

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 17, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: Senator Hager, Senator Christiaens, Senator Mesaros

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: HB 371, HB 383, HB 449
Executive Action: HB 314, HB 545

HEARING ON HB 371

Opening Statement by Sponsor:

Representative Nelson, House District 19, stated the Board of Public Accountants (BPA) asked her to bring HB 371 before the legislature. She stated the format of the Uniform Certified Public Accountant (CPA's) Examination is going to change in May of 1994. She stated HB 371 would provide for the continual licensure of Licensed Public Accountant's (LPA's) under the new

exam format. She stated the exam will cover the same materials but will be under a revised testing. HB 371 would simply codify the changes.

Proponents' Testimony:

Shirley Warehime, Chairperson, Board of Public Accountants, read from prepared testimony in support of HB 371 (Exhibit #1).

Colleen Patton, Montana Society of Public Accountants, stated her support of HB 371.

Helen Taffs, Montana Society of Certified Public Accountants stated her support of HB 371.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Brenden asked Ms. Warehime if Gary Nelson was on the Board and if he supported HB 371. Ms. Warehime answered in the affirmative to both parts of the questions.

Senator Klampe asked Ms. Warehime if HB 371 would shorten the waiting period for exam results. Ms. Warehime stated HB 371 may change the waiting period, but that was not the purpose of HB 371. She stated there was no information available on the point. Brenda Saint Claire, Administrator, Board of Public Accountants stated the changes taking place were to supply more multiple choice and objective type of questions on the test. He stated the release date of exam scores may be moved up because the correction would be easier due to fewer essay questions.

Closing by Sponsor:

Representative Nelson closed on HB 371. She asked Senator Gage to carry HB 371.

HEARING ON HB 449

Opening Statement by Sponsor:

Representative Vivian Brooke, House District 56, stated HB 449 would define "Farmers Market" and list the products which can be sold at farmers markets in the state.

Proponents' Testimony:

William Morrison stated he was in favor of HB 449. He stated the farmers were asking for no money from the state and would not give the state any money, either. He stated HB 449 would clarify the position of farmers markets in state law. Mr. Morrison stated HB 449 would define the items which can be sold at farmers markets and would also remove a perceived need for licenses for market vendors. He stated the Missoula County Health Department interpreted the present regulations to mean vendors at farmers markets are commercial establishments. He stated people selling honey were specifically targeted. He stated the Department also required a \$60 fee for the operation of a farmers market.

Shirley Morrison stated she supported HB 449 because it was necessary to define the status of farmer's markets.

Leo Giacometto, Department of Agriculture, stated his support of HB 449.

Opponents' Testimony:

Mitzi Schwab, Food and Consumer Safety Bureau, read from prepared testimony in opposition to HB 449 (Exhibit #2). She also supplied proposed amendments (attached to Exhibit #2).

Questions From Committee Members and Responses:

Senator Gage asked Ms. Schwab if there had been any problems with farmer's markets. Ms. Schwab stated there had been no specific complaints, except from local health departments. She stated the problems arise when a person is selling processed foods such as pies.

Senator Gage asked Mr. Morrison if he would object to an amendment which would state only raw and unprocessed foods may be sold at farmers markets. Mr. Morrison stated he had no objections.

Senator Klampe asked Ms. Schwab if the drying of foods is considered the processing of foods. Ms. Schwab stated the drying of foods is, by technicality, a processing of foods. She stated dried foods are usually not addressed in problem situations.

Closing by Sponsor:

Representative Brooke closed on HB 449.

Opening Statement by Sponsor:

Representative Ray Brandewie, House District 49, stated HB 383 was on behalf of the Board of Realtors. He stated HB 383 would do four things:

1. HB 383 would provide for the creation of a real estate education council which would monitor real estate education programs.
2. HB 383 would provide for payment and expenses of the council from the recovery account.
3. HB 383 would change the specifications for the grounds for denial of licenses to applicants.
4. HB 383 would establish limited sanctions for disciplining licensees.

Representative Brandewie supplied the Committee with copies of proposed amendments (Exhibit #3).

Proponents' Testimony:

Grace Berger, Executive Secretary, Board of Realty, read from prepared testimony in support of HB 383 (Exhibit #4).

