a Norwegian, German or Russian nurse who speaks English as a second language. If this statute were challenged as unconstitutional, there might be no limit on the applications of foreign nurses from around the world and the inability of the Board to determine their qualifications.

4) If the bill would be interpreted to exclude the administration of the CGFNS examination, the Board would be required to find some alternative mechanism for examining credentials and curriculum. The Board is aware of no such service at this time and it is certainly possible that none is available. We estimated in our fiscal note that such a service might cost \$160.00 per application, but it could be substantially more. This would be an additional fee on top of the \$35.00 examination fee charged to all applicants.

5) If this bill were interpreted to prohibit the administration of the CGFNS examination, the Board doubts that there would be any time savings in alternate procedures for evaluation of credentials and curriculum. MHA indicated that its purpose was to shorten the time frame for licensure of foreign nurses, but this bill will likely have the opposite effect. The Board intends to continue in its diligent process of examination and proper licensure of nurses to protect the public health, safety and welfare. It does not intend to pass out licenses when there is insufficient information.

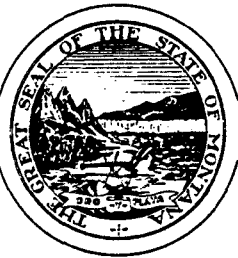
6) The Board has indicated to MHA its willingness to work on strategies to address the time in processing of applications from Canadian educated nurses whose primary language is English.

BOARD OF NURSING
DEPARTMENT OF COMMERCE

Exhibit # 6
2-18-91 HB 626

HB 626

ARCADE BUILDING, LOWER LEVEL
111 N. JACKSON



STATE OF MONTANA

(406) 444-4279

HELENA, MONTANA 59620-0407

To: All Interested Persons
From: Montana State Board of Nursing
Re: Licensure of Foreign Educated Nurses
Date: January 10, 1991

This memo is intended to clarify exam dates and the process necessary to expedite the licensing of foreign educated nurses.

In order for an RN educated in a foreign school to become licensed in Montana, the candidate must first go through the Commission on Graduates of Foreign Nursing Schools (CGFNS). The CGFNS will evaluate the educational program and give an exam that tests nursing as well as English. The CGFNS will then notify the Montana Board of Nursing of the qualifications of the RN applicant and advise whether they are ready to take the NCLEX exam. The CGFNS exam is given three times a year in at least fifty countries.

1991 CGFNS exam dates

March 13, 1991
August 14, 1991 - Application deadline May 13, 1991
November 13, 1991 - Application deadline August 12, 1991

There is additional information in the Board of Nursing office on the CGFNS which is available upon request.

After RN applicants have received the CGFNS certificate, they are eligible to take the NCLEX exam which is the one we give to all of the United States graduates. This exam is given two times a year in Helena (as well as in the other 50 states).

1991 NCLEX exam dates

February 5-6, 1991
July 9-10, 1991 - Application deadline May 14, 1991

The NCLEX exam for RNs is given every February and July.

Foreign educated LPN applicants do not have a CGFNS component. They must take an English proficiency exam which may be taken at most Vo-Techs and colleges. Then they can take the NCLEX exam which is offered every April and October.

If you have additional questions, please contact the Board of Nursing at (406) 444-4279.

BOARD OF NURSING
DEPARTMENT OF COMMERCE

1424 9TH AVENUE



STATE OF MONTANA

(406) 444-4279

HELENA, MONTANA 59620-0407

LICENSURE REQUIREMENTS
FOR
GRADUATES OF FOREIGN NURSING SCHOOLS

Prior to being eligible for licensure as a registered or practical nurse in Montana, applicants who are graduates of foreign nursing schools must meet the following requirements:

8.32.405 LICENSURE BY ENDORSEMENT (1) The applicant for licensure shall be made on the appropriate forms supplied by the department and verified by appropriate measures showing:

- (a) completion of 4 years of high school or its equivalent;
- (b) graduation from an approved school of nursing; (professional for registered nurse licensure and practical for practical nurse licensure) and;
- (c) holds a valid license issued by another state, territory or country.

8.32.406 LICENSURE FOR FOREIGN NURSES (1) Foreign educated nurses must fulfill the requirements of ARM 8.32.405 (1) (a), (b) and (c) and in addition written a State Board Test Pool Licensing Examination/NCLEX in another state of the United States or Canadian province.

(2) Candidates whose credentials cannot be verified as required shall be evaluated individually on the basis of supplemental preparation or other appropriate evidence of professional competency.

(3) Candidates for licensure as registered nurses will be required to show evidence of having passed the Commission on Graduates of Foreign Nursing Schools screening examination prior to writing the Montana licensing examination.

(4) Candidates for licensure as practical nurses will be required to show evidence of having successfully completed an English Proficiency examination before admission to the Montana licensing examination.

8.32.408 TEMPORARY WORK PERMIT . . . (3) . . . (c)
Foreign educated applicants for licensure by examination or endorsement are not eligible for a temporary work permit unless such applicant has been licensed by examination in another jurisdiction.

The Commission on Graduates of Foreign Nursing Schools screening examination is given twice a year. Further information on this examination may be obtained by writing directly to the Commission at the following address:

Commission on Graduates of Foreign Nursing Schools (CGFNS)
3600 Market Street - Fourth Floor
Philadelphia, PA 19104-2651
Phone: (215) 349-8767

COMMISSION ON GRADUATES OF FOREIGN NURSING SCHOOLS
3600 MARKET STREET

PHILADELPHIA, PENNSYLVANIA 19104-2651 U. S. A.

MAIN OFFICE: (215) 222-8454
TELEX: 402409 CGFNS PHA

FAX: (215) 662-0425
CABLE: CGFNS, PHILADELPHIA U.S.A.

Exhibit # 6
2-18-91 HB 626

Our Ref: 4/6 MT
October 23, 1990

Dianne Wickham, R.N., M.S.N.
Executive Secretary
Montana State Board of Nursing
Arcade Building
Lower Level
111 North Jackson Street
Helena, MT 59620-0407

Dear Ms. Wickham:

We are pleased to send you more information about the CGFNS certificate program and the licensure process for foreign-educated nurses. I understand that you are specifically interested in the standards for Canadian nurses. The National Council of State Boards of Nursing has published a study comparing the CNATS exam to the NCLEX-RN exam. That study would be very useful to you. I'm sorry that I have not yet received a copy, but I'm sure you can get one from NCSBN.

CGFNS uses the same standards to evaluate all foreign-educated nurses. In this letter I have included a review of how CGFNS works and then information about our evaluation of credentials, since that is of interest to you.

How CGFNS Works

CGFNS conducts a two-part screening program that protects the American public and gives foreign nurses a way to help determine their chances of passing NCLEX-RN before they leave their own countries.

First, CGFNS evaluates the credentials of foreign nurses to see if they have the educational background to practice in the United States. Foreign nurses whose credentials meet established standards then move to the second step: taking the CGFNS Qualifying Examination in one of 52 sites worldwide. Nurses who pass the Qualifying Exam receive a CGFNS Certificate.

The Immigration and Naturalization Service (INS) requires foreign nurses to hold a CGFNS Certificate or a full and unqualified license in order to obtain an occupational visa.

Ms. Wickham
October 23, 1990

(2)

How CGFNS Evaluates Credentials

Our current staff in Credentials Services has 17 members, including two managers. All of the staff who evaluate credentials are college graduates, and some have many years of experience at this work.

CGFNS maintains current files on nursing education in over 200 countries. Today, nurses are coming from more diverse backgrounds than ever before. The breadth of CGFNS's data thus becomes increasingly important.

In Indonesia, for instance, there are no titles to identify levels of nursing. Germany has over 900 nursing programs, only a few of which give nurses the background to practice as first-level nurses in the U.S. In these and many other instances, extensive knowledge of individual nursing programs is vital to evaluate the preparation of nurses.

In addition to evaluating educational backgrounds, the staff checks credentials to make sure that they are valid. Fraudulent credentials are a persistent problem. Because of their experience and our data, the staff can identify patterns of fraud as they emerge, despite widely disparate alphabets, languages, and formats. In addition to our files on nursing programs worldwide, we have on file over 100,000 individual applications to CGFNS to which we can turn to help us compare credentials.

Most problems with credentials, however, occur because of honest misunderstandings or cultural and language barriers. Over the past several years, CGFNS has paid particular attention to improving services to applicants who need help in resolving problems such as proof of their educational preparation and current licensing status.

How Nurses Complete the Screening Program

Foreign nurses whose credentials meet established standards then take the CGFNS Qualifying Exam, which tests both nursing knowledge and English skills. The section on nursing is designed to test material similar to that on the NCLEX-RN. The English portion includes a listening tape to make sure that nurses have the English skills to work with patients and colleagues.

Nurses who fail only the English portion of the exam need retake only that section. Nurses who fail the nursing portion must retake the entire exam. Nurses may retake the exam as many times as they want.

Nurses who pass the Qualifying Exam then receive a CGFNS Certificate. Since 1978, the majority of Certificate-holders have passed NCLEX-RN. Before CGFNS began its testing program, less than 15 percent of foreign nurses passed NCLEX-RN.

Failure rates among foreign nurses in states that do not require a CGFNS Certificate remain high. For example, in California, which does not require that foreign nurses taking NCLEX-RN hold a CGFNS Certificate, 27 percent of those taking NCLEX-RN for the first time and five percent of those repeating the exam failed in 1989.

Ms. Wickham
October 23, 1990

(3)

The Importance of a CGFNS at the State Level

Over 80 percent of U.S. licensing boards also require foreign nurses to earn a CGFNS Certificate before they sit for NCLEX-RN. Requiring CGFNS at the state level prevents an otherwise common practice to circumvent INS: recruitment of foreign nurses to come to the U.S. on other visas, such as tourist visas, to take NCLEX-RN. We know that in some states recruiters encourage this practice, and the vast majority of these nurses still fail NCLEX-RN.

Because CGFNS applies the same standards to all foreign nurses, the state level requirement of a CGFNS Certificate contributes to consistent standards for nursing practice across the U.S. States can endorse nurses with CGFNS Certificates when they move from other states with assurance that their own standards are being met.

CGFNS also provides an important screen of English proficiency. One might expect foreign nurses already in the U.S. to do significantly better than nurses in other countries on the English portion of the CGFNS exam. In fact, the data shows that nurses do no better at U.S. sites than at sites in other countries. This reinforces the need to test the English skills of all foreign nurses, even those who already live here.

Why CGFNS Was Founded

CGFNS was founded in 1977 at a time much like the present. Foreign nurses were coming to the United States in growing numbers, often in response to very active recruitment abroad.

State nursing board were finding it difficult to keep pace with the demands on their services to evaluate foreign nurses' credentials thoroughly and equitably. Furthermore, foreign nurses who failed NCLEX-RN often found themselves stranded in the United States. Many arrived in the United States with false expectations, sometimes on one-way tickets. Some nurses who failed the licensing exam became undocumented workers entirely outside the health care system. Others took low-paying jobs where they were easily exploited or, worst of all, found work in unlicensed institutions.

CGFNS resulted from an extensive collaboration of government agencies and professional organizations, which recognized the seriousness of the problems involved in licensing foreign nurses. INS urged its founding, and the Department of Health, Education and Welfare (now the Department of Health and Human Services) provided the initial funding. CGFNS remains under the sponsorship of the American Nurses Association and the National League for Nursing so that its activities receive constant direction from leaders in the nursing profession. The National Council of State Boards of Nursing also appoints a member of the CGFNS Board of Trustees.

The wisdom of CGFNS' founders been confirmed by 13 years of experience. The CGFNS screening program has contributed significantly to an orderly, fair process for licensure. Furthermore, thousands of foreign nurses have been spared the enormous expense and disappointment of coming to the United States, only to fail NCLEX-RN.

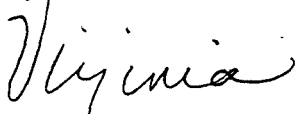
Ms. Wickham
October 23, 1990

(4)

The enclosed backgrounder on CGFNS provides answers to some common questions about the program. I have also sent you some other material that might prove useful.

Please contact me if we can be of further help in any other way.

Sincerely,



Virginia M. Maroun, RN, MSN
Executive Director

Enclosures: CGFNS Backgrounder Sheet
Executive Summary, GAO Report
"Shortage is International Problem", by Virginia M. Maroun,
American Nurse, March 1990
"The Facts About Foreign Nurses", RN, September 1988
"A Cure for the Nursing Shortage", Washington Post, Feb. 23, 1988
Executive Summary, Interim Report of Secretary's Commission

THE CGFNS STORY

Certifying Foreign-Educated Nurses for Professional Careers in the United States

WHAT CGFNS SET OUT TO DO To establish order out of confusion . . . bring fairness and equity to an often chaotic situation . . . protect foreign-educated nurses against exploitation . . . contribute to safe nursing practice in the United States . . . These were the goals in mind when the Commission on Graduates of Foreign Nursing Schools (CGFNS) was first established in 1977. Its objective: to enable foreign-educated, professional nurses to gauge their chances of becoming registered nurses in the U.S.

The hope is to prevent the professional disappointment, loss of status, exploitation, or financial hardship that could be the ultimate fate of any who first come to the U.S. and afterward find they can not achieve registered nurse (RN) status. By prescreening, CGFNS helps foreign-educated nurses predict if they have the qualifications, knowledge, and language skills that will enable their integration into the U.S. nursing profession.

STRONG BEGINNINGS Before 1977, there was no organization charged with this mission. This concerned both the U.S. Department of Health and Human Services (then known as HEW) and professional nursing organizations. As a result of their analyses, CGFNS was founded as an independent, nonprofit organization. A voluntary Board of Trustees composed of leaders in nursing and fields related to the public health was established. And on October 4, 1978, CGFNS gave its first, all-day exam in 31 countries, to 1,200 qualified graduates.

CGFNS' strong beginnings were in part due to its sponsoring organizations -- the American Nurses' Association and the National League for Nursing. It became even more firmly established when in 1980 the U.S. Immigration and Naturalization Service and the U.S. Department of Labor made CGFNS' certification a requirement for occupational visas and work permits. And, from the outset, state boards of nursing subscribed to the value of CGFNS' certification. Currently, over 80% of the state licensing boards require a CGFNS Certificate before they admit a foreign-educated graduate to their RN licensing exam.