Steve Mandeville, Legislative Chairman, Montana Association of Realtors, stated his support of HB 383. He stated there is a problem because the Board does not have the authority to spend money for education which they have been mandated to spend.

Greg VanHorssen, Income Property Managers Association and Montana Landlord's Association, stated he was in support of HB 383.

Tom Hopgood, Montana Association of Realtors stated he was in support of HB 383.

Opponents' Testimony:

Carol McCelwain, Broker, Owner of Homestead Real Estate, reviewed a letter from the Butte Board of Realtors (Exhibit #5). She stated she personally opposed HB 383, also. She stated the spending of \$35,000 for the formation of a council and further bureaucracy was unnecessary. She stated she is not opposed to continuing education for the realtors. She stated there is currently \$284,000 in the recovery fund, which is \$184,000 above what is required to be in the fund. She stated the "people just want to get at our money" and stated, "if there's too much money in [the fund], return it to us."

Kathy James, Homestead Real Estate, stated she opposed HB 383.

Dory Schwinden, Roosevelt County, House District 20, stated he was appearing in opposition to HB 383 on behalf of one of his constituents, Dorothy Cody. Mr. Schwinden stated Ms. Cody felt the council was not necessary and the same thing could be accomplished by hiring a full time employee.

Senator Vaughn, Senate District 1, stated she was opposed to HB 383 and was representing the realtors in her district.

Questions From Committee Members and Responses:

Senator Lynch asked Ms. Bergen if there were problems with the current continuing education for realtors. Ms. Bergen stated there were problems with the continuing education program. She stated half of the licensees in Montana are not members of the Association and do not have readily accessible education programs. She stated there are two licensees on the Board who feel HB 383 is necessary to implement the proper continuing education courses.

Senator Kennedy asked Ms. Bergen why non-members of the association could not acquire continuing education on their own. Ms. Bergen stated the problem occurs when non-association courses are taken and they do not help the realtors at all.

Senator Rea asked Ms. Bergen who would be administering the test. Ms. Bergen stated the examination does not cover a certain topic. She stated if a course was to be taken through correspondence, then an examination would have to accompany the course certificate to show the realtor did know the information.

Senator Wilson asked Mr. Mandeville what the cost was to be a member of the Association. Mr. Mandeville stated the total fees were around \$250 and there were additional charges for the continuing education courses.

Senator Gage asked Bob Verdon, Legal Council, Board of Realty how a person is determined to have failed to demonstrate fiduciary responsibilities. Mr. Verdon stated if a person applies and receives a "bad" credit report, it would be a reason for the Board to believe the person fails to demonstrate fiduciary responsibilities.

Closing by Sponsor:

Representative Brandewie closed on HB 383 stating the continuing education is necessary to keep up with a changing profession. He stated anyone licensed to sell real estate must be a licensed professional real estate salesperson or a broker. He stated the Realtors Association is a professional organization. Representative Brandewie stated a real estate person is licensed but does not belong to the organization.

EXECUTIVE ACTION ON HB 545

Motion/Vote:

Senator Kennedy moved HB 545 BE AMENDED (Exhibit #6). The motion carried UNANIMOUSLY.

Motion/Vote:

Senator Kennedy moved HB 545 BE CONCURRED IN AS AMENDED. The motion carried UNANIMOUSLY.

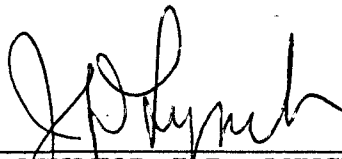
EXECUTIVE ACTION ON HB 314

Motion/Vote:

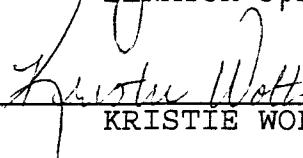
Senator Kennedy moved HB 314 BE CONCURRED IN. The motion carried UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:15 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business and Industry DATE 3/17/93

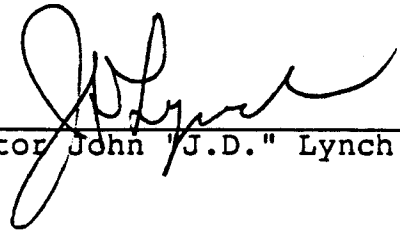
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens			✓
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager			✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros			✓
Senator Rea	✓		
Senator Bruski-Maus	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 17, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 545 (first reading copy -- blue), respectfully report that House Bill No. 545 be amended as follows and as so amended be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.

Following: "SECTIONS"

Insert: "15-16-601,"

2. Title, line 15.

Following: "SECTIONS"

Insert: "15-1-505,"

Following: "33-17-206"

Insert: ", "

3. Page 61, following line 18.

Insert: "Section 35. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded. (1) (a) A taxpayer is entitled to a refund on:

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5), the county treasurer may, by order of the board of county commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been made to the state treasurer as provided in 15-1-504 if the board of county commissioners determines that a portion of the money paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county treasurer to refund to the taxpayer the portion of the taxes, interest, penalties, and costs paid to the state treasurer.

~~(c) The county clerk and recorder shall, at the time for filing the report required by 15-1-505, certify to the state auditor, in the form as the state auditor may prescribe, the amounts refunded. In the next settlement of the county treasurer~~

~~with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts refunded.~~

(3) When a part of the taxes, interest, penalties, or costs referred to in this section were levied in behalf of a school district or municipal or other public corporation and collected by the county treasurer, the taxes must be refunded upon the order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest, penalties, or costs under this section may not be made except upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the

description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded.""

Renumber: subsequent sections

4. Page 61, line 19.

Following: "Sections"

Insert: "15-1-505,"

Following: "33-17-206"

Insert: ", "

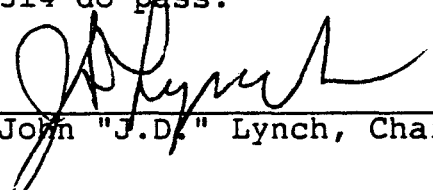
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 17, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 314 (first reading copy -- white), respectfully report that Senate Bill No. 314 do pass.

Signed: 

Senator John "J.D." Lynch, Chair

BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE



MARC RACICOT, GOVERNOR

111 N. JACKSON, LOWER LEVEL

STATE OF MONTANA

(406) 444-3739

PO BOX 200513
HELENA, MONTANA 59620-0513

SENATE BUSINESS & INDUSTRY

February 9, 1993

EXHIBIT NO. 1

DATE 3/17/93

BILL NO. HB 371

To: Senate Business & Industry Committee

From: Shirley J. Warehime, CPA
Chairperson, Board of Public Accountants

RE: House Bill 371

Chairman J. D. Lynch and Committee Members

On behalf of the Board of Public Accountants, I would like to express our support for House Bill 371.

Under current law, an individual seeking to be a Certified Public Accountant (CPA) must as a condition for licensure pass all parts of the Uniform CPA Examination. Those seeking to be a Licensed Public Accountant (LPA) must pass specific parts of the Uniform CPA Examination, specifically Accounting Practice and Auditing or Accounting Theory.

Beginning with the May 1994 Uniform CPA Examination, the structure and format will be changed from a two and one-half day, four part examination with one part having two sections to a two day, four part examination. The subject matter covered by the examination will remain unchanged, however, the material covered in specific sections and names will change.

The purpose of House Bill 371 is to provide for the continual licensure of licensed public accountants under the new exam format. It is proposed that the Board provide through administrative rules the specific sections to be passed. The Statement of Intent provides that those sections shall be Auditing (AUDIT), Financial Accounting and Reporting - Business Enterprises (FARE), and one of the remaining two sections or be the holder of a U.S. Treasury Card.

The Board believes that these proposed revisions test the body of knowledge for which public accountants are licensed and have the support of the societies of the regulated professions.

CERTIFICATION AND LICENSURE REQUIREMENTS

	<u>EXAMINATION THROUGH 11/93</u>	<u>EXAMINATION COMMENCING 5/94 - PROPOSED</u>
CPA:	All Parts	All Parts
LPA:	Accounting Practice (Two sections); and Auditing or Theory	Financial Accounting & Reporting and Auditing; and One other part (Accounting and Reporting or Business Law)

All other requirements for LPA or CPA licensure are the same for each profession, i.e. educational qualifications, good moral character, experience requirements.