CGFNS MEETS THE NEED From the beginning, CGFNS has been focused on its mission. It does not encourage or discourage immigration. Nor does it perform job placement, conduct review courses, or engage in education placement for advanced or specialized nursing study in the U.S. What it does do is twofold.

First, it assesses applicants' credentials. Second, it provides an exam which predicts how well a foreign-educated nurse will do on the licensing exam for nurses in the U.S. The focus on this twofold strategy has contributed to the organization's achievement which is documented in dramatic statistics.

Before the CGFNS requirement was established, more than 82,000 foreign-educated nurses entered the U.S. During that time, less than 15 % of those who took state licensing exams passed. The CGFNS requirement changed that drastically. Between 1978 and 1987, a national average shows 67% who took the state boards passed on their first attempt. Another 22% passed on reexamination. Thus, 89% of foreign-educated nurses admitted to NCLEX-RN with their CGFNS Certificates achieved a license -- a significant improvement over the pre-CGFNS statistics.

THE CREDENTIALING PROCESS As the first step in its certification program, CGFNS evaluates the credentials of foreign-educated nurses to see if they have the educational background and licensure status to practice as first-level, general nurses as defined by the International Council of Nursing. To do this fairly and accurately, CGFNS maintains current files on secondary and nursing education, as well as licensure, in almost 200 countries.

CGFNS also has a network of contacts in varied agencies, including ministries of health and education, regulatory boards, and nursing associations. These contacts mean CGFNS is up-to-date on educational patterns, licensure, and registration requirements -- an essential resource in today's fast-changing world.

Foreign-educated nurses whose credentials qualify them take the CGFNS exam at one of more than 50 sites worldwide.

THE CGFNS EXAMINATION CGFNS tests both nursing knowledge and English language skills in an examination given three times a year. The section on nursing is designed to test material similar to NCLEX-RN, the U.S. licensing exam for registered nurses. Keeping the content of these two tests comparable is important to ensure the predictive reliability of CGFNS. CGFNS contracts with the National League for Nursing, an organization highly respected in the field of nursing education and test development, to prepare the nursing portion of the exam.

CGFNS contracts with the Educational Testing Service to prepare the English-language portion of the CGFNS exam. This is the same service that produces the widely used Test of English as a Foreign Language (TOEFL). The English portion of the CGFNS exam includes sections on vocabulary and grammar. An audio tape also tests English skills.

Nurses who pass the Qualifying Exam receive a CGFNS Certificate. With that achieved, they can apply for an occupational visa or work permit and state licensure.

CGFNS' CONCERN CGFNS continually evaluates its program and applicant population.

FOR SERVICE For instance, from October 1978 through October 1989, examinations or re-examinations were administered to 78,511 graduates of schools from 131 countries. CGFNS knows that approximately one third of qualified applicants passed the nursing and English portions of the exam on the first try.

But large numbers do not mean that CGFNS loses the focus on the individual. CGFNS works continually to improve its services to individuals who wish access to its certification program. It is for these individuals that CGFNS also maintains a strong commitment to uncompromising standards of integrity, confidentiality, and excellence.

Established by the nursing profession, CGFNS is committed to providing a fair and effective certification process -- a process that helps ensure that foreign-educated nurses who wish to practice in the U.S. are qualified to do so.

Commission on Graduates of Foreign Nursing Schools

3600 Market Street, Suite 400

Philadelphia, PA 19104-2651

Business: (215) 222-8454

Applicants: (215) 349-8767

FAX: (215) 662-0425

United States General Accounting Office

GAO

Report to the Subcommittee on
Immigration and Refugee Affairs,
Committee on the Judiciary, U.S.
Senate

November 1989

HEALTH CARE

Information on Foreign Nurses Working in the United States Under Temporary Work Visas



Human Resources Division

B-327425

November 21, 1989

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

The Honorable Alan K. Simpson
Ranking Minority Member
Subcommittee on Immigration and Refugee Affairs
Committee on the Judiciary
United States Senate

In your January 9, 1989, letter, you asked us to study the present supply of nurses in the U.S. labor force and the effect of permanent and temporary foreign nurses on that supply. In that letter and in later meetings with your staff we agreed to concentrate on five principal concerns:

- How do the wages and working conditions in the nursing industry compare with occupations requiring similar levels of education and training?
- What percentage of licensed U.S. nurses do not now work in the nursing field?
- How many nurses are in the United States on temporary work visas and what countries do they come from?
- What are the policies and practices of medical care institutions relative to their sponsorship of temporary foreign nurses who desire to convert to permanent status?
- How frequently do employers convert temporary foreign nurses to permanent status?

Results in Brief

In response to your questions, we found:

- Nurses' starting salaries are comparable to those for individuals in other occupations with similar job characteristics as determined by the Office of Personnel Management (OPM). Average salaries are generally lower.
- In the opinion of the Department of Health and Human Services' (HHS) Commission on Nursing, the shortage of registered nurses is contributing to a deterioration in their work environment.
- In 1988, about 400,000 (20 percent) of the 2 million licensed registered nurses in the United States were not working in nursing-related areas.

- Of these, 28 percent were working in nonnursing occupations, and the remainder were unemployed and generally not seeking employment.
- The Immigration and Naturalization Service (INS) estimates that in May 1989, there were about 24,400 foreign nurses working in the United States under temporary work visas. Over 70 percent of these nurses came from the Philippines, and most were working in New York and New Jersey. Other major sources of foreign nurses are Canada, the United Kingdom, and Ireland.
 - New York City Health and Hospitals Corporation officials and responsible New York City and Los Angeles hospital personnel told us that they will generally sponsor nurses working under temporary work visas who (1) request such action, (2) successfully complete a probationary period, and (3) obtain registered nurse status by satisfying state licensing requirements.
 - INS data show that medical care institutions sponsored 1,316 temporary foreign nurses in achieving permanent immigrant status during fiscal years 1985-88. These institutions are sponsoring many others whose applications are currently being processed by INS or are being held at the American consulate in the nurse's home country awaiting U.S. government approval to convert to permanent status. In May 1988, INS estimated that there were about 4,100 applications for conversion pending for Filipino nurses alone.

More than 1,200 foreign nurses working under temporary work visas in New York City and Los Angeles hospitals will be required to leave the United States if their visas are not extended beyond December 31, 1989.

Background

The United States is experiencing a shortage of registered nurses. In December 1988, the Secretary of HHS's Commission on Nursing concluded that "... the reported shortage of [registered nurses] is real, widespread, and of significant magnitude."¹ The Commission found that the current shortage cuts across all health care delivery settings and all nursing practice areas. Three-fourths of the nation's hospitals were experiencing at least some shortage of nurses. Larger hospitals in urban areas were facing the most serious problems.

Many hospitals in New York City and, to a lesser extent, other urban areas have turned to the recruitment of nurses in foreign countries to augment their nursing staffs. Foreign nurses may enter the United States under H-1 visas issued by the State Department in the country of

¹Secretary's Commission on Nursing, Final Report, Vol. I, December 1988, p. v.

origin. This type of visa permits the admission of aliens of distinguished merit and ability for temporary periods of employment. To qualify for an H-1 visa, foreign nurses must have already completed their formal training and have obtained an employer sponsor in the United States. These visas normally authorize a stay in the United States of up to 5 years.

The Immigration Amendments of 1988 (P.L. 100-658), enacted on November 15, 1988, temporarily extended INS's 5-year time limitation on H-1 nursing visas. The legislation provided an extension of stay to December 31, 1989, for those nurses who had already been in the United States for at least 5 years under H-1 visas. The legislation was enacted to avoid worsening the nurse shortage, which would have been aggravated if the nurses whose visa terms were expiring were removed from the hospital work force.

Foreign nurses who are in the United States under the provisions of H-1 visas and have employer sponsors can apply for and be granted immigrant status, which enables them to remain permanently in this country. The number of such individuals is limited only by U.S. immigration law for each country and for various preference categories.² Foreign nurses are eligible to use two of these preferences; one is for members of professions of exceptional ability and the other is for workers in skilled or unskilled occupations not of a temporary or seasonal nature in which personnel are in short supply in the United States. The spouse and children of the foreign nurse, if accompanying her and not otherwise entitled to immigrant status, are entitled to the same status in the same order of consideration for getting a visa as the nurse.

A maximum of 270,000 immigrants may be admitted to the United States annually under a worldwide limitation. Of this number, no more than 10 percent (27,000) are allowed to immigrate under either of the two preference categories used by nurses with H-1 visas. Further, no more than 20,000 individuals are allowed to immigrate to the United States from any individual country during each year. The amount of time an individual has to wait for conversion to permanent immigrant status depends on the demand for an individual preference category.

²There are six preference categories that have their own numerical limitations. The first, fourth, and fifth preferences are based on the immigrant's relationship to a U.S. citizen (i.e., children, brothers, or sisters). The second preference is reserved for a spouse or an unmarried child of a legal permanent resident, and the third and sixth preferences are based on job skills needed in the United States.

Nurses' Salaries Are Generally Lower Than Those for Similar Occupations

Data collected by the Department of Labor show that nurses' average annual salaries are generally less than those for individuals in other occupations judged by OPM to be similar with regard to:³ knowledge required by the position, supervisory controls, independent judgment required, complexity, nature of work, impact of work products or services, personal contacts, purpose of contacts, physical demands, and work environment.

In order to compare occupations, OPM divided them into levels according to the degrees of difficulty, responsibility, and expertise required. The nursing profession is categorized into four levels. Level I nurses provide comprehensive general nursing care to patients whose conditions and treatment are normally uncomplicated. According to OPM, Level I nurses have job characteristics similar to general schedule (GS)-7 employees in the federal government. Level II nurses (equivalent to GS-9s) provide comprehensive nursing care of increased complexity requiring more independent judgment. Level III nurses (equivalent to GS-11s) plan and perform specialized and advanced nursing services of considerable difficulty. Level IV nurses (equivalent to GS-12s) act as consultants in areas of specialization and are considered as experts or leaders within a specialty area.

The Bureau of Labor Statistics (BLS) data indicate that nursing salaries are generally lower than those of individuals in other occupations where the job characteristics are similar.⁴ Table 1 compares a Level II nurse's average annual salary with that of individuals in other occupations with similar job characteristics (e.g., the characteristics of a Level II nurses' work are considered similar to that of a Level V engineering technician).

³Department of Labor, Bureau of Labor Statistics, White-Collar Salaries in Private Service-Producing Industries, March 1989. The Bureau of Labor Statistics—in cooperation with OPM and the Office of Management and Budget—conducts this survey to carry out its responsibility under the Federal Pay Comparability Act of 1970, which provides a basis for pay adjustments for federal white-collar employees.

⁴The comparison of occupational salaries based on job characteristics requires job evaluation, a method that has been criticized for its subjectivity. Critics of this method argue that comparisons of job content among occupations are subject to judgment and prone to bias. Thus, the results of job evaluation processes, such as that embedded in the BLS survey, should be interpreted with caution.

1: Comparison of Registered
Nurses' Salaries With Those Paid to
Professionals With Similar Job
Characteristics in Other Occupations

Occupation	Job level	Average annual salary
Registered nurse	II	\$28,434
Engineer	III	40,098
Buyer	III	37,849
Engineering technician	V	36,594
Chemist	III	36,469
Attorney	I	36,365
Auditor	III	35,059
Accountant	III	33,404
Computer programmer	III	32,172
Systems analyst	I	31,893
Public accountant	II	27,505

One factor that may explain the relatively low nursing salaries is the lack of salary progression throughout nurses' careers. Although the Commission found that, in 1987, nurses' starting salaries were comparable to such occupations as accountants, buyers, or computer programmers, it also found that nurses' salaries do not increase over the nurses' careers to the extent salaries do for others. Specifically, on average, career earnings for nurses increase only 39 percent as compared with salary increases ranging from 94 percent for a buyer to 193 percent for an accountant.

The Commission reported that the shortage of registered nurses is contributing to the deterioration of their work environment. The situation is complicated by the fact that nurses (1) are being given increased responsibility for greater numbers of severely ill patients, (2) are confronted with an increased amount of more extensive technology, (3) are subjected to work scheduling demands that require round-the-clock coverage of patients, and (4) suffer from a perceived or actual lack of authority or influence within individual employment settings. Further, cutbacks in the number of support personnel, such as unit secretaries and medical records clerks, have caused registered nurses to add a variety of clinical and nonclinical services to their responsibilities. According to the Commission, deteriorating work environments have contributed to the stress and disillusionment of registered nurses and have been detrimental to both the morale and image of the profession.

Most Licensed U.S. Nurses Work in Nursing-Related Areas

In 1988, about 1.6 million of the 2 million licensed registered nurses in the United States were working in nursing-related areas (defined as any position requiring a registered nurse). Further, surveys done by HHS's Division of Nursing and the American Nurses' Association show that the proportion of licensed registered U.S. nurses working in the nursing field has steadily increased from 68 percent in 1959 to 80 percent in 1988.

Table 2: Licensed Registered Nurses Working in Nursing-Related Areas, Selected Years

Year	Percent
1959	68.0
1977	70.0
1984	78.7
1988	80.0

About 1.1 million of the licensed registered nurses working in 1988 were employed in hospitals, while the remainder worked in nursing homes, community health settings, and ambulatory care settings.

Of the approximately 400,000 licensed registered nurses not working in nursing-related areas in 1988, 28 percent were employed in nonnursing occupations, and most of the remainder were neither working nor seeking employment. In 1988, the unemployment rate for licensed nurses seeking employment was about 1.4 percent.

The number of licensed registered nurses working in nursing-related areas has increased from 1.5 million in 1984, to about 1.6 million in 1988. Nevertheless, the shortage of nurses has continued. According to the Commission, this has occurred primarily because the demand for nursing services has increased more rapidly than the supply of nurses.

Many Foreign Nurses Work in the United States Under H-1 Visas

INS estimates that there were over 24,400 nurses in the United States under H-1 visas as of May 31, 1989. This estimate does not include any nurses who entered the country under such visas before fiscal year 1985. Over two-thirds of the nurses entered the country during fiscal years 1988 and 1989, and over 70 percent of them are from the Philippines, as shown in table 3.

3: Number of Nurses in the United States Under H-1 Visas as of May 31,

Country of origin	Fiscal Year of Entry					Total	Percent
	1985	1986	1987	1988	1989		
Philippines	1,519	1,934	2,693	6,239	5,342	17,727	72.6
Canada	177	321	519	1,013	876	2,906	11.9
United Kingdom	24	55	114	595	310	1,098	4.5
Ireland	41	53	141	538	326	1,099	4.5
Jamaica	8	3	45	184	102	342	1.4
Other	44	85	162	582	372	1,245	5.1
Total	1,813	2,451	3,674	9,151	7,328	24,417	100.0
Percent	7.5	10.0	15.0	37.5	30.0		

INS estimates that over 60 percent of all nurses with H-1 visas in the United States are located in the New York and New Jersey areas, as shown in table 4.

4: State Residency of Nurses With H-1 Visas in the United States as of May 31,

State	Number	Percent
New York	10,670	43.7
New Jersey	4,664	19.1
California	1,685	6.9
Texas	1,563	6.4
Florida	1,245	5.1
Massachusetts	1,026	4.2
Other	3,564	14.6
Total	24,417	100.0

The INS Statistical Division developed the above estimates based on information contained in the Non-immigrant Information System, which became fully operational in fiscal year 1985. The data were adjusted by INS to account for known inaccuracies in the reporting of both occupational data and departure data. The Director of the INS Statistical Division cautioned that these estimates may understate the number of nurses working under H-1 visas in the United States because they omit those who entered the country before the Non-immigrant Information System was fully implemented. But, in his opinion, the number of nurses who entered the United States before fiscal year 1985 was much smaller compared with the number who have entered since.

The INS estimates are similar to those cited in a June 1988 report prepared by a management consulting firm for INS. That report estimated that 68 percent of the nurses entering the United States in fiscal year

1987 under H-1 visas came from the Philippines, and 72 percent of them located in New York City, northern New Jersey, and Los Angeles.⁵ The report estimates that between 20 and 30 percent of employed nurses in the New York City area were admitted under the H-1 visa program.

Hospitals Sponsor Nurses Working Under H-1 Visas Who Desire to Convert to Permanent Status

The number of nurses working under H-1 visas who were converted to permanent immigrant status during fiscal years 1985-88 is relatively small in comparison with the total number of such nurses in the United States; 1,316 nurses were converted to permanent status during fiscal years 1985-88. However, our work in New York City and Los Angeles indicates that hospitals are willing to sponsor those H-1 nurses who successfully complete a probationary period and obtain a state nursing license.

One major factor that may help to explain the relatively low numbers may be that thousands of Filipino nurses have applied for, but have not yet been granted, permanent status because of the long delays encountered in obtaining permanent immigrant status from the Philippines. As mentioned earlier, the U.S. government has established limitations worldwide and by country on the number of individuals who will be allowed to immigrate in any given year. In May 1988, INS estimated that at least 4,100 Filipino nurses were awaiting conversion to permanent status. But, as of March 31, 1989, waiting times for conversion of these nurses were 16.3 years for the preference category dealing with professions of exceptional ability and 4.5 years for the one related to skilled or unskilled occupations in short supply in the United States.

Table 5 shows the number of nurses who converted to permanent status during fiscal years 1985-88 and the countries from which they came.

⁵Booz, Allen, and Hamilton, Inc., Characteristics and Labor Market Impact of Persons Admitted Under H-1 Program, June 1988.

Table 5: Source Country of Nurses With Visas Who Have Been Converted to Permanent Status (Fiscal Years 1985-88)

Country of origin	Fiscal year				Total
	1985	1986	1987	1988	
Philippines	262	190	152	97	701
Canada	49	37	27	30	143
United Kingdom	48	30	14	23	115
Ireland	21	18	13	37	89
Jamaica	8	6	5	10	29
Other	70	54	41	74	239
Total	458	335	252	271	1,316

Officials in the 10 hospitals we visited in New York City and Los Angeles and the New York City Health and Hospitals Corporation believe their hospitals are taking appropriate measures to sponsor nurses under H-1 visas who are interested in converting from temporary to permanent status. Most of the hospitals refer interested nurses to immigration attorneys if questions or problems arise that are beyond the expertise of the hospitals' personnel. In addition, a few of the hospitals provide either financial assistance to their nurses for obtaining legal assistance or free in-house legal services. According to their estimates, 1,673 (72 percent) of the 2,338 affected nurses employed in their facilities have applied for conversion to permanent status.

The practice of the 10 hospitals we visited and the New York City Health and Hospitals Corporation was to sponsor nurses who expressed the desire to convert to permanent immigrant status and who met certain conditions. Eight of the 10 hospitals and the New York City Health and Hospitals Corporation require their nurses under H-1 visas to successfully complete the hospital's probationary period (ranging from 60 days to 6 months) and obtain registered nurse status by satisfying state licensing requirements before they will agree to sponsor them for permanent residence. The other two hospitals believe it is unnecessary to make such nurses wait to meet these requirements because the vast majority successfully complete the probationary period and obtain a state nursing license anyway.

Hospital officials offered their own opinions as to why the number of conversions is relatively low. Among the opinions given were that many nurses (1) have not been in the United States long enough to meet the requirements or (2) wish to return to their home country at the end of their visa period and, therefore, have no desire to convert to permanent

status. Several hospital officials said that the latter factor is especially true for nurses from the United Kingdom and Ireland.

The Authorized Stay of Some Nurses Working Under H-1 Visas May Expire

The Immigration Amendments of 1988 provided an extension of stay to December 31, 1989, for nurses in the United States under H-1 visas who had been in the country under that status for at least 5 years. These nurses will again become subject to INS's 5-year limitation on December 31, 1989, when the current extension expires. As a result, the authorized stay of those nurses with H-1 visas who entered the United States before December 31, 1984, will expire unless additional extensions are granted.

The Director of the Statistical Division told us that INS does not know how many nurses would be affected if another extension is not granted. However, surveys in New York City and Los Angeles show that hospitals in these areas will be adversely impacted if further extensions are not granted. Specifically, 16 percent (4,182 of 25,928) of the nurses employed in hospitals surveyed in New York City are in the United States under H-1 visas. Similarly, 9 percent (342 of 4,005) of the nurses employed in hospitals surveyed in Los Angeles are here under H-1 visas.

These surveys show that 1,226 of the H-1 visa nurses employed by the survey respondents might be affected as of December 31, 1989, and 505 by December 31, 1990, if further extensions are not granted. Table 6 provides more details on this situation.

Table 6: Number of Nurses Whose H-1 Status Expires as of December 31, 1989 and 1990

Organizations representing hospitals	Number of hospitals	Number of H-1 visa nurses whose stay in the U.S. expires as of		Total
		12/31/89	12/31/90	
The Greater New York Hospital Association	46	603	202	805
New York City Health and Hospitals Corporation	10	482	264	746
Subtotal	56	1,085	466	1,551
Hospital Council of Southern California (Los Angeles)	15	141	39	180
Total	71	1,226	505	1,731

With the loss of the H-1 visa nurses, the hospitals involved could lose about 4 percent of their nursing staff as of December 31, 1989, and an

additional 2 percent as of December 31, 1990. Without further extensions these numbers will likely increase over the next 5 years because most of the foreign nurses at these hospitals received their H-1 visas during fiscal years 1987, 1988, and 1989.

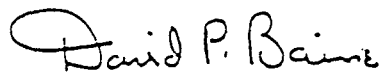
Legislation introduced into the House of Representatives on March 20, 1989, if enacted, would provide relief for H-1 visa nurses from the extended waiting times for conversion to permanent immigrant status. Specifically, the Immigration Nursing Relief Act of 1989 (H.R. 1507) would provide special permanent immigrant status to all individuals who entered the United States before January 1, 1988, under an H-1 visa to work as a registered nurse. These individuals as well as their accompanying spouse and children would achieve permanent immigrant status without being subjected to the waiting times previously discussed. The facility for which a foreign nurse will work must meet the following conditions:

- it would encounter substantial disruptions without the services of the temporary foreign nurses,
- the employment of foreign nurses will not adversely affect the wages and working conditions of registered nurses similarly employed,
- the foreign nurse will be paid at the same rate as those registered nurses similarly employed by the facility, and
- it has taken and continues to take timely and significant steps to recruit and retain sufficient registered nurses who are U.S. citizens or immigrants in order to reduce the reliance on H-1 nurses as quickly as possible.

We did not request written comments on a draft of this report from the organizations contacted during our review. We did, however, give INS officials an opportunity to review pertinent sections of the report that involved INS and incorporated their views where appropriate.

We performed our review from March through August 1989. Appendix I discusses the objectives, scope, and methodology for our review.

We are sending copies of this report to interested Senate and House committees and will make copies available to others on request. Should you have any questions concerning this report, please contact me at (202) 275-6207. Other major contributors to this report are listed in appendix II.



David P. Baine
Director, Federal Health
Care Delivery Issues

Objectives, Scope, and Methodology

Our objectives were to determine

- how the wages and working conditions in the nursing industry compare with occupations requiring similar levels of education and training,
- what percentage of licensed U.S. nurses do not work in the nursing field,
- how many nurses are in the United States on temporary work visas and what countries they come from,
- what the policies and practices of medical care institutions are relative to their sponsorship of temporary foreign nurses who desire to convert to permanent status, and
- what is the frequency with which employers convert nurses to permanent status.

We obtained information from the Executive Director of HHS's Commission on Nursing, the Commission's reports, and HHS's Division of Nursing on nurses' wages and working conditions and on the percentage of licensed registered U.S. nurses who were working in nursing-related areas. Since INS did not have accurate information on the number of nurses in the United States under H-1 visas at the time we initiated our review, we requested its Statistical Division to develop estimates for us. The Division provided these and other data on the number of foreign nurses who had converted to permanent status during fiscal years 1985-88.

To identify hospital policies and practices on sponsoring nurses in the United States under H-1 visas who desire to convert to permanent status, we interviewed officials at (1) the New York City Health and Hospitals Corporation,¹ (2) five hospitals in New York City, and (3) five hospitals in Los Angeles. Each of these organizations employed substantial numbers of such nurses.

To identify the number of nurses working under H-1 visas employed by selected New York City and Los Angeles hospitals and the number who may have to leave the United States as of December 31, 1989, when the extension granted by the Immigration Amendments of 1988 expires, we

¹The New York City Health and Hospitals Corporation operates the New York City health care system, which includes, among other facilities, 11 acute care hospitals, 5 long-term care facilities, and over 40 ambulatory care centers.

obtained the results of surveys done by the Greater New York Hospital Association and the Hospital Council of Southern California.²

²The Greater New York Hospital Association is composed of 106 not-for-profit hospitals, long-term care facilities and health-related organizations in New York City and surrounding communities. The Hospital Council of Southern California represents 225 hospitals, long-term care facilities, and other health care organizations of differing types of ownership in the southern California area.

Appendix II

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AMERICAN NURSE

Comment and Opinion

Shortage is international problem

As I See It

By Virginia M. Maroun, MSN, RN
Executive Director
Commission on Graduates of
Foreign Nursing Schools

The Commission on Graduates of Foreign Nursing Schools (CGFNS) works to prevent the exploitation of foreign nurse graduates and to help insure qualified health care for Americans. CGFNS supports the United Nations Declaration of Human Rights, which affirms the freedom of the individual to migrate. However, CGFNS neither encourages nor discourages immigration.

Nurses struggle to keep pace with growing numbers of acutely ill patients, while hospitals report closing units for lack of staff. It is hardly surprising that health care administrators, policy makers, and nursing staff look to foreign nurses as one way to relieve the nursing shortage. Indeed, foreign nurses with the desire, education, skills, and language ability to practice in the United States make valuable additions to our health care system. But it would be wrong to assume that foreign nurses are the answer to the shortage in the United States, and that assumption can lead to abuses.

First, we sometimes forget that the nursing shortage is an international problem. A 1989 International Council of Nursing Report notes that a majority of member states in the World Health Organization report a shortage, maldistribution, and misutilization of nurses. A growing number of foreign governments are expressing concern about the "brain drain" of nurses to the United States, and some are taking steps to limit or even ban recruitment of nurses for the United States. Thus, in purely practical terms, the supply of nurses to meet the world's needs is limited.

Equally important, resources spent on

excessive recruitment do not address the root problem of the nursing shortage in the United States. According to a 1988 report by Booz, Allen and Hamilton, Inc., the causes of the nursing shortage are "intrinsic characteristics of the nursing profession... low wages, lack of autonomy, lack of support staff for nurses, long hours..." Increased numbers of foreign nurses will not solve these problems.

Nonetheless, both hospitals and private agencies in the United States are recruiting foreign nurses more vigorously than ever before. While most recruiters are offering an ethical, professional service, they are wholly unregulated. One recruiter primarily imports and exports goods, such as cotton thread and tires. The firm simply added nurses to their product line. Other recruiters have arranged for nurses to pay them and their home governments large sums for the privilege of working abroad.

Overzealous recruitment during past shortages stranded many foreign nurses in the United States, unable to practice their professions. Until 1978, over 80 percent of foreign nurses failed the licensing exams for registered nurses in the United States. Many of these nurses had accepted one-way tickets from recruiters. After failing the exam, some became undocumented workers, while others obtained visas to work in lower paying positions within the health care system.