SECTION A - DESCRIPTION OF THE EXAMINATION

Names and Scope of Examination Sections

Names

The Examination consists of four separately scored sections, whose names (and short names in parentheses) are as follows:

- Business Law & Professional Responsibilities (LPR).
- Auditing (AUDIT).
- Accounting & Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations (ARE).
- Financial Accounting & Reporting - Business Enterprises (FARE).

Short Names

Short names shown above in parentheses will be used for communicating Examination Advisory Grades and other grading information to Boards of Accountancy.

Scope - Technical

Business Law & Professional Responsibilities will test candidates' knowledge of the legal implications of business transactions, particularly as related to accounting and auditing, and candidates' knowledge of the CPA's professional responsibilities to the public and the profession. *Auditing* will test candidates' knowledge of generally accepted auditing standards and procedures, and related topics. *Accounting & Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations* will test candidates' knowledge of federal taxation, managerial accounting, and accounting for governmental and not-for-profit organizations. *Financial Accounting & Reporting - Business Enterprises* will test candidates' knowledge of generally accepted accounting principles for business enterprises. The complete content specification outlines are contained in Appendix A of *Information for CPA Candidates* (Section C).

Scope - Writing Skills

Answers to selected essay questions will be used to assess candidates' writing skills. Writing skills will be assessed on selected essay responses in the Business Law & Professional Responsibilities, Auditing, and Financial Accounting & Reporting sections. Five percent of the points available on each of these sections will be allocated to writing skills. An explanation of effective writing skills is presented on pages 7 through 8 of *Information for CPA Candidates* (Section C).

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

March 17, 1993

Testimony on House Bill 449
Senate Business and Industry Committee

Chairman Lynch and Committee Members:

For the record, my name is Mitzi Schwab, Chief, Food and Consumer Safety Bureau (FCSB) of the Montana Department of Health and Environmental Sciences (DHES). The DHES is in opposition of HB 449 on the basis that current application of 50-50, MCA is correct and applies food safety requirements fairly.

A bill to specifically exempt farmer's markets from food establishment licensure is not needed. DHES and local health departments which jointly perform the duties required under 50-50, MCA do not license facilities which are defined as "farmer's market" on p. 2, lines 2 - 5 when the products sold are clearly the responsibility of the Departments of Agriculture or Livestock.

Regardless of licensure status, food products must meet minimum health and safety standards when offered for consumption. Without licensing, the income to support regulation of food processors would diminish without removing DHES or local health agency responsibilities.

Should the committee decide this bill is necessary, DHES requests amendments to HB 449.

DHES requests the deletion of the phrase "The term does not include a farmer's market." from the definition of "commercial establishment in Section 1 on p. 1, lines 18 and 19. The definition of "commercial" was added in 1991 to as an interpretation aid for determining whether an establishment met food establishment definitions. The intent of the definition of "commercial" was not to either include or exempt any type of establishment by general class.

DHES also requests amending the definition of "raw and unprocessed farm products" in Section 1, p. 4 by deleting "except for drying" and by deleting ",bottled or" (lines 8 and 10). Through these processes, a food may become adulterated, hazardous to health and subject to public health regulation. DHES recognizes honey in the comb as a raw agricultural product.

DHES also requests the committee to add the following provision on p. 5, line 8 following market: "unless the gardener, farm owner, or farm operator is also selling prepared or processed food products." This would clarify that a gardener, farm owner or operator who engages in selling prepared or processed food products, in addition to raw food, is not exempt from licensure.

DHES requests the committee to consider a "do not pass" for HB 449. Should the committee decide HB 449 is necessary, DHES requests the committee to pass HB 449 "as amended" with the attached proposed amendments. DHES thanks this committee for the courtesy of offering comment on this bill.

Sincerely,

Mitzi Schwab, Chief
Food and Consumer Safety Bureau
Telephone: 444-2408

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3/17/93

BILL NO. HB 449

AMENDMENTS TO HOUSE BILL 449
(third reading)

PROPOSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1. Page 1, lines 18 and 19.

Strike: "The" on line 18 through "market" on line 19.

2. Page 4, line 8.

Following: "preserved"

Strike: ", except for drying"

3. Page 4, line 10.

Following : "honey"

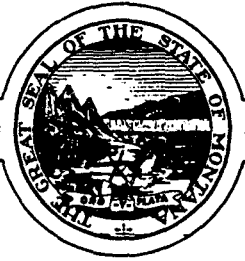
Strike: ", bottled or"

4. Page 5, line 8.

Following: "market"

Insert: "unless the gardener, farm owner, or farm operator is also selling prepared or processed food products."

DEPARTMENT OF COMMERCE
PUBLIC SAFETY DIVISION



STAN STEPHENS, GOVERNOR

111 N. JACKSON

STATE OF MONTANA

HELENA, MONTANA 59620-0407

PROPOSED AMENDMENTS TO HOUSE BILL 383

1. Page 2, line 19.

Following: "licensees."

Insert: "The board may require examination of any licensee seeking continuing education credit for courses other than seminars the licensee attended in person or in which the licensee was a participant via a satellite or fiber-optic link-up or alternate methods that course completion is verified."

2. Page 7, line 9.

Strike: "\$5,000"

Insert: "\$2,500"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 3/17/93

BILL NO. HB 383

HOUSE BILL 383 HAS SEVERAL PARTS TO IT THAT MUST BE ADDRESSED INDIVIDUALLY. SECTION ONE OF THE BILL ALLOWS THE BOARD TO PROVIDE QUALITY EDUCATION PROGRAMS TO CURRENT LICENSEES AND LICENSE APPLICANTS. IT ALLOWS FOR THE CONTINUED TRAINING OF STAFF INVESTIGATORS, LEGAL COUNSEL, ADMINISTRATORS AND BOARD MEMBERS. IT ALLOWS THE BOARD TO CONTINUE WITH THE PRINTING AND DISTRIBUTION OF THE NEWSLETTER ON A REGULAR BASIS. IT CREATES A COUNCIL OF EXPERTS TO WORK WITH THE BOARD TO ACCOMPLISH THE ABOVE MENTIONED GOALS.

UNDER THE CURRENT STATUTE, NO EXAMINATION IS ALLOWED FOR ANY CONTINUING EDUCATION COURSE. THE BOARD IS CURRENTLY IN VIOLATION TO REQUIRE SOME EVIDENCE OF COMPLETING A CORRESPONDENCE OR VIDEO COURSE. THE BOARD OF REALTY REGULATION HAS NO DESIRE TO REQUIRE EACH LICENSEE TO PASS AN EXAMINATION PRIOR TO RENEWAL EACH YEAR. WHAT THEY ARE ATTEMPTING IS TO ENSURE THAT ANY NON-TRADITIONAL EDUCATIONAL OFFERING IS SUBSTANTIATED JUST AS ACTUAL CLASSROOM MONITORING IS REQUIRED FOR TRADITIONAL EDUCATION CREDIT.

THE ORIGINAL REAL ESTATE RECOVER ACCOUNT LEGISLATION PASSED IN 1985, DIRECTED THE BOARD TO ESTABLISH A RECOVERY FUND, ESTABLISHED A MINIMUM FUND BALANCE, AUTHORIZED THE ESTABLISHMENT AND COLLECTION OF FEES, AND PAY OUTSTANDING JUDGEMENTS THAT MEET THE LEGISLATIVELY ESTABLISHED REQUIREMENTS. THE LAW ALSO ALLOWS THE BOARD THE DISCRETION TO TRANSFER ANY EXCESS MONEY TO THE STATE SPECIAL REVENUE FUND FOR EDUCATIONAL PROGRAMS AND CONTINUING EDUCATION. SEVERAL YEARS AGO, THE BOARD ATTEMPTED TO SPEND SOME OF THAT EXCESS REVENUE, ONLY TO DISCOVER THAT APPROPRIATION DID NOT ACCOMPANY THE CASH.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 3/17

BILL NO. HB 383

THE BOARD IS ASKING FOR AUTHORIZATION TO SPEND FUNDS CURRENTLY COLLECTED AND DEPOSITED IN THE RECOVERY ACCOUNT FUND. EACH NEW LICENSEE PAYS \$35.00 EARMARKED FOR THIS FUND AND GETS NO EDUCATIONAL BENEFIT FROM THE PROGRAM. CURRENTLY THE BALANCE OF THAT ACCOUNT IS IN EXCESS OF \$280,000. THE STATUTORY BALANCE OF THIS ACCOUNT IS SET AT \$100,000.