To protect both foreign nurses and the American public, the American Nurses Association and the National League for Nursing established the Commission on Graduates of Foreign Nursing Schools (CGFNS) at the invitation of the Immigration and Naturalization Service and the U.S. Department of Health, Education and Welfare (now called the Department of Health and Human Services). Since 1978, CGFNS has tested and screened nurses in sites around the world before they apply for entry into the United States to determine if these nurses are likely to pass

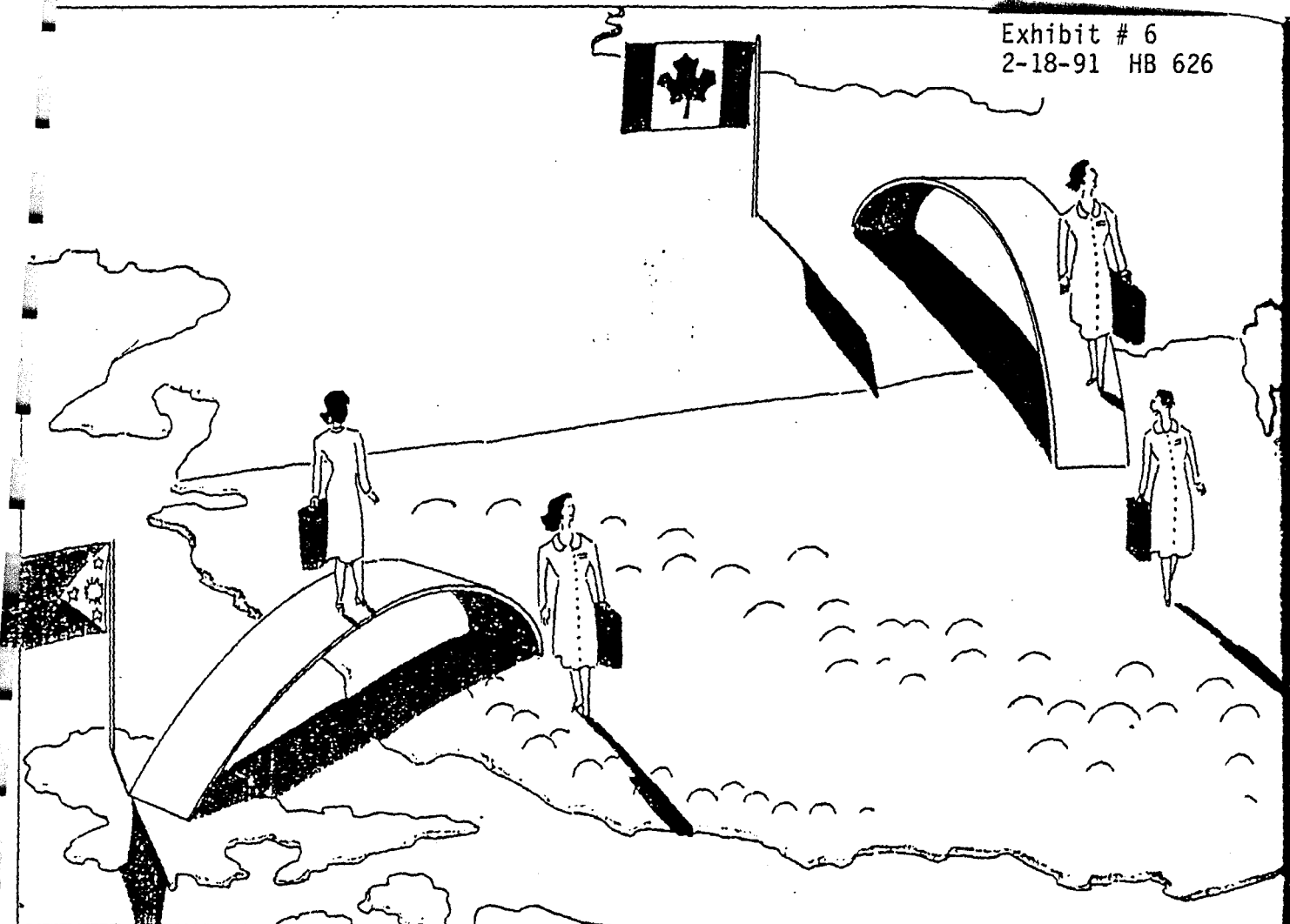
an American state licensing exam. CGFNS now offers its test at 52 sites worldwide. Today, 89.2 percent of foreign nurses who hold a CGFNS certificate have passed the NCLEX-RN exam (National Council of State Boards of Nursing licensing examination for registered nurses). Nurses who do not qualify for a CGFNS certificate cannot obtain an H-1 visa to enter the U.S. and cannot take the licensing examination in most states. These foreign nurses are spared the enormous expense and disappointment of coming to the United States only to fail the exam.

Although the screening process has greatly improved the NCLEX-RN pass rates of foreign nurses, exploitation of foreign nurses can still take place today. Some states do not require foreign nurses to obtain a CGFNS certificate. In these states, the vast majority of foreign nurses still fail the licensing exam. Too many then find themselves without jobs or the funds to return home.

Once foreign nurses pass the licensing exam, many still have difficult transitions to make. Foreign nurses may be accustomed to a health care system where they have either much greater or much less autonomy. They may have practiced in a system based on a different philosophy of health care. And many foreign nurses may face strong cultural barriers as well.

What can American nurses do to assist colleagues from abroad in realizing their potential in the health care system in the United States? At a minimum, you can help foreign nurses with communication problems, cultural differences, and new technologies. You can work with hospitals for appropriate orientation programs. If you learn that a foreign nurse was misled by overzealous recruiters, notify your hospital's personnel director or help the nurse involved find a reputable immigration lawyer. And most important, all of us must continue to press for real, lasting solutions to the nursing shortage, which will benefit all nurses working in the United States.

The Commission on Graduates of Foreign Nursing Schools is located in Philadelphia. ANA is represented on the CGFNS Board of Trustees.



The facts about foreign nurses

With more hospitals than ever searching for foreign nurses, you'll want to know where these nurses come from, how they're recruited and educated, and what it's like to work with them.

By Jean S. Arbeiter, SENIOR EDITOR

For more than 20 years, hospitals have been calling foreign nurses a "stopgap" solution to periodic shortages. Now, amid the shortage to end all shortages, the gap has become a chasm.

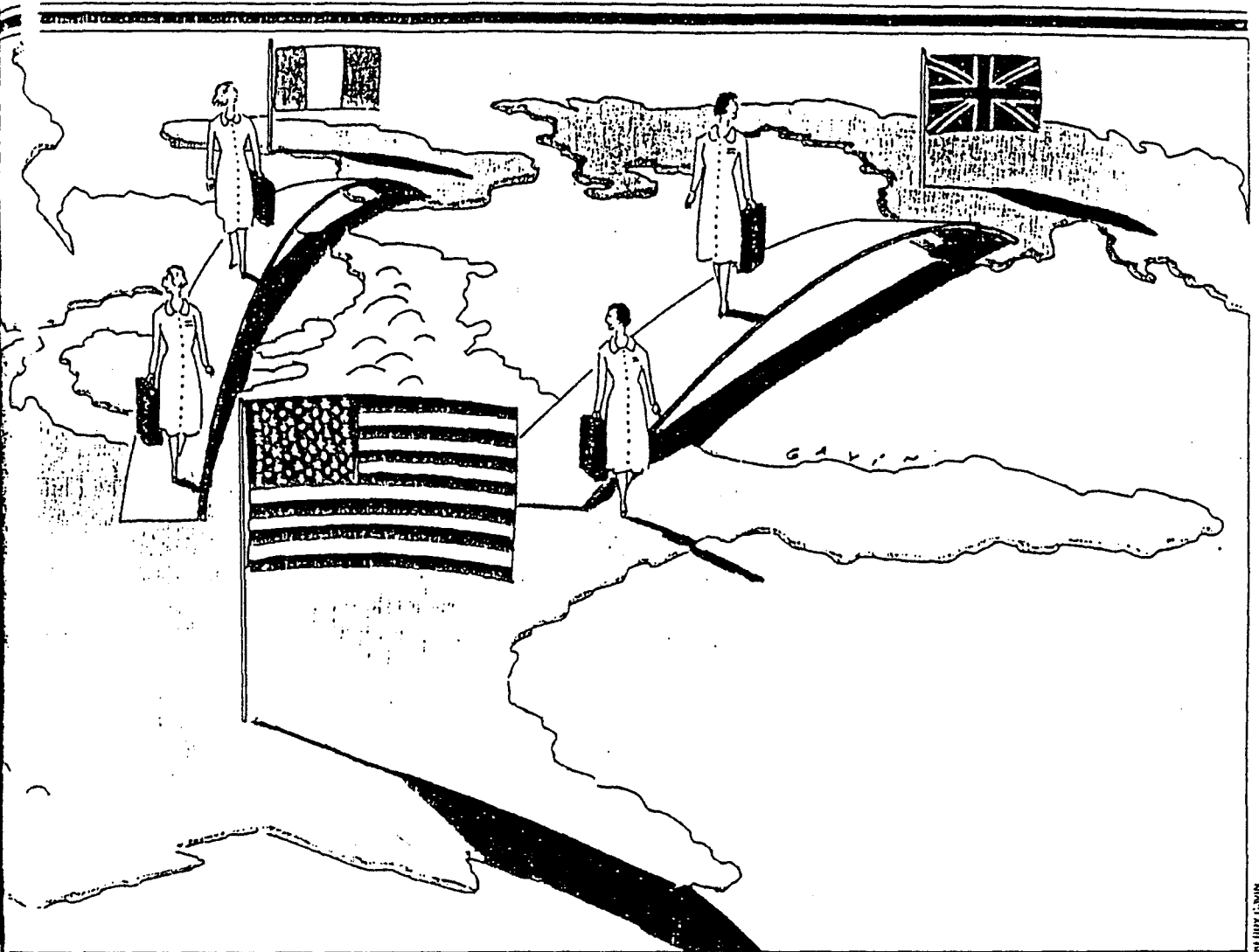
Foreign nurses are in demand as never before. A new survey by the National Association for Health Care Recruitment discloses that

scores of its members are making their maiden voyages to London, Dublin, and Manila. A recent job fair in the Philippines attracted some 70 hospitals—triple the usual number.

"Anywhere you can think of, people are recruiting," comments Virginia Maroun, RN, MSN, executive director of the Commission

on Graduates of Foreign Nursing Schools. In 32 nations, the commission administers the screening exam needed to qualify for a temporary work visa. Two years ago, 14,000 exams were administered. This year, the number will total 20,000.

Where do foreign nurses come from? What do they expect of this



country? What does it cost to recruit them? Do they meet U.S. standards? What can it be like to work with them? A close look at recruitment provides some answers.

Defining the foreign nurse

For starters, you should know that out of 1.9 million licensed nurses in this country, only 73,423—fewer than 4%—are foreign educated, according to government statistics for 1984, the most recent year available.

Although nurses from almost 100 countries ranging from Argentina to Zaire took the licensing exam last year, four sources account for 75% of all foreign nurses: Canada, Great Britain, Ireland, and, dominating the world scene, the Philip-

pinas. More than half of the 30,549 nurses who took the CGFNS exam for the first time between 1983 and 1987 were from the Philippines.

Foreign nurses are concentrated on the East and West Coasts and in the Sun Belt. A recent survey by the American Hospital Association shows that large hospitals—500 beds or more—recruit them most often. Some inner-city systems depend on them heavily: An estimated 1,800 of the 4,000 nurses employed by New York City's public hospitals, for instance, are from other countries.

How a recruiter finds nurses

Wherever they hunt, recruiters look for nurses with at least two years of experience and a specialty,

such as intensive care, neurosurgery, geriatrics, or OR.

They can find nurses in several ways: by using an agency (a requirement in the Philippines), by participating in overseas job fairs, or by placing ads in professional journals and local newspapers and interviewing applicants.

It can take eight to 12 months after a nurse is interviewed until she arrives in the United States, and even more months until she's completed orientation, passed the licensing exam, and is ready to work as an RN. The recruiting process can also cost considerably more than the estimated \$2,500 to \$4,000 it takes to find an American nurse.

Here's how the figures added up for one recruiter to attend a recent one-week job fair in the Philip-

air fare \$1,200, hotel and expenses \$900, booth at the fair \$1,100, Filipino agency's fee per nurse \$2,300, recruiter's weekly salary \$650.

Add to this such routine perks as the foreign nurses' plane fare, free or subsidized housing for three months, a review course for the licensing exam, the licensing fee, and perhaps a relocation bonus, and it's easy to see how costs can mushroom.

Successful forays, however, produce nurses who are more likely than U.S. nurses to be retained. They sign contracts for one to three years, and switching hospitals can be complicated.

Knocking at the "Golden Door"

To a foreign nurse, an American salary may seem a fortune. In the Philippines, nurses can earn \$1,800 a year, in Taiwan, \$6,000, Great Britain and Ireland, \$15,000, and Canada, \$20,000.

Even with the economic lure of earning \$23,000 and up, not everyone emigrates by choice. Ireland's unemployment is so severe that many nurses *must* leave if they want to work. "It's very sad," says Dorothy Burtch, RN, nurse recruiter for Grace Hospital in Detroit, "because they really don't want to leave Ireland."

Similarly, the Philippines assumes that many graduates of its 13 nursing schools will leave. Regardless of major unmet health-care needs, the government produces nurses "for export," along with other workers, as a source of foreign exchange, says Frederico

Macaranas, PhD, an economist who studies Filipino emigration. In 1986, Filipinos laboring abroad reportedly sent home \$680.4 million in taxes in addition to paying taxes to their host countries.

But emigration works to the individual's benefit, too. Nursing, one of the few professions open to Filipino young women of poor background, can lift an entire family out of poverty.

Consider Fele Magdamo, RN, director of inservice at St. Barnabas Hospital in New York City. She's helped put seven brothers and sisters through school. Grace Ortiz, RN, an NSG supervisor at the same hospital, sends \$500 a month to the husband and three children she left behind.

"These sacrifices are for a better life for everyone," sums up Flor de Guzman, RN, a patient care coordinator in the OR at Newark (N.J.) Beth Israel Medical Center. The goal of many is to become permanent residents and to bring their families here. Motivation is high. "Filipino nurses do double shifts, and they don't complain," Guzman says. "They have a purpose."

The matter of measuring up

No matter how determined a nurse may be, she's got to meet U.S. standards. Does her schooling enable her to do that?

Foreign educational programs vary considerably, even within a country, claims Maroun. In Sweden alone, for example, there are over 20 ways to become an RN.

In Great Britain and Ireland, education is largely of the type that

predominated here decades ago—three years in a hospital training school. In the Philippines, the emphasis is on a four-year BSN. Programs in all three countries, however, are heavily oriented toward clinical experience.

"When you graduate in the Philippines, you've done so much, you could be a charge nurse," asserts Fele Magdamo. In order to graduate, a student must have delivered a minimum of 25 babies unassisted and also assisted major and minor surgeries.