THE BOARD HAS ATTEMPTED TO IMPLEMENT AN EDUCATION OUTREACH PROGRAM DESIGNED TO OFFER QUALITY, TIMELY EDUCATION TO THOSE IN AREAS WHERE EDUCATION IS NOT READILY AVAILABLE AND TO THE HALF OF THE LICENSING BODY THAT DOES NOT HAVE EDUCATION PROGRAMS READILY AVAILABLE TO THEM AS AN ASSOCIATION MEMBER. UNDER THE CURRENT PROGRAM, THE BOARD IS MANDATED TO PRODUCE A LIMITED NUMBER OF OFFERINGS WITH A VENDOR WHO HAS THE RESOURCES TO ADMINISTER THE ENTIRE PROGRAM BECAUSE THE BOARD DOES NOT HAVE THE AUTHORITY TO COVER SUCH COSTS. CURRENTLY FEES ARE CHARGED TO COVER A PORTION OF THE COST OF THESE PROGRAMS. THAT MONEY IS COLLECTED AND SPENT BY THE VENDOR, WITH THE BOARD MAKING UP ANY ADDITIONAL COSTS. THIS PROGRAM HAS BEEN VERY WELL RECEIVED, BUT LIMITS THE BOARD TO COURSE CONTENT AND RESOURCES OF THE VENDOR.

THE NEWSLETTER IS A SOURCE OF INDUSTRY AND REGULATORY INFORMATION OFFERED TO ALL LICENSEES. IT IS DESIGNED TO INFORM LICENSEES OF NEW REGULATORY ISSUES THAT ARE IN EFFECT, ANSWERS GENERAL ADMINISTRATIVE QUESTIONS AND KEEPS THE LICENSEES INFORMED OF BOARD ACTIVITIES. BOARD MEMBERS AND STAFF ALIKE HAVE RECEIVED A NUMBER OF FAVORABLE COMMENTS ON THE FORMAT AND CONTENT OF THE NEWSLETTER.

THE CREATION OF AN EDUCATION COUNCIL WOULD ALLOW THE BOARD TO

USE THE EXPERTISE OF EDUCATORS AND LICENSEES ACROSS THE STATE WHO ARE INTERESTED IN ASSISTING THE BOARD IN THE DEVELOPMENT OF QUALITY PRE-LICENSURE AND CONTINUING EDUCATION. THIS COUNCIL WOULD ANSWER TO THE BOARD AND BE LIMITED IN ITS DECISION MAKING AUTHORITY. THIS BILL DOES NOT MANDATE THE EXISTENCE OF A COUNCIL, BUT DOES PROVIDE A MECHANISM TO CREATE AND COMPENSATION SUCH A BODY. WISE SPENDING OF EDUCATION DOLLARS WILL GREATLY OUT-WEIGH THE COST OF AN EDUCATION COUNCIL. THE BOARD WOULD USE THE EXPERTISE OF LICENSEES AND EDUCATORS FROM ACROSS THE STATE TO IDENTIFY AND DEVELOP CURRICULUM FOR BOTH PRELICENSING AND CONTINUING EDUCATION TO ADDRESS CURRENT ISSUES. WITH ALL OF THE OTHER DUTIES PLACED ON THE BOARD, COURSE DEVELOPMENT DOES NOT GET THE ATTENTION IT DESERVES.

TODAY, 30 STATES EMPLOY A FULL TIME EDUCATION DIRECTOR TO ASSIST IN IMPLEMENTING THEIR EDUCATION PROGRAMS. 22 STATES HAVE SOME FORM OF AN EDUCATION COUNCIL. OF THOSE 22 STATES, 15 HAVE BOTH A FULL TIME EDUCATION DIRECTOR AND AN EDUCATION COUNCIL, AND THOSE NUMBERS ARE RISING. STATES RECOGNIZE THE BENEFIT TO LICENSEES AND CONSUMERS IN IDENTIFYING STRATEGY AND FOLLOWING THROUGH WITH A COMPREHENSIVE, MANAGED EDUCATION PLAN.

THE BILL WOULD ALLOW CONTINUING EDUCATION FUNDS TO TRAIN ITS STAFF OF INVESTIGATORS, LEGAL COUNSEL AND ADMINISTRATOR. IT WOULD PROVIDE FUNDS FOR BOARD MEMBERS TO ATTEND EDUCATIONAL PROGRAMS DESIGNED TO EDUCATE MEMBERS ON THE DUTIES AND RESPONSIBILITIES OF THAT POSITION AND THE EVER CHANGING AREA OF REGULATING A DYNAMIC INDUSTRY. IT IS COUNTER PRODUCTIVE TO REQUIRE THE LICENSEE TO KEEP ABREAST OF NEW DEVELOPMENTS IN THE INDUSTRY AND ATTEMPT TO REGULATE THOSE LICENSEES WITHOUT THE KNOWLEDGE OF CURRENT REGULATORY ISSUES.

THE SECOND SECTION OF THIS BILL DOES SPECIFICALLY SPELL OUT LICENSE DENIAL CRITERIA. CURRENTLY THE BOARD CAN DENY A LICENSE FOR ACTIVITY THAT COULD RESULT IN LICENSE SUSPENSION OR REVOCATION. THIS SECTION WOULD PUT THE APPLICANT ON NOTICE OF THE CONSEQUENCES OF MAKING FRAUDULENT STATEMENTS OR DEMONSTRATING FIDUCIARY UNRESPONSIBILITY.

THE THIRD SECTION OF THIS BILL DOES ALLOW THE BOARD TO ACCEPT AND IMPOSE DISCIPLINARY SANCTIONS OTHER THAN LICENSE SUSPENSION OR REVOCATION AGAINST A LICENSEE AFTER AN ADMINISTRATIVE HEARING. THERE ARE OCCASIONS WHEN THE LICENSING LAW HAS BEEN VIOLATED, BUT THE VIOLATION DOES NOT WARRANT REVOCATION OR SUSPENSION. THIS SECTION WOULD ALLOW THE BOARD TO PRONOUNCE OR STIPULATE TO LESSER DISCIPLINARY ACTION.

AGAIN, I WOULD LIKE TO REITERATE THAT THIS BILL IS REQUESTING AUTHORITY ONLY TO SPEND REVENUES CURRENTLY COLLECTED. THERE WILL BE NO INCREASE IN COST TO THE LICENSEES OF MONTANA. IF THE RECOVERY FUND DOES FALL TO THE STATUTORY BALANCE, FEES WILL BE COLLECTED FROM THE PARTICIPATES OF EDUCATION PROGRAMS TO REVIVE THE ACCOUNT BALANCE.

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of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.

Part 5 Recovery Account

37-51-501. Real estate recovery account established -- minimum balance -- interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of \$100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of \$35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than \$100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of \$100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund -- orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of \$25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.



REALTOR®

BUTTE BOARD OF REALTORS®

March 16, 1993

Montana State Legislators
State Capitol
Helena, Montana 59601

Senators: Judy Jacobson, J.D. Lynch, Henry McClernan

Representatives: Dave Brown, Fritz Daily, Dan Harrington, Joe Quilici, Bob Pavlovich

Re: House Bill 383 (Brandewie)

Re: Montana Law (Recovery Account) Section 37-51-501 paragraph (2) "The board shall maintain a minimum balance of \$100,000.00 in the account. The board may, in its discretion, transfer any money in excess of that amount from the account to the state revenue fund for the use of the boards in accordance with the purposes provided in 37-51-204."

Re: Montana Law (Board of Realty Regulation) Section 37-51-204 "The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this correction."

The Butte Board of Realtors unanimously continue their opposition to House Bill 383 as proposed, or to any amendments there to which require testing of licensees and the creation of a real estate education council.

An examination of the Montana Law Sections 37-51-501 and 37-51-204 cited above clearly indicates that the Board of Realty Regulation now possesses authority to incur expenses for the purpose of educating staff, board, licensees and the general public. Additional changes are not needed.

It is the consensus of the Butte Board of Realtors that the proposed changes contained in House Bill 383 reflect an attempt to create a retesting mechanism that may deprive present licensees of the ability to broker real estate transactions.