This kind of autonomy is common in third-world countries. "As a student, I could start IVs, do episiotomies, and repair lacerations," says a Haitian nurse. "We were better trained."

Proud as they are of their varied abilities—and many recruiters rate their skills as "superb"—the fact is that last year, only 43% of foreign nurses taking the licensing examination (NCLEX) for the first time passed. That compares with 91% of U.S. nurses.

The low pass rate may reflect language problems, a more medically-oriented clinical practice, or a less theory-oriented education. "The overseas nurse tends to be deficient in the rationale as to why certain procedures are done," comments J. Philip Knight-Sheen, SRN, BA, a British nurse whose agency, Medrec, has been in business since 1968. The major reason, suggests Dr. Macaranas, is unfamiliarity with objective tests, particularly those that require the nurse to select the most appropriate action.

Regardless of the cause, foreign nurses—especially those from the



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third world, who have the highest failure rates—need special help.

Many hospitals provide extensive orientation—as long as three months in some cases—assign preceptors, and offer review courses to prepare for the licensing exam. Even so, some nurses don't pass after several tries. They're supposed to leave the country, but many disappear into lower paying positions as aides, often in nursing homes.

Getting to know you

How do staff nurses react to those foreign nurses who do become their colleagues?

Most recruiters insist that staff are delighted to have the extra pair of hands, but there are negative reactions as well. These range from envy—"I've been here five years and no one offered *me* free housing"—to fear of liability—"Will I be held responsible if she makes a mistake?" (See the box on page 60 for more on that point.)

Nancy Sharts Engel, RN, PhD, an assistant professor at Villanova (Pa.) University College of Nursing, has worked in several Asian countries and now consults to hospitals on how to acculturate foreign nurses.

There's no doubt, she says, that nurses from Great Britain and Ireland—indeed all of Western Europe—find acceptance more readily than those from the Philippines and other third-world countries. "An Irish accent is charmingly familiar. A Filipino accent may sound a bit strange."

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Heading off legal danger

Are there any additional liability risks in working with a foreign nurse? Technically, No. If she's passed the licensing exam, she's held to the same standards as any other nurse. Neither you nor she are exempt from the customary responsibilities nurses have toward one another, but fulfilling those responsibilities may require special attention on your part, says attorney A. David Tammelleo.

For example, nurses have a duty to communicate accurately with each other, but a newly arrived foreign nurse may have trouble comprehending you. That doesn't relieve you of the need to make yourself understood. You can't be content simply to relay information. You must ask the nurse to repeat back what you've said or demonstrate by her actions that she got the message.

If she can't, the communication gap may be so great as to endanger patients. It then becomes a form of incompetence, which you're legally and ethically required to report. This also holds true of any other type of incompetence on her part that you witness.

Your supervisor may try to dump the problem back on you by urging you to "keep an eye on things." Firmly turn down this request. Even though you'd only be a quasi-supervisor, you could conceivably be held responsible for the negligence of the person you supervise.

If you've already accepted a role as a preceptor, point out that it's impossible to precept someone who doesn't understand you, and withdraw from the assignment.

Protect yourself, too, by keeping a record of the problems you encounter and the actions you take, reporting specific problems to your supervisor, for example. Give one copy to your supervisor and keep another in your personal files. That way, should legal problems arise, you can show you did your best to prevent trouble.

worker feel ill at ease and add to the work load. But most hostilities, says Engel, grow out of the assumption that all nurses should think alike. That simply isn't the case, and it's important to understand key differences.

Consider liability issues: They're not as great a concern in Great Britain, where medicine is socialized and patients are unlikely to sue, or in the Philippines, where litigation is simply not part of the social repertoire.

Foreign nurses focus on care giving, and they're stunned by the amount of paperwork needed here, as well as the emphasis on cost ef-

fectiveness. "In England you don't have to prove anything to an insurance company," is a typical remark.

Though both Filipino and British nurses come from more hierarchical systems—they are often surprised to hear doctors addressed by their first names—they say they're used to working more independently of physicians. "Here you have to get a doctor's order for a lot more things," says Amanda Fife, an English nurse who's been at Detroit's Grace Hospital since March. "We use our head and tell them later."

Nevertheless, at home, the physician's status is very much respected. In the Philippines, a class-

conscious society, the nurse does what the doctor says, and the patient does what the nurse says, and so does the patient's family, who are responsible for a great deal of care. They wash and feed the patient and change his sheets, while the nurse attends to clinical matters. "We work around them," says one Filipino nurse.

Concepts like consumer rights and patient education are alien in the Philippines, as in the rest of Asia, thinks Engel: "In fact, Asians think it's a burden to the patient to give him decision-making power."

Passivity may be a problem

Patients aren't the only ones expected to be compliant. A newly arrived Filipino nurse—or any Asian nurse—isn't likely to be assertive.

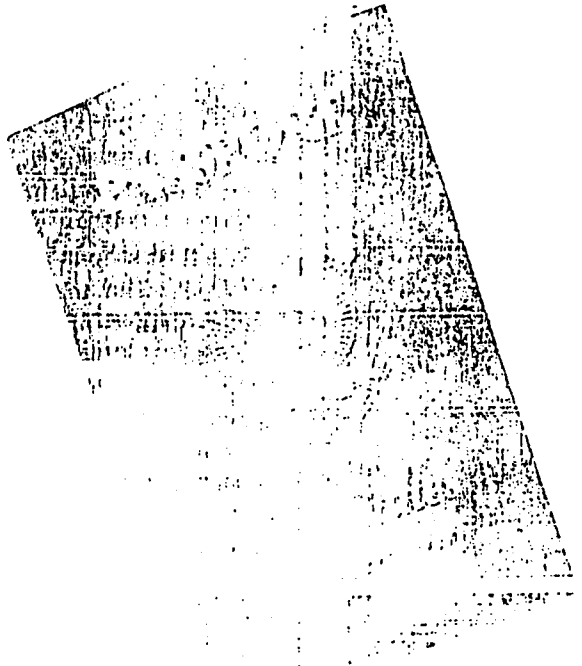
The culture emphasizes group harmony, not speaking out. When a nurse doesn't understand something, says one recruiter, she may keep silent to avoid losing face. She's heard that nurses can be sued in this country, and she's terrified of making a mistake.

"If the phone rang, I'd go the other way," remembers Flor de Guzman, who's been here 20 years, of her first weeks in an American hospital. She didn't want to risk misconstruing a telephone order.

Efforts to avoid self-assertion can go to extremes. In a northeastern hospital, for example, a nurse found that the light board had fallen down on a patient's bed. Rather than calling engineering, she hid the board under the blanket.

Understandably, this type of behavior can make an American feel

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nervous, but there are several courses of action to improve patient safety.

The first step is to alert your supervisor, who may decide to arrange further orientation for the newcomer.

To reduce language problems, speak slowly and simply. Why say "ambulate," for example, when "walk" will do just as well? As her understanding increases, you can introduce phrases that are commonly used on the unit and on doctors' orders.

Instead of asking a new arrival if she comprehends something—the answer is likely to be Yes—ask her to repeat back what she thinks she understands. That way, misconceptions can be cleared up before they lead to trouble.

Finally, you can teach by reviewing unit procedures and pointing out, in a kindly way, what's expected of her. Emphasize the importance of documentation and accountability. You might offer to look at her charting, for example—"Perhaps I can give you a few pointers."

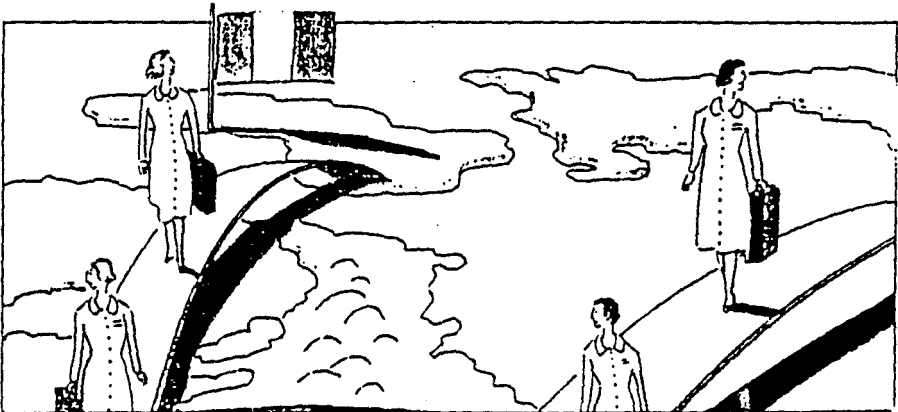
Offer praise, wherever possible, for her clinical skills—"I can see

you've had a lot of experience starting IVs"—or her patience, a Filipino trait that's often favorably remarked upon.

This kind of interchange can build trust, which the new arrival may need to feel before she's comfortable enough to ask for help. . . . Barnabas' Betty Lyon can testify to amazing transformations. "At first, Filipino nurses are so timid—then they become outgoing and confident."

The teaching role, admittedly, constitutes an added burden for the rest of the staff. But, says Engel, "if we're diligent, we can expect a colleague who can soon share our load."

"Soon" can be six months to a year, according to most recruiters. Decisive action by the hospital can speed up the process. Rose Hauer, RN, MA, president of the Commission on Graduates of Foreign Nursing Schools, recommends "cultural committees"—which can explain American jargon as well as differences in nursing practices—to help foreign nurses adjust. One hospital developed an "Adopt-a-nurse" program, and another facility encouraged American nurses to share



their apartments with new arrivals. Not only do such measures orient foreign nurses to what's expected of them, they also help Americans understand their new colleagues.

A stumbling block is only partially removed

While hospitals compete for foreign nurses, the future of their efforts has become cloudy.

True, the Immigration and Naturalization Service, bowing to appeals from hospital and nursing organizations, has backed off on a plan that would have eliminated sixth-year extensions of temporary work visas. These visas, though, used to be extendable even beyond six years.

Now, the INS insists, six years will be the limit. That's not enough, says Carl M. Shusterman, JD, chairman of the Southern California chapter of the American Immigration Lawyers Association. Because of quotas, it can take a Filipino nurse three to four years to obtain permanent status. If her visa runs out before she has attained that status, she'll still have to leave the country.

Legislation may produce a solution. One congressman suggests that quotas be bypassed and permanent status granted automatically after five years to nurses who'll commit to working five more years in areas with the most severe shortages. Another suggests simply that extensions be allowed for up to five years.

Even as legislative initiatives emerge, not everyone agrees that cracking down on professional tem-

porary visas was such a bad idea. Jack Golodner, director of the department of professional employees for the AFL-CIO, thinks foreign nurses should be limited to the type of temporary visa that can't be obtained until an employer proves no American workers are available for the job. Otherwise, Golodner argues, hospitals could continue to recruit foreign nurses, even when the shortage is over, thus keeping nursing salaries down.

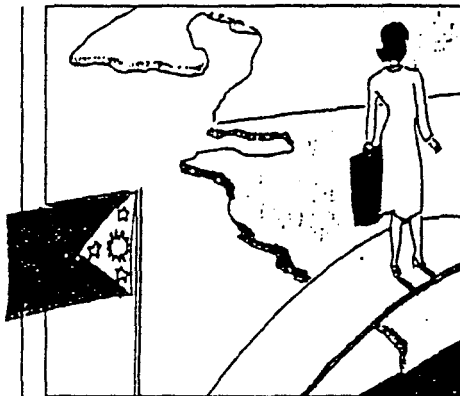
The answer to the nursing shortage, he believes, lies not in foreign recruitment but in increased salaries, particularly for experienced nurses, and in upgraded working conditions.

No one says Nay, but the recruiters argue that even if perfect conditions were to come about tomorrow, it would take years to get nursing school enrollments up to par. In the meantime, they insist, they are forced to keep looking abroad.

Foreign recruitment raises questions beyond its effect on U.S. salaries. Some observers decry the ethics of "raiding" other countries that are suffering critical shortages of their own—Canada, England, and Australia, for example, not to mention the third-world nations where health care generally is in short supply.

"What makes the United States think it has the right to recruit from countries that need nurses?" asks Marsha Kelly, RN, MS, director of public policy analysis for the National Council of State Boards of Nursing.

But one recruiter for a large medical center in New York City



argues that foreign countries will benefit in the long run since nurses who return home bring back the latest ideas and technology with them.

Be that as it may, there are increasing indications of "Yankee Go Home." An agency head reports that Australia, New Zealand, and South Africa won't always issue travel documents for recruiting visits. The Philippine Nurses Association decries the "indiscriminate export of nurses that bleeds our own country." India, among other countries, won't allow the screening exam for foreign nurses to be given there.

This type of hostility—combined with other hassles—has made some recruiters weary of a "stopgap" solution that's become institutionalized. Ending it, however, would raise other ethical problems. Not only does the economy of the Philippines depend heavily on the export of nurses, so do the hopes of thousands of nurses. Hospitals will have to look hard at these issues someday, but right now they're in no mood to philosophize. They're just after every qualified nurse they can get. ■

A Cure for the Nursing

Imported Nurses Are Only a Short-Term Answer

By Sue Hong

Special to The Washington Post

America's hospitals are so critically short of nurses that they are raiding foreign countries to help solve the problem.

Seventy nurses from South Korea, for example, are expected in February but will bring little relief to the potential long-term nursing shortage in the United States.

Nevertheless, recruiters representing hospitals and other medical institutions are mushrooming all over the country, waging what one recruiter calls a "bidding war" in search of nurses around the globe.

Many recruiters, who traditionally sought nurses trained in Europe or Canada, are increasingly looking to Asia and to Caribbean countries for candidates.

The Korean Overseas Development Corp. (KODCO), a government agency, recently set up its first U.S. office in Miami to provide overseas employers with "well-qualified" workers to meet worldwide demands. Its director, Jae Hwan Hyun, noted that last year alone three U.S. recruiting agencies asked for 115 nurses from South Korea.

These requests came at a time when the South Korean government is eager to boost its prestige as a new industrial power with technical know-how. More than 900 South Korean nurses and medical technicians are now working in Saudi Arabia, and the number of nations requesting South Korean workers continues to rise.

South Korean nurses planning to come to the U.S. are registered nurses with four-year college degrees. KODCO in Seoul provides an English studies program to help them pass examinations given by the U.S. Commission on Graduates of Foreign Nursing Schools (CGFNS), which are required by the U.S. Immigration and Naturalization Service. The examinations are given twice annually at 35 locations throughout the world, including seven in the United States.

The number of nurses taking the CGFNS test jumped from 14,000 in 1986 to 18,000 last year. The first 1988 exam in April is expected to draw 10,000 nurses who wish to practice in the U.S.

For the past eight years, CGFNS has administered 76,425 examinations or reexaminations to 47,420 graduates of schools in 104 countries. Of the 47,420 graduates who have taken or retaken the CGFNS exams, 19,849, or 41.8 percent, have achieved a CGFNS certificate and are eligible for jobs in the U.S.

One recruiter, Burt Cutler, executive director of Rank International Agency in West Hempstead, N.Y., said that 10 nurses from South Korea will work at New York's Bronx Municipal Hospital Center and in New Jersey at the Christian Health Care Center. Cutler, who represents major hospitals in Illinois, Massachusetts, New York and New Jersey, said that 1,000 nurses are needed right away in these areas. He added that without foreign nurses, some hospitals

and nursing homes may be unable to meet state staffing requirements and will have to close. The hardest-hit areas, according to Cutler, include the Northeast, South Florida and the West Coast.

Jeong Wha Lee of Seoul, who signed a contract with the Bronx Municipal Hospital, said she looks forward to acquiring all the advanced nursing technology offered in the United States. Lee said she worked five years side by side with American and British nurses at Central Hospital in Riyadh, Saudi Arabia.

"Of all the nurses," said Lee, "I was most impressed with up-to-date skills and medical knowledge U.S. nurses demonstrated there, and it made me think about furthering my nursing career in the U.S." With her interest in hospice care for the terminally ill, Lee said she plans to open a hospice when she returns to Korea.

Kyung Ah Park, also waiting for her visa since December, said she loves her profession and wants to learn all she can about surgical nursing. The unlimited educational opportunity, career advancement and monetary reward motivated her to sign a contract with the Bronx Municipal Hospital.

"I love nursing. There are so many hospitals and educational opportunities in the United States. I think I can learn more about surgical nursing over there and hopefully will earn more money," Park said.

But the U.S. Embassy is said to be reluctant to grant working visas, citing the fact that many nurses fail to return to Korea.

Ai-Sil Sohn, coordinator of clinical nursing care at Brookdale Hospital Medical Center in Brooklyn, N.Y., who knows many nurses who had previously arrived from South Korea, said that American hospitals with acute nursing shortages ask most foreign nurses to stay on the job and help them acquire permanent residency. Sohn, who has been in the U.S. 12 years, estimates that at least 2,500 Korean-born nurses work in the Northeast.

Recruiting of foreign nurses now has become so intensified that, said Cutler, "it's like a bidding war out there. Some even offer free housing and a trip to Disneyland."

In December, Cutler headed for the Philippines and South Korea. He carried with him English books to help potential candidates pass CGFNS examinations. "Korean and Philippine nurses are very good. Eventually, we are going to bring every nurse who passes her CGFNS examination," said Cutler. Since 1972, he has recruited 40,000 nurses, mostly from the Philippines, where English is widely spoken.

Florida hospitals, many of which are heavily dependent on foreign nurses, now "have about 2,500 vacancies for registered nurses in 150 hospitals," said Mike Willis, director of human resources for the Florida Hospital Association.

A 1986 U.S. Department of Health and Human Services report shows that in 1990

Shortage



Kyung Ah Park, left, and Jeong Wha Lee check blood types in a Seoul hospital. They are two of the many South Korean nurses who have applied to practice in the U.S.

the supply of registered nurses with bachelor's degrees will be 413,000. At the same time, the demand will be 803,000, said Carol Grimaldi, public relations director for the American Nurses Association based in St. Louis, Mo.

"There has been a 23 percent decline in nursing school enrollment since 1983, said Grimaldi. "We are talking about thousands of people when the U.S. is turning into a health-care focused society—spending more than \$1 billion a day in health care."

According to the American Hospital Association's Division of Nursing, the vacancy rate for registered nurses in hospitals more than doubled between 1985 and 1986, going from 6.3 to 13.7 percent, while enrollments in nursing schools have been decreasing at a rate of 10 percent a year for the past three years. Moreover, as many as 40 percent of all registered nurses may have left the field to pursue other careers. Meanwhile, nursing experts project the decline in nursing school enrollments to worsen through the mid-1990s.

The high 13.7 percent rate reflects a large number of vacancies in positions dealing with acutely ill patients, said Bill Losaw, statistician in the Division of Nursing at the U.S. Public Health Service.

"There are nurses out there, but why they are not working is all speculation—you don't know the real causes," said Losaw.

HHS Secretary Otis Bowen is looking at the nursing shortage issue and is setting up a committee for a conference on the nursing shortage early this year.

The most frequently cited reasons for the nursing shortage are low pay, long hours and the negative image of nursing, as well as the declining enrollment in nursing schools at a time when the aging—who tend to be sicker and require longer care—are the fastest-growing segment of the U.S. population.

Barbara Lumpkin, director of governmental relations for the Florida Nurse Association, said that today's one-on-one care is just "exploding," as nursing shortages are most acute in such specialty areas as gerontology, geriatric centers and high-tech-related intensive-care units. "Right now, we could use 5,000 to 7,000 nurses in Florida. Five years ago, two nurses with support personnel could care for 25 beds; today you need four nurses," Lumpkin said.

Grimaldi said that of the nation's 1.9 million registered and licensed nurses, 1.5 million are active in nursing, a higher participation rate than in the last

20 years. But the demand for registered nurses outside the hospital has grown, with many new opportunities to work in non-traditional, ambulatory care settings, such as day surgery clinics, home care agencies and others competing for the shrinking pool of nurses.

In response to the acute shortage of registered nurses, the American Organization of Nurse Executives, the American Association of Critical-Care Nurses, the American Hospital Association and other advocacy groups have launched a campaign to recruit more young people into nursing.

Others are lobbying for legislative action on the state and federal level.

Foreign graduate nurses will not permanently solve the U.S. nursing shortage, said Lumpkin. They burn out, just as American nurses do. They return home or go on to find other areas of work, like American nurses, and move out of nursing.

With the advent of the women's movement, women today have career choices they did not have 25 years ago. Currently, 97 percent of nurses are women and their starting salaries average \$22,000 a year.

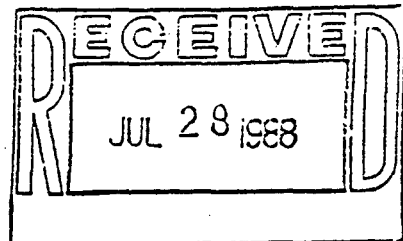
"What these bright young women are saying," said Lumpkin, "is—after 20 years of practice, nurses will be still making \$33,000, whereas engineers, lawyers and women in other professions will triple their salaries." ■

Sue Hong is editor of Ameri-Asia News, a national newspaper for Asian Americans based in Allamonte Springs, Fla.



SECRETARY'S COMMISSION ON NURSING

Interim Report Executive Summary



July 1988

RECEIVED
OCT 26 1990

MONTANA BOARD OF NURSING

4. What are the implications for the future?

Projections for the future are not encouraging. In the short term, the quantity of care provided by the existing pool of RNs will be difficult to increase. Furthermore, in the long term, the Commission believes that the future supply of RNs will not be adequate to meet anticipated demand. There is considerable evidence to suggest that the demand for RNs will continue to increase, but that there will not be a commensurate expansion of supply.

- a) The available evidence suggests that increases in the short-run supply of RNs will be difficult to obtain, given the current conditions of the RN market.
 - o The labor force participation rate of RNs has escalated in recent years and is at an all-time high (nearly 80% in 1984). This employment pattern is not consistent with the supposition that many nurses are available for employment but have not yet been induced to enter the labor market. Changes in the RN labor force participation rate of the magnitude required to fill reported vacancies are unlikely to occur under the existing working conditions and wage structure. Substantial improvements in compensation as well as in working conditions seem necessary.
 - o It may be possible to increase the hours worked by part-time nurses, although such increases alone may not solve the nurse shortage and may not be easy to achieve given the scheduling problems related to nurse employment. Many nurses work part-time due to family commitments and the difficulties associated with shift rotation. Flexible schedules and benefits such as child care would probably be helpful in this case, in addition to wage increases.
 - o Foreign nurses cannot be relied upon as a source for significantly increasing the overall domestic supply of RNs. Expansion of the use of foreign nurses is problematic because of a number of factors: the limited supply of qualified nurses in source countries; U.S. immigration and foreign emigration restrictions; language barriers which potentially affect perceptions of service quality; and state licensure requirements. Beyond these factors, the propriety of drawing nurses from countries which may themselves have serious health care needs is of concern, as is the desirability of relying on foreign sources to solve domestic shortages.

EXHIBIT 7
2/18/91
HB 625

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Barbara Pooker BUDGET _____

ADDRESS 1041 Broadway, Suite G-2 Helena, Mt.

WHOM DO YOU REPRESENT? MNA

SUPPORT _____ OPPOSE - AMEND _____

COMMENTS: OPPOSED FOR FOLLOWING REASONS:

- 1) The Board of Nursing ^(BON) is willing to address this issue through administrative process - see BON motion # 35 2/18/91
- 2) The BON does not currently require an English Proficiency Exam
- 3) Costs ^{to the applicant for the BON} to perform an internal transcript evaluation is anticipated to cost more, be more time consuming and not provide as much to the applicant. (ie no EMS work permit)
- 4) No evidence that the process can be (speed up) in fact may cause further delay until a replacement procedure can be developed or contracted out.
- 5) No information or evidence that there ^{is an} ~~are~~ overwhelming need from Foreign Nurses seeking licensure in Mt.
- 6) Bill does not address Canadian Educated Nurses

The Mt. Nurses Association has no reason or motive to keep well qualified English speaking Canadian Educated Nurses from being processed in an efficient and timely manner. This bill does nothing to enhance or expedite the current process.

MISSOURI NURSES ASSOCIATION

EXHIBIT 8

RECEIVED FEB 19 1991

HB 626

2/18/91

Sunday, February 17, 1991

To: Barbara Booher, MNA Staff

Please present the following testimony to oppose House Bill 626 Committee Hearing on Monday, Feb. 18:

The present "Statutes and Rules Relating to Nursing" provides for licensing of nurses from Canada. The Montana State Board of Nursing should have the authority and responsibility of determining specific licensing requests and this is currently available in the above mentioned Statute.

A shortage of professional nurses in Montana should not panic us to "weaken" our licensing rules. We must not relinquish our standards for quality health care for Montanans by risking the licensure of those that may not be qualified. Canadian nurses might be a resource but schools in Canada are not equal - some might have similar standards to those in Montana but others do not have comparable educational requirements - it is the responsibility of the State Board of Nursing to investigate nursing programs as requests for licensure are received.

To assist with filling nurse vacancies in Montana other resources should be investigated: e.g.; a. encouraging unemployed nurses to consider employment; b. providing salaries comparable with nursing salaries in similar situations, c. encouraging "upper mobility" both in employment and education and d. increasing the numbers of students (nursing) in our current professional nursing educational programs.

Thank you *Milly Gutkoski*
Milly Gutkoski, MN, RNC - nurse educator
304 N. 18
Bozeman, MT 59715
phone 587-3242 or 994-3783

*To Mrs. Booher
& Sec of the Board
to encourage licensing
of nurses from Canada.*

EXHIBIT 9
2/18/91
HB 626

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME TERESA HENRY RN BUDGET _____

ADDRESS 413 25th St. South Great Falls.

WHOM DO YOU REPRESENT? Mont Nurses Assoc.

SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS: The Mont. Nurses' Association opposes HB626. This bill, on first reading, seems like a minor change in the law. In effect, it may change the current process for reviewing the credentials of Canadian educated nurses. The current process consists of credential screening and a screening examination, both given by the Commission on Graduates of Foreign Nursing Schools (CGFNS). This examination has two parts - a basic nursing test and English language proficiency test. CGFNS cannot/will not administer the test partially. The state board of nursing would need to evaluate language proficiency and review school transcripts internally rather than use CGFNS. Credentials and language proficiency are basics for patient safety.

EXHIBIT 10
2/18/91
HB 686

He said the 15% interest would deposit \$17.5 million directly into the general fund and the other portion of the deposits, \$21 million approximately, would go into the state equalization account for public education. The public education account is used to finance the foundation program and if the revenues generated to that account are insufficient, the general fund makes up the difference.

Murdo Campbell, Montana Coal Board, gave testimony in support of this bill. He furnished the committee with a resolution adopted by the Coal Board, attached as Exhibit 2.

Bruce Moerer, Montana School Board Association, gave testimony in support of this bill. He said while we do not think it is the most desirable situation, we are not in the most desirable situation. When we are asked the question where are we going to get this money for the foundation program if we don't use this, we do not have a good answer.

OPPONENTS: Eric Feaver, Montana Education Association, gave testimony in opposition to this bill. Again the Governor has proposed, and the legislature has the opportunity to endorse, a cap on the education trust. Clearly the foundation program needs the money but he does not support a cap on the education trust.

QUESTIONS FROM THE COMMITTEE: Senator Eck asked Senator Van Valkenburg if a pay back provision has been considered and how he would react to that idea.

Senator Van Valkenburg said certainly we want to rebuild but he would need to know the source of funding for the pay back before commenting further.

Tom Crosser said he did not believe any consideration was given to a pay back. He said he did not participate directly in the preparation of this legislation. The cap will discontinue at the end of the biennium and the distribution to the education trust does pick up at that point in time.

Senator Van Valkenburg closed.

CONSIDERATION OF SB 224: Senator Eck, Senate District 40, presented this bill to the committee. She said this bill addresses what is an acceptable method of paying gasoline distributors in the state. She furnished the committee with information concerning evaporation and shrinkage and cost of collection allowances provided by various states for motor fuel tax, attached as Exhibit 3. In 1952 the

distributors were allowed 2% of the six cent tax and all we had at that time was a six cent tax. Since that time the cost of gasoline, of doing business and the amount of tax have all increased. The gasoline distributors are asking for 2% of the total tax instead of 2% of the six cents.

PROPOSERS: Doug Alexander, Montana Petroleum Marketers, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 4.

Steve Visocan, Visocan Petroleum, gave testimony in support of this bill. There are several areas in which he sees a cost associated with the gasoline tax. They buy the fuel and pay the tax at the time the fuel is purchased rather than based on the sale of the fuel. He said we also have a tax on the inventory. There are losses due to evaporation and shrinkage. He furnished the committee with a copy of an invoice showing the gross amount of gallons and net gallons. The net gallons would reflect the loss due to shrinkage. See attached Exhibit 5. Another area is interest on the tax. They have sold a significant volume of fuel, and of \$453,000 sold, \$90,000 of that is tax. His interest cost is about \$10,877. Another area is in collecting the tax and preparing the report. They furnish a good form to work with but it is not an easy task and requires a lot of time. They hire a person 1/2 time on a full time basis to collect data and make sure they are properly paying the state for the tax. It costs them \$4,800 to pay this individual at \$5.00 per hour for this service.

OPPOSERS: Gary Wicks, Director, Montana Department of Highways, gave testimony in opposition to this bill. He said his main concern is the amount we are dealing with here. He referred to the fiscal note and said his numbers are consistent with that. If the bill passed, as written now, we are talking about increasing the amount of money they receive \$386,000 for the fiscal year which would end in 1989. It would go from the current \$546,000 if the current gas tax says at 17 cents a gallon. If the legislature approves the increase that passed the House of three cents a gallon, the shrinkage allowance would go to \$1.2 million. That is about a \$1.7 million deduction from monies that would otherwise go to build Montana highways. He said we have a difficult time getting a fuel tax passed by the legislature and it seems that as soon as we get one passed there are efforts made to take the money away before we get the opportunity

to put it on the board. There will be other bills that will impact the Highway Department. The Highway Department ends up getting fairly less than more people think. He listed where the money goes to, leaving a balance of \$24-25 million. He said that is what is left over for the highway program and that is why \$1.7 million does mean something to the Highway Department.

~~Jim Manion, representing the Montana Automobile Assn., gave testimony in opposition to this bill. He said the concept is not something that they disagree with, perhaps it is slightly inequitable.~~ He does share the same concern that Mr. Wicks expressed, the amount of money that does not go to the highway earmarked account that should come off the top.

QUESTIONS FROM THE COMMITTEE: Senator Bishop asked Steve Visocan what impact this will have on his own business.

Steve Visocan said if the increase goes through he could estimate it would be around \$8,000 to \$10,000.

Senator Mazurek asked Mr. Visocan what the present shrinkage allowance yielded to him.

Steve Visocan said around \$5,000.

Senator Eck asked Norris Nichols to comment on the information she furnished to the committee in Exhibit 3.

~~Norris Nichols~~ said some states don't allow anything for shrinkage and other states do allow something but there is no consistency. Some states allow a percentage and others allow a flat figure. ~~Some states allow a share for the retailer.~~ There are no two states the same.

Senator Mazurek asked Mr. Nichols if they have ever figured out what each percent is worth in a dollar amount to the distributor.

Mr. Nichols said he could get that information.

Senator Eck closed.

FURTHER CONSIDERATION OF SB 200: Senator McCallum appointed Senators Brown, Hirsch, Neuman and Severson to a subcommittee to review this bill. Senator Brown was appointed Chairman.

EXHIBIT 11
2/18/91
HB 686

1-21-88

Les Hirsch called back, we talked about S-224- the shrink bill. He remembers distinctly the back and forth conversation about jobbers transmitting shrink money to the dealers. He is going to get a transcript of the hearing, talk to the Legislative Council, talk with an Interim Legislative Committee and talk to Jerry Devlin to bring this before the Revenue Oversight Committee.

1-21-88

Talked to Dorothy Eck, (sponsor of Senate Bill 224) about the fact that shrink money in almost all cases statewide was not being transmitted to the dealers, as was told to Senate Taxation Committee in the hearing in Helena. She said Doug and Rona Alexander had helped her with the bill, she would call them. She would call me back. She said perhaps a meeting between dealers and jobbers was in order. I said: yes most certainly.

EX-11
2-18-91
HR 686
1-27-88

1-27-88

Joe Merrill called back, we talked about S-224 - the Admin bill, he remembers discussing the bill & with concern on about jobless training - about money to the states. He is going to get a transcript of the hearing, talk to the Legis. Liaison Council, talk with and with legislative committee and talk to Jimmy Lee - him to bring this before the resource amongst committee

called to Dorothy Cole, (repass of Sen. Bill 224) about the fact that Admin money in almost all cases retirement cases not being transmitted to the states, as was told to Sen. Levin committee in the hearing in October. She said Jimmy & Ron Alexander had helped her with the bill she would call them. She would call me back. She said perhaps a meeting between Alex and jobless was in order. I said, go next continuity.

EXHIBIT 12
2/18/91
HB 686

TESTIMONY OF STEVEN C. BAHL

Professor of Law
University of Montana School of Law
Missoula, MT 59812

before the
HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
on February 18, 1991
in support of
House Bill 741
(An Act Generally to Revise Montana Nonprofit Corporate Law)

I am the Chair of the State Bar of Montana Corporate Law Revision Committee. I also serve as a member of the board of two Montana nonprofit organizations: the Missoula Public Library Foundation and my local church, both of which are incorporated under the Montana Nonprofit Corporation statute.

House Bill 741 (An Act Generally To Revise Nonprofit Corporate Law) is a companion bill to House Bill 552 (An Act Generally To Revise the Montana Business Corporation Act). As the State Bar's Committee considered the business corporation law in the fall of 1989, members quickly observed that there are more similarities between business corporations and nonprofit corporations than dissimilarities. Both are incorporated in the same way, both file documents with the secretary of state, both have a governing board and officers, members or shareholders of both generally elect the governing board, both have bylaws, and both have special rules about selling substantially all their assets, merging and dissolution.

The Committee also observed that the nonprofit corporation law in Montana was even less clear and less up to date than the business corporation law. Montana's nonprofit corporation laws have not been substantially updated since 1967. I suspect that while the corporate bar has been vigilant in monitoring the business corporation laws, we have been less vigilant with respect to the nonprofit law. Professor Harry G. Henn of Cornell University Law School was correct when he observed:

Nonprofit organizations have been the neglected stepchildren of modern organization law. The law historically has given nonprofit organizations, like Cinderellas, the hand me downs of their half-siblings, the business organizations."

Henn, "Statutory Trends in the Law of Nonprofit Organization," 66 Cornell Law Review 1103, 1104 (1981).

House Bill 741 gives us the opportunity to correct that problem in Montana.

It is, indeed, increasingly important to provide the nonprofit corporation community with the same unambiguous laws provided to the for-profit corporation community. Forty-five percent of adult Americans act as volunteers for charities, averaging 4.7 hours of contributed time a week. Approximately 11.5 million people (nationally) serve on boards of nonprofit organizations. Nonprofit organizations employ 6% of the work force. Up-to-date, workable nonprofit laws for nonprofit corporations are a must.

The Corporate Law Revision Committee spent 18 months studying this problem. As with its proposed revisions in the Business Corporation Act, the Committee based its proposals largely on the Revised Model Act prepared by the American Bar Association. The Committee recommends the ABA Model Act for three reasons. First, the American Bar Association based its Model on thorough research. The American Bar Association surveyed nonprofit organizations throughout the nation to ascertain what legal problems they faced and how those problems could be solved. The American Bar Association circulated more than one thousand copies of its initial draft to nonprofit organizations and others. After eight years of studies by the nation's top nonprofit organization experts, the ABA proposals were finalized in 1987. Second the initial ABA Model Nonprofit Corporation Act provides the basis for our current Montana law. Updating the Montana law with the ABA revisions only seems appropriate. Third, the ABA has supplemented its Revised Model Act with a volume of Official Comments. These comments are extremely useful when applying the legislation.

Once the Committee decides to base its proposals on the Model Act, it engaged in a careful analysis of the Act. It did not blindly adopt the proposals, but retained important aspects of current Montana law, such as Montana's limits on liability of volunteers and directors. (Section 91 (6))

The Committee published an exposure draft of its proposals in June of 1990. It solicited and received comments from the nonprofit corporation community. Comments were favorable. The Committee's proposals were finalized and circulated in October of 1990.

The legislation is quite lengthy in that it entirely restates the law concerning corporate governance in nonprofit organizations. I wish to highlight several objectives of the Committee; other members of the Committee will speak in more detail on specific sections of the law.

The overriding objectives of the Committee were to improve the law, to clarify the law, and to eliminate unnecessary rigidity in the law.

IMPROVEMENT OF THE LAW

There are three basic types of nonprofit organizations: religious organizations, nonprofit organizations that primarily benefit their members (like a country club or trade association) and nonprofit organizations that primarily benefit the public (like the American Red Cross or a private college) (Section 16(1)). Each of these organizations should be treated differently in the eyes of the law. Religious organizations should largely be free from the scrutiny of the state (Sections 20 and 83). There should be maximum flexibility to corporate government to accommodate their religious hierarchies and beliefs. Nonprofit corporations like country clubs should be governed more like regular corporations. Members should, if permitted by law, be able to transfer their members or have the organization buy them back (Sections 43 and 49). On the other hand, the law should encourage nonprofit corporations,

like the Red Cross, that are chartered for a public purpose, to make sure that they do not operate for the private benefit of their officers and directors.

Montana statutory law currently treats the local church in the same way it treats a country club or a trade association. To fail to distinguish between these nonprofit corporations is to force a square peg into a round hole. To address this problem, courts have frequently fashioned ad hoc and haphazard rules to distinguish between these organizations. These rules are unclear and often unevenly applied. The new legislation sets forth clear rules governing each type of organizations, but generally allow some flexibility for each type of corporation to modify those rules in their charter.

CLARIFICATION OF THE LAW

This bill also clarifies Montana law, just as the Business Organization bill clarified Montana law. Clarity in the law avoids needless litigation and adds to certainty in planning.

These provisions are good examples:

- *Indemnification.* While Montana law, as it now exists, provides substantial protection to officers and directors of nonprofit corporations against liability, the law is largely silent as to when and how a nonprofit corporation may (or must) reimburse its officers and directors for liability they incur when acting for the corporation. The proposal allows nonprofit corporations substantial flexibility in establishing policies in this regard, while at the same time protecting officers and directors (Section 101 through 109).
- *Duty of Loyalty.* Courts carefully scrutinize transactions between nonprofit corporations and their officers and directors for conflicts of interest. The standards, however, are not clearly defined by the courts. As such, the Committee proposes specific conflict of interest rules that balance the need to

balance the need to preserve the public perception that nonprofit corporations are worthy of trust, while at the same time allowing those organizations to deal with directors who might also be officers of financial institutions, landlords or other businesses. Directors who act in good faith and meet the other standard of the proposal are protected (Section 92).

- *Derivative Actions.* The statute is currently silent as to the ability of a member of the corporation to sue the director derivatively (in the name of the corporation) if they stray from the nonprofit purpose or otherwise mismanage the corporation. The bill provides specific standards to limit these actions when the risk of a harassment lawsuit exceeds the public interest in allowing those suits to go forward (Sections 50 through 56).

The law also clarifies the ability of the Attorney General to supervise these nonprofit organizations. Under existing Montana law the Attorney General may sue to dissolve a corporation if it acts in an unauthorized way or it may seek to enjoin a corporation from performing unauthorized acts. The rationale is that the Attorney General represents the interest of the public in insuring that a charitable organization acts to accomplish its charitable purpose. The existing law better defines the ability of the Attorney General to petition a court to intervene in a nonprofit organization (Section 19). Two points should be noted.

(a) The bill limits the Attorney General's power to intervene in religious corporations, for fear of unnecessary interference with the free exercise of religion. (For example, see Sections 20 and 82.) Likewise, the bill limits the obligations of organizations operating primarily for their members to give the Attorney General notice of important corporate action (Sections 106, 124, 131, 136). With these organizations, members who have an economic interest are best suited to monitor the corporation's activities. The Attorney General's greatest power is to petition a court to

stop nonprofit corporations that are organized to benefit the public, from violating its charitable purpose. Examples of fraud and self dealing by charities are too common. This bill will allow the Attorney General to take steps to help stop these abuses. To do so will increase confidence in nonprofit organizations.

(b) Even when the Attorney General may intervene, his power is limited. The Attorney General cannot actually intervene in the affairs of a nonprofit corporation. As a general rule, he can only petition a court to stop actions that violate the charitable purpose (Section 19).

ELIMINATION OF NECESSARY RIGIDITY

Finally, the law allows increased flexibility. It expressly permits many management practices now used by nonprofit organizations. The proposal specifically allows self-perpetuating boards (Section 77), makes it easier to call and hold meetings (Sections 60 through 65), makes it easier to structure an organization with delegates (Section 57), allows more flexibility in methods of choosing directors (Sections 60 through 65, 77), allows directors meetings to be held by phone and generally simplifies corporate governance (Sections 85 through 90).

I should make it clear that the bill applies to nonprofit corporations incorporating only under the general nonprofit statute. It does not address those organizations incorporated under specific sections of the Montana Code that address specific types of nonprofit organizations. As such, it does not address credit unions, cooperative associations, agricultural associations, rural cooperative utilities, cemetery associations and those religious groups under the Religious Corporation Sole statute.

House Bill 741 will make it easier for directors to manage a nonprofit corporation because the law is clear, yet flexible. Adoption of House Bill 741 will provide nonprofit organizations with the same up-to-date law as for profit corporations.

EXECUTIVE SUMMARY

HOUSE BILL 741 STATE BAR OF MONTANA CORPORATE LAW REVISION PROJECT

Steven C. Bahls, Missoula, Chair
Robert Murdo, Helena, Vice Chair
Karla Gray, Butte
Garth Jacobson, Helena
Bruce MacKenzie, Great Falls
Robert G. Michelotti, Jr., Billings
Robert Pyfer, Helena
Jeff Pence, Bozeman
Bob Goodale, Circle

House Bill 741 was drafted by the Corporate Law Revision Committee of the State Bar of Montana. This Executive Summary discusses the drafting process and the material provisions of the bill.

IMPORTANCE OF NONPROFIT CORPORATIONS

The law governing nonprofit organizations has not historically received the attention it deserves. Professor Howard Oleck observes: "American society has consisted, to an extraordinary extent, of voluntary associations of persons and organizations not for profit, but for the public good." H. OLECK, *NONPROFIT ORGANIZATIONS AND ASSOCIATIONS* (1980). Approximately 11.5 million people (nationally) serve on the boards of nonprofit organizations. C.N. WALDO, *A WORKING GUIDE FOR DIRECTORS OF NONPROFIT ORGANIZATIONS* xi (1986). Nonprofit organizations employ seven million workers (6% of the work force in the U.S.), contributing \$228.2 billion to the national economy. Reiss, *The Hidden Economy: The Nonprofit Sector*, *MANAGEMENT REVIEW* 49 (July 1989). In addition, 45 percent of all adult Americans act as volunteers for charities, averaging 4.7 hours of contributed time a week. *Id.* at 50. Up-to-date laws for nonprofit organizations, as such, are a must.

BACKGROUND OF THE PROJECT

On July 7, 1989, Gary Spaeth, President of the State Bar of Montana, appointed a special Corporate Law Revision Committee. The objective of the Committee was "to review Montana's corporation statutes and to propose to the 1991 Legislature necessary and desirable revisions aimed at providing the business community up-to-date and unambiguous laws addressing corporate governance."

The Committee, in accordance with its charge, limited its review to matters of corporate governance. Corporate governance issues are currently addressed in Chapter One of Title 35. For nonprofit corporations, corporate governance issues primarily deal with the relationship between a corporation and its members, directors and officers. In addition, corporate governance issues, to a more limited extent, deal with the relationship between a corporation and state government (particularly the secretary of state) and creditors (particularly upon the dissolution of a corporation).

As such, the Committee did not examine taxation, workers' compensation and other issues outside the scope of corporate governance.

The membership of the Committee was a broad spectrum of attorneys including those in private practice and those employed by government, a nonprofit organization, private industry and academia. Committee members had expertise in all aspects of corporate governance including closely held businesses, publicly held businesses and nonprofit organizations. The Committee members' employers have generously provided the services of the Committee members.

The Committee members have met numerous times since their appointment, reviewing the American Bar Association's Revised Model Business Corporation Act, the Revised Nonprofit Business Corporation Act and legislation from various states. The Committee took into consideration the interests of nonprofit corporation members, directors and management, as well as the interests of the State of Montana and its citizens.

HISTORY OF THE ABA MODEL ACTS

The Committee's proposals are based largely on the Revised Model Nonprofit Corporation Act (1987) ("RMNCA") prepared by the American Bar Association. The current Montana Nonprofit Corporation Act is based on earlier versions of the ABA Model Act.

The RMNCA is the first complete revision of the ABA's Nonprofit Corporation Act since 1964. The drafters of the RMNCA used, as their starting point, the California Nonprofit Corporation Act. The ABA's Subcommittee on Model Nonprofit Corporation Law, composed of leading experts in the area of nonprofit corporations, circulated over one thousand copies of their exposure draft to nonprofit organizations, the IRA, academics, accountants and others. The ABA proposals were finalized and adopted in whole or in part by several jurisdictions. Other states are considering the law. See Hone, *Aristotle and Lyndon Baines Johnson: Thirteen Ways of Looking at Blackbirds and Nonprofit Corporations -- The American Bar Association's Revised Model Nonprofit Corporation Act*, 39 CASE W.R.L. REV. 751 (1988). See generally Moody, *The Who, What and How of the Revised Model Nonprofit Corporation Act*, 16 N. KENT L. REV. 251 (1988).

The Revised Model Nonprofit Corporation Act is generally parallel to the Revised Model Business Corporation Act (House Bill 552).

Because the Bar recommends staying with the ABA Model Acts, existing forms of articles of incorporation now on file need not be amended. The basic principles applicable to corporations remain largely unchanged.

ADVANTAGES OF THE PROPOSED REVISIONS TO THE MONTANA NONPROFIT CORPORATION ACT

The Committee's proposals for the Montana Nonprofit Corporation Act are parallel to its proposals for the Montana Business Corporation Act, except where policy reasons indicate a different treatment. The objectives of the Committee, when revising the Montana Nonprofit Corporation Act, were (a) to clarify, (b) to modernize, and (c) to simplify the law relating to governance of these organizations.

Because of the dearth of court decisions regarding nonprofit corporations, questions that are not addressed in the statute create substantial uncertainty for nonprofit corporations and those who represent them. As such, the Committee proposals *clarify* the following issues that would otherwise be left to the courts:

a) *Increased Flexibility.* The proposal specifically allows self-perpetuating boards, simplifies filing documents with the secretary of state, makes it easier to call and hold meetings, makes it easier to structure an organization with delegates, allows more flexibility in methods of choosing directors, allows directors meetings to be held by phone and generally simplifies corporate governance.

b) *Indemnification.* While Montana law, as it now exists, provides substantial protection to officers and directors of nonprofit corporations against liability, the law is largely silent as to when and how a nonprofit corporation may (or must) reimburse its officers and directors for liability they incur when acting for the corporation. The proposal allows nonprofit corporations substantial flexibility in establishing policies in this regard, while at the same time protecting officers and directors. The substantial protection against liability the existing law affords officers and directors is preserved.

c) *Duty of Loyalty.* Courts carefully scrutinize transactions between nonprofit corporations and their officers and directors for conflicts of interest. The standards, however, are not clearly defined by the courts. As such, the Committee proposes specific conflict of interest rules that balance the need to balance the need to preserve the public perception that nonprofit corporations are worthy of trust, while at the same time allowing those organizations to deal with directors who might also be officers of financial institutions, landlords or other businesses. Directors who act in good faith and meet the other standard of the proposal are protected.

d) *Derivative Actions.* The statute is currently silent as to the ability of a member of the corporation to sue the director derivatively (in the name of the corporation) if they stray from the nonprofit purpose or otherwise mismanage the corporation. The Proposal provides specific standards to limit these actions when the risk of a harassment lawsuit exceeds the public interest in allowing those suits to go forward.

e) *Rights of Members.* The proposal clarifies the rights of members of *mutual benefit associations*, if permitted by articles of incorporation or bylaws, to transfer memberships (for consideration) and receive distributions when a corporation dissolves. Members of religious corporations and public benefit corporations do not have this privilege.

f) *Dissolution.* The abilities of creditors and injured plaintiffs to recover against the assets of a dissolved corporation is not clear under existing law. In some cases, plaintiffs may be left without a remedy. The proposal balances the rights of creditors of the dissolved corporation with the necessity for the dissolving organization to wind up its affairs.

g) *Housekeeping*. The Committee's proposals, throughout, clarify ambiguities in existing law, eliminate unnecessarily technical requirements and provide for maximum flexibility in structuring a corporation. For example, the law authorizes the use of delegates. It also clarifies the circumstances under which a membership may be purchased.

h) *Terminations of Membership*. Whether a member may be expelled or terminated is now left to the courts. The proposal contains specific provisions as to how a nonprofit corporation must use the process to expel a member without fear of liability.

In addition, the proposals adopt a growing trend in the law treating mutual benefit corporations, religious organizations and public benefit corporations differently. To fail to distinguish this is to force a square peg into a round hole. Under the proposal, each newly formed nonprofit corporation must choose between designation as a public benefit, mutual benefit or religious corporation. Existing nonprofit corporations must choose a designation before 1995. The Committee's proposal recognizes the difference between these different types of nonprofit corporations:

a) *Public Benefit Corporations* are those corporations operating for public or charitable purposes. As such, members may not sell their interest or receive distributions from the organizations. Because members of public benefit corporations have little economic interest in their corporations, they usually do not carefully monitor activities to prevent corporate abuse. The Committee's proposal addresses this problem by increasing the statutory authority of the Attorney General to monitor these organizations.

b) *Mutual Benefit Corporations* are organizations such as trade associations, social clubs, and fraternal organizations designed to benefit their members. Members, as such, are given broader voting rights. Members, while not entitled to receive distributions while the organization is operating, will be entitled to sell their memberships and receive distributions when the organization dissolves.

c) *Religious Corporations* are treated under the proposal in a way similar to public benefit corporations. For constitutional and public policy reasons, however, the proposal allows more flexibility in the governance of these organizations. Similarly, the power of the Attorney General to oversee a religious corporation is limited.

Self designation by nonprofit corporations has the advantage of eliminating the uncertainty of courts making an inappropriate designation. Courts, when deciding such issues as the property rights of members, of course, are already forced to categorize nonprofit organizations when deciding such issues as the property rights of members. H. OLECK, *NONPROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS* § 266 (1980).

Finally, just as the RMBCA eliminates unnecessary complexity in the laws governing business corporations, the RMNCA eliminates unnecessary complexity in the laws governing nonprofit corporations.

EXHIBIT 13
2/18/91
HB 741

Statement on HB 741

Mr. Chairman, Members of the Committee:

My name is Adam McLane. I live in Helena at 621 3rd Street. I am testifying this morning as an individual. But for your information I am a Certified Public Accountant, I have worked for nonprofit organizations for the past twenty years, I have served on nonprofit boards, and I have been a consultant to a variety of nonprofits on management matters, including incorporating and obtaining a tax-exempt status.

I am speaking as a proponent of HB 741, but the truth is that it is difficult to know whether to support or oppose this legislation.

The bill, as you know, completely rewrites the Montana Nonprofit Corporation Act. In my opinion, it is not clear that the Act needs to be rewritten. Few persuasive arguments have been advanced by the previous proponents to establish that there is a need to change the existing version of the Act. I believe that the existing law has, in fact, worked reasonably well, and is relatively easy to understand.

A definite argument against any change relates to the length and complexity of this bill. Besides the burden that is placed on this Committee and the Legislature by a bill of this length, it also means added work for all the nonprofit corporations it applies to (which must number at least a thousand). If this bill is enacted into law, at a minimum each existing nonprofit will need to obtain a copy of the new law, and read it carefully in its entirety (no small matter). In addition, if this bill passes, in my opinion many of these nonprofits will conclude they must amend both their articles of incorporation and their by-laws. I believe this will be necessary because a number of the provisions of this bill set specific standards for such things as meetings and voting, and other procedural requirements, that will not correspond to the current practices of existing organizations. It is not that either this bill, or the organizations' current practices, are better; they are simply different. The additional work and expense involved will not help any of these nonprofit organizations further their exempt purposes; it will just be "busy" work -- which none of them need.

If, however, this Committee believes that a rewritten Montana Nonprofit Corporation Act is needed at this time, I have a number of changes to suggest in HB 741 as drafted.

1. In contrast to the current Nonprofit Corporation Act, nowhere in this new version is the word "nonprofit," or the pair of words "nonprofit corporation," defined. I believe this is a serious omission because it leaves undefined the type of corporation to which the Act applies. It theoretically allows a for-profit corporation to incorporate under this Act.

EXHIBIT 14
HB 741
2/18/91

Amendments to House Bill No. 741
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 18, 1991

1. Page 8, line 1.
Strike: "shareholder's"
Insert: "member's"
2. Page 8, line 2.
Strike: "shareholders"
Insert: "members"
3. Page 162, lines 12 and 17.
Following: "April"
Strike: "1"
Insert: "15"

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE Feb. 18, 1991 ROLL CALL VOTE BILL NO. HB 350 NUMBER 1

MOTION: To Pass HB 350 as Amended

NAME	AYE	NO
REP. JOE BARNETT		✓
REP. STEVE BENEDICT		✓
REP. BRENT CROMLEY		✓
REP. TIM DOWELL	✓	
REP. ALVIN ELLIS, JR.		✓
REP. STELLA JEAN HANSEN	✓	
REP. H.S. "SONNY" HANSON		✓
REP. TOM KILPATRICK	✓	
REP. DICK KNOX		✓
REP. DON LARSON	✓	
REP. SCOTT MCCULLOCH	✓	
REP. BOB PAVLOVICH	✓	
REP. JOHN SCOTT	✓	
REP. DON STEPPLER	✓	
REP. ROLPH TUNBY		✓
REP. NORM WALLIN		✓
REP. SHEILA RICE, VICE-CHAIR	✓	
REP. BOB BACHINI, CHAIRMAN		✓
TOTAL	9	9

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Econ Dev.

COMMITTEE

BILL NO.

HB625

DATE Feb. 18, 1991

SPONSOR(S) Rep. Linda Nelson

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Beverly Gibson ^{Itelena}	MT. Assoc. of Counties	✓	
Steve Browning	MT Hospital Assn	✓	
Jay Pottegger	Teton Medical Center	✓	
Katharine Donnelley	Montana Hospital Assn.	✓	
Tom Pluz	MT Hospital Assoc	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 626
DATE Feb. 18, 1991 SPONSOR(S) Rep. Linda Nelson
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
STEVE MELOY	Commerce Information		
Barbara Looher	Mt. Nurses Assoc.		✓
Steve Browning	MT Hosp Assoc.	✓	
Jay Petteger	Teton Medical Center	✓	
Tom Ahner	Mt Hospitals Assoc	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Econ Dev.

COMMITTEE

BILL NO. H B 686

DATE Feb. 18, 1991

SPONSOR(S) Rep. Tom Kilpatrick

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Steve Yiserman	WAMA		✓
JOHN TAGGART	ATOM	✓	
Rox LeLand	ATOM	✓	

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Econ Dev. COMMITTEE BILL NO. HB 741
 DATE Feb. 18, 1991 SPONSOR(S) Rep. B. Cromley

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Grant Jacobson	Sec. of State	✓	
Roger Tippy	self	✓	
Bob Murdo	State Bar Corporation Committee	✓	
Jock Michelotti - Blys	✓ ✓	✓	
Steven C Bahls	State Bar Corporation Committee	✓	
adam mcLane	self	✓	
Bob Pyper	State Bar Corporation Revision Comm.	✓	
Bill Leary	MISAE - Self -	✓	
WARD STANFORD	self	✓	

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