The creation of a real estate education council, with the authority proposed in House Bill 383 and the elimination of the phrase "...but except as provided in 37-51-302 the board may not require examination of licenses." (Montana Law 37-51-204 paragraph (3)), explicitly provides the retesting mechanism.

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Arguments advanced in support of House Bill 383 contain a false ring. If, as we believe, the intent to retest is manifest, the issue should be approached up front with all testimony and debate as to the need for disciplining licensees.

Additionally, we believe that the sanctions contained in Section 3 (proposed new section) are too broadly stated and the monetary administrative penalty specified unnecessary. Certainly the provision of paragraph (5), which allows any combination of the sanctions "as the board finds appropriate", are severe and further testify as to the nature of House Bill 383's intent.

Montana Licensees have demonstrated their professional competency by the current requirements of continuing education and the fact that the recovery reserve is fully funded. The Butte Board of Realtors is opposed to the formation of an education council which would increase staffing and create the need for additional spending.

We respectfully request that you lend your support in defeating House Bill 383.



Ron Hammer
Board President
(406) 494-5672

cc: Gloria Neuhardt, President
Montana Association of Realtors

Member Senate Business Committee

Amendments to House Bill No. 545
Third Reading Copy

Requested by Representative Tuss
For the Committee on Business and Industry

Prepared by Bart Campbell
March 16, 1993

1. Title, line 8.
Following: "SECTIONS"
Insert: "15-16-601,"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 3/17/93

BILL NO. HB 545

2. Title, line 15.
Following: "SECTIONS"
Insert: "15-1-505,"
Following: "33-17-206"
Insert: ", "

3. Page 61, following line 18.

Insert: "Section 35. Section 15-16-601, MCA, is amended to read:
"15-16-601. Taxes or penalties illegally collected or
duplicate taxes to be refunded. (1) (a) A taxpayer is entitled to
a refund on:

(i) taxes, interest, penalties, or costs paid more than
once or erroneously or illegally collected if an appeal pursuant
to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-
16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly
computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5),
the county treasurer may, by order of the board of county
commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been
made to the state treasurer as provided in 15-1-504 if the board
of county commissioners determines that a portion of the money
paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county
treasurer to refund to the taxpayer the portion of the taxes,
interest, penalties, and costs paid to the state treasurer.

~~(c) The county clerk and recorder shall, at the time for
filing the report required by 15-1-505, certify to the state
auditor, in the form as the state auditor may prescribe, the
amounts refunded. In the next settlement of the county treasurer
with the state, the state auditor shall give the county treasurer
credit for the state's portion of the amounts refunded.~~

(3) When a part of the taxes, interest, penalties, or costs
referred to in this section were levied in behalf of a school
district or municipal or other public corporation and collected
by the county treasurer, the taxes must be refunded upon the
order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest,
penalties, or costs under this section may not be made except

upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as

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may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded.""

{ Internal References to 15-16-601:

15-16-602 (2)x	15-16-612x	15-16-613x	15-24-920x
20-15-403x}			

Renumber: subsequent sections

4. Page 61, line 19.

Following: "Sections"

Insert: "15-1-505,"

Following: "33-17-206"

Insert: ", "

DATE 3/17/93

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: HB 371, 383, 449

Name	Representing	Bill No.	Check One	
			Support	Oppose
Carol McQuinn	Butte Board Realtors	383		✓
William Morrison		449	✓	
Shirley Morrison	Missoula Farmers Mkt	449	✓	
Julia Talbot	MT Soc of CPAs	371	✓	
Grace Burger	MT Board of Realty Reg	383	✓	
Cooley Jones		383		✓
Greg Van Housen	IPMA/MLA	383	✓	
Shirley Washburn	Board of Public Accts	371	✓	
Brenda H. Clair	" " "(Imp)	371		
Colleen T. Oelton	MT Society Public Accts	371	✓	
Carpton Sheets	MT Society of Pub Accts	371		
Dore Schindler	Dist #20	383		✓
Mitch Schwab	DHES	449		✓
Steve Manderville	MT Assoc Realtors	383	✓	
Tom Hopgood	MT Assoc Realtors	383	✓	
JP. Jensen	MT Dept. AG		✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY