

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN ROGER DEBRUYCKER, on February 8, 1995, at 8:00 a.m. in Room 402 of the State Capitol.

ROLL CALL

Members Present:

Rep. Roger DeBruycker, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Judy H. Jacobson (D)
Sen. Loren Jenkins (R)
Rep. John Johnson (D)
Rep. William R. Wiseman (R)

Members Excused: none

Members Absent: none

Staff Present: Roger Lloyd, Legislative Fiscal Analyst
Florine Smith, Office of Budget & Program
Planning
Debbie Rostocki, Committee Secretary

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

Committee Business Summary:

Hearing: Department of Commerce
- Weights and Measures
- Financial Division
- Milk Control Board
- POL Bureau
Executive Action: Department of Commerce
- Weights and Measures
- Financial Division
- Milk Control Board
- POL Bureau

HEARING ON Department of Commerce Weights and Measures Bureau

Mr. Roger, Lloyd, Legislative Fiscal Analyst (LFA), gave an overview of the Bureau's budget, contained on pp. C-141-143 of the LFA Budget Analysis Book.

Mr. Jon Noel, Director of the Department of Commerce, made a preliminary comment regarding the new proposal to institute

octane testing. They have never had the funding to do this and it is required by law. The bureau has run two tests and there was an alarming rate of mis-stating of octane levels by dealers in this state. About 10% of "91 octane" claims are actually splash-blended down to about 87. They have also found that 86 or 87 octane are actually 85.5. He said the consumers are being "ripped off, pure and simple." The department has put the petroleum dealers on notice that a problem has been found and the county attorneys will be contacted. If this problem had been detected earlier the department would have drafted a bill which could have permitted them to levy fines and use that revenue to fund the program.

Mr. Jack Kane, Chief of the Weights and Measures Bureau, then spoke. In 1981 this program was transferred to the Department of Commerce. This bureau is responsible for the licensing, testing and inspecting all weighing and measuring devices used commercially in the state. This includes 11,700 pumps and meters, 6,400 scales and more than 6,000 packages checked annually, entailing travel in excess of 145,000 miles per year. The bureau is also responsible for quantity and quality control of all petroleum products. Complaints concerning violation of the weights and measures laws are investigated by the bureau. In the agricultural realm they test and inspect every commercial grain elevator, livestock, logging, fertilizer and hopper scale in the state on a yearly basis. They also inspect 90% of all gas pumps. They work to find those persons not complying with the law and to remove from commercial use inaccurate weighing and measuring devices.

The bureau has eight inspectors throughout the state. In order to continue providing the same level of service it now provides, they will need four new 1/2 ton pickups and other equipment as outlined in the LFA narrative.

The bureau has received an increasing number of complaints concerning the quality of gasoline and octane levels. The authority to test these fuels has been a function of the bureau since 1977 but due to a lack of funding this has not been done.

Mr. Kane then reviewed the Present Law (PL) Adjustments the bureau has requested.

Questions: **REP. WISEMAN** suggested putting out a press release about the octane issue as a mechanism for curtailing the mis-stating of octane levels by petroleum dealers. **Mr. Noel** replied that the first tests they did were not kept track of to the extent that would be required to prove which pump the test came from. In the second test they did maintain this tracking and re-checked a number of the pumps which were tested the first time. A press release was considered but they decided to take a softer approach. However, the dealers have been put on notice, and it is a "different ballgame" now.

SEN. JENKINS wanted to know how it was determined who diluted the gas. **Mr. Kane** said they were quite sure it was done at the retail level. **Mr. Noel** explained that in the past the refiners had only sold two grades of petroleum: 91 octane and 85.5 octane. Certain dealers splash-blend that to get an 86 or 87 octane. The problem is when they are selling the splash-blended gas and calling it 91 octane. In response to **REP. JOHN JOHNSON**, **Mr. Kane** explained that only eastern Montana got 87 octane gas; the rest of the state gets 85.5. (As elevation increases, 85.5 octane performs the same as 87 octane does at a lower elevation.) All of the mountain states have a minimum octane requirement of 85.5.

Mr. Kane reviewed the New Proposals in the budget. Regarding petroleum testing, they would like to take fifteen random samples per month throughout the state. The cost for this will be about \$16,000 per year. These estimates are more accurate than those presented in the LFA narrative even though the total remains the same.

The equipment request contains funding for an additional slab weight and dolly for the 2.5 ton tandem truck which will augment the one truck that they now have to use across the entire state. At present they have four 100 gallon field provers; the new proposal would provide enough for each area to have its own.

Questions: **SEN. KEATING** wanted to know if collections continued to exceed expenditures for the bureau in 1995. **Mr. Kane** said the reason for the surplus in 1994 was because one inspector retired and one was out of commission for about four months and this resulted in a lower than usual travel budget.

CHAIRMAN ROGER DEBRUYCKER wanted to know what the penalty was for violation of the octane requirement. **Mr. Kane** said it is up to the county attorneys whether or not the violator is prosecuted. He estimated that the fine for a first offense ranges from \$50-\$500. **Mr. Andy Poole**, Deputy Director for the Department of Commerce, said it was a criminal violation and the department has no administrative civil penalty authority to assess fines.

Tape No. 1:B:000

EXECUTIVE ACTION ON Department of Commerce
Weights and Measures Bureau

Motion/vote: **SEN. KEATING** moved to accept PL Adjustments No. 4, 5, 6, 7 and 8 on p. C-141, with No. 7 at the level of \$63,100 in 1996 and \$67,000 in 1997. **SEN. JACOBSON** seconded the motion. The motion carried unanimously.

Motion/vote: **SEN. KEATING** moved to accept New Proposals No. 1, 2 and 3 on p. C-143; **REP. JOHNSON** seconded the motion. The motion carried unanimously.

HEARING ON Department of Commerce
Financial Division

Mr. Lloyd gave an overview of the division's budget (pp. C-144-146). Although all of the six additional FTE positions which were authorized in the last legislative session were not filled, they are fully funded for the coming biennium. As occurred in the Weights and Measures Bureau, the executive inadvertently doubled the amount of the present law equipment request, and in this budget PL No. 5 could be reduced by half.

Mr. Donald Hutchinson, Commissioner of the Division of Banking and Financial Institutions, gave an overview of the budget and provided a written text. **EXHIBIT 1**

Questions: **SEN. KEATING** wanted to know if the action the Legislature had taken several sessions prior to allow branch banking and mergers had reduced the division's workload. **Mr. Hutchinson** said there had been some changes but it didn't really reduce their workload. Although they weren't running around checking as many branches, the time spent in the central bank has increased.

In response to **SEN. KEATING**, **Mr. Hutchinson** said the federal government would be required to perform the Financial Division's functions if the state did not.

SEN. KEATING asked what kinds of bank activities the division monitored to prevent fraud. **Mr. Hutchinson** said the key method of discovering any impropriety between a banker and a consumer is via contacts from consumers. The division spends about 25% of its time fielding questions from consumers. Complaints about federally chartered banks are referred to the proper federal regulatory agency. If the problem is the state's, the person making the complaint is asked to outline the complaint in writing and to give authority to the division to check with the institution to see what the other side of the story is. Often it is a case of a misunderstanding, which can be resolved. The division directs the bank to inform the customer of its findings. Sometimes an examination crew is dispatched to make sure things are the way they were stated. **Tape No. 2:A:000**

Mr. Hutchinson said the division checks to make sure banks are in compliance with all rules and statutes. In addition they cross-check to see that FDIC regulations are met if the bank is regulated by that entity.

SEN. JENKINS wanted to know if there has been a trend of banks choosing state charter instead of a federal charter. **Mr. Hutchinson** confirmed there has been. Since early 1990 the division has converted about 17 nationally chartered banks to a state charter. Some of the reason for this are because they have local representation, the division can intercede on the bank's behalf in solving bureaucratic problems at the federal level and

lastly, the division's fees are about 60% of what the federal regulator charges the banks, which can amount to a \$40,000 difference.

REP. WISEMAN asked for more elaboration on the division's monitoring of the Board of Investments (BOI). **Mr. Hutchinson** said the BOI had two loan portfolios which the Legislature had assigned the division to examine due to the involvement of banks which the division regulates. **Mr. Noel** said the Legislative Auditor's Office examines the overall operations of the BOI.

CHAIRMAN DEBRUYCKER wanted to know if the audit of the lead bank was sufficient to ensure that any branch banks were in compliance also. **Mr. Hutchinson** replied that some banks actually do maintain all their books in the lead bank, but this is not always the case. Although they are branches of the lead bank, sometimes they are set up as "unit" banks and loan portfolios can't be checked at the lead bank. Their operations are spot-audited, however, to see that they are fulfilling their obligations. In the regulatory scenario, all regulators check the branches. **Mr. Noel** stressed the importance of monitoring the operations of branch banks as a means of monitoring the lead banks.

SEN. JENKINS asked for justification for funding the six additional FTE which had been approved in 1993 to assist in the process of converting from national to state bank charters. **Mr. Hutchinson** said they did experience a considerable increase in their regulatory activities. Prior to 1993 \$3 billion in assets was regulated from state chartered banks and at present \$5 billion is being regulated and from more banks. They had difficulty filling the six new positions during the current biennium due to the large amount of travel required and the lengthy training process for the new positions. **Mr. Noel** said they have been trying very hard to fully staff the six positions because of the importance of doing prompt investigations. The real problem is the division cannot retain senior staff because of the heavy travel time. He stressed that even prior to the added workload the division was under-staffed.

EXECUTIVE ACTION ON Department of Commerce
Financial Division

Discussion: **REP. WISEMAN** wanted to know when the division had last readjusted the fees it charges banks, in light of the fact that it is 60% of what the federal regulators charge. **Mr. Hutchinson** said they were last readjusted in the spring of 1994. Prior to that they hadn't been adjusted since 1985. The fees were increased approximately 35% at that time.

Additional testimony: **Mr. Bill Ayre**, a lobbyist for the Montana Bankers Association, rose in support of the budget request at the invitation of **CHAIRMAN DEBRUYCKER**. Banks are willing to pay for whatever it takes to ensure good inspections.

Questions: In response to **SEN. KEATING**, Mr. Ayre guessed the state chartered banks would not be inspected. Mr. Noel said the state chartered banks would have to get a federal charter. Mr. Ayre pointed out that the banks had not objected to the 35% rate increase the prior spring. **CHAIRMAN DEBRUYCKER** pointed out that the costs were being passed on to the bank customers, which is probably why the banks hadn't objected.

In response to **SEN. KEATING**, Mr. Lloyd said funding for the division came from license sales as well as from fees. **SEN. KEATING** wanted to know what happened to revenues received over what was appropriated. Mr. Lloyd said if they receive more than they spend the fund balance increases over the years.

Tape No. 2:B:000

Motion/vote: **REP. WISEMAN** moved to accept PL Adjustments No. 4, 5 and 6 on p. C-145, with No. 5 adjusted to \$34,860 in 1996 and \$15,595 in 1997. **SEN. JACOBSON** seconded the motion. The motion carried with **CHAIRMAN DEBRUYCKER** opposed.

Motion/vote: **SEN. JACOBSON** moved to accept New Proposal No. 1 on p. C-146; **SEN. JENKINS** seconded the motion. The motion carried unanimously.

HEARING ON Department of Commerce
Milk Control Bureau

Mr. Lloyd began his overview by addressing two bills before the Legislature which concerned the Milk Control Bureau. **SB 116** would eliminate the Milk Control Board; it has not been heard yet. **HB 280** would transfer the function of the Board to the Department of Livestock; it has not been heard yet, either. He then briefly reviewed the budget for the Milk Control Bureau.

Mr. William Ross, Milk Control Bureau Chief, then gave an overview. If **HB 280** passes, it will be necessary to note this in **HB 2**. The bureau encourages the proper production and orderly marketing of milk and cream products. During the past year the Bureau had five FTE administering the program. Two FTE travel on a full-time basis as well as one office person which they are proposing spend 50% of his or her time traveling.

Over 25,000 miles are driven to conduct ongoing monthly audits for each of the state's eight milk processing plants. The office staff computes statewide average prices and notifies each processor of the minimum monthly price to pay each producer. There are approximately 175 licensed grade A producers in the state, with a \$3.1 million payroll each month. He commented that the Bureau collected about \$75,900 in under-payments in the last year, which were returned to the producers.

The Bureau licenses 269 individuals at \$2 each. This revenue reverts to the general fund. The Bureau also collects assessments which are earmarked for administration of the Milk Control Bureau

and parts of the Department of Livestock. The total amount collected in one year was about \$481,000, of which \$288,064 went to the Department of Livestock, and \$192,936 to this Bureau. Collections are based on how much each producer owes and how much each processing plant owes.

The Board of Milk Control is attached to the Department of Commerce for administrative purposes only. The Bureau performs all clerical duties for the Board and the Bureau Chief acts as the Board's Executive Secretary. The Bureau is requesting an additional \$1,100 for per diem and \$1,435 for board and travel in the coming biennium because the number of Board meetings attended in the base year was low. The Bureau also requests an additional \$2,124 for travel for one person to conduct investigations throughout the state.

Questions: **REP. WISEMAN** said milk at the commissary at Malmstrom Air Force Base costs \$1 per gallon cheaper than anywhere else. He wanted to know who was not getting the \$1 which was not being paid. **Mr. Ross** explained that there were vast marketing differences between the Air Force Base and the public, which account for considerable savings by the Base. **Mr. Noel** said the person that "isn't getting the buck" is the same person who isn't getting it when milk is shipped out of state and then brought back as a method of avoiding wholesale price controls: the wholesaler is the person who "isn't getting the buck." He said the state's system benefits the large retailers and certain entities such as the school districts because they are buying at a large enough volume that they can dictate to the wholesaler to avoid price controls.

The retail price of milk at the Air Force Base is less because it is a federal entity, but the retail price elsewhere is not affected by the savings realized from avoiding wholesale price controls because it is set by law. The large processing plants (Dairigold and MeadowGold) not only avoid price controls by selling to entities such as the Air Force Base but are able to avoid them by circumventing the state's price control law by leaving the state just far enough to classify the transaction as being interstate. The result is the big retailers have a fatter profit margin because their costs are less than the smaller retailers, even though their retail prices are the same.

In response to **REP. WISEMAN**, **Mr. Noel** said the small producers are concerned that if price controls come off the retailers and wholesalers will pressure them to reduce their prices. However, the producer level price in Montana is set exactly the way the producer level price is set in the surrounding states: the Minnesota/Wisconsin price is modified according to regional differences which results in an increase of \$3.15/100 lb. in Montana. In the surrounding states that markup ranges from \$1.90 to \$2.05. If the state did away with producer-level price controls, the dairy farmers could petition the federal government to set price controls and the markup would probably be closer to

what the surrounding states are setting. He said he did not support doing away with the producer level controls but was very much in support of doing away with the wholesaler/retailer price controls.

Mr. Noel addressed the concern that the retail price of milk from the smaller retailers will go up if price controls are done away with.

Tape No. 3:A:000

He submitted that it did not make sense for the distributors to increase the amount they charge the smaller retailers. They could already do this under the present law, which only controls the minimum price which can be charged, and this is not happening. He added that the price of milk was far cheaper in the surrounding states than it is in Montana and this included small towns as well.

SEN. JENKINS said the concern of the smaller distributors is that decontrol would make it more difficult to compete with the larger distributors. **Mr. Noel** said the fact is that the small distributors are presently not buying at the wholesale level at the same price as the large distributors are selling because there is not enough volume to justify trucking the milk across the border to evade the law. If price controls were done away with, all distributors would be able to get milk for a lower price. **SEN. JENKINS** argued that being able to get milk for a lower price would increase the competition from out of state producers. **Mr. Noel** pointed out that this was already an option. Price controls in Montana are not affected by interstate prices.

EXECUTIVE ACTION ON Department of Commerce
Milk Control Bureau

Motion/vote: **SEN. KEATING** moved and **REP. WISEMAN** seconded to accept PL No. 4 on p. C-147. The motion carried unanimously.

HEARING ON Department of Commerce
Professional & Occupational Licensing Bureau

Mr. Lloyd gave an overview of the Professional and Occupational Licensing (POL) Bureau (pp C-149-154). The biggest issue with this bureau for some years has concerned the funding for the 36 boards which the Bureau oversees. The question has been whether to increase services or reduce fees, to avoid excessive fund balances.

Tape No. 3:B:000

Mr. Noel made some brief comments. The state's constitution prevents the government from interfering in or regulating business activities in the state except for the purpose of protecting the public health and safety. The Legislature regulates the boards in the POL Bureau under this provision.

Mr. Steve Meloy, POL Bureau Chief, then gave an overview. He introduced two POL Administrative Officers: **Ms. Lisa Casman** and **Ms. Brenda St. Clair**. As a result of the Bureau's collaboration with the Renew Government Task Force, an "omnibus" bill has been introduced. However, it is the Governor's wish that the Bureau remain centralized. There are several bills which propose that even more boards be put under the Bureau. **Mr. Meloy** then presented written testimony **EXHIBIT 2** and addressed the proposed present law adjustments and new proposals.

The Bureau has spent considerable time and energy with its Boards in the area of cash balances. There are many factors that contribute to large balances, and their size depends on when the budgeting "snapshot" is taken. A way needs to be found to take these snapshots when the balances are at their lowest points. What has happened to cause excessive balances is partially caused by executive-ordered budget cuts. When executive-ordered curtailment of line-items such as out-of-state travel occurs, the money the Legislature has granted for this purpose is diminished and the cash balance grows.

Mr. Meloy pointed out that boards as well as licensees are reluctant to lower their fees. The Bureau takes issue with the LFA's determination that the State Board of Electricians' fund balance is excessive. This board has switched to a triennial renewal and more money is needed for this reason.

Mr. Meloy said the boards have been working hard to reduce their cash balances. Five boards in the last biennium actually waived their fees. He reminded the committee that in 1981 the Legislative Audit Committee told the POL to ask the Legislature to remove the fees from the statutes. The result was that all the fees got set into rule instead of statute. If fees are put back in statute, this will cut off the public hearing process which currently takes place and transform it into a lengthy legislative job. If the second LFA option at the top of p. C-150 is adopted, it would leave no recourse for the board if there were unexpected increases in expenses. The problem with LFA option No. 3 is that if a board is directed by statute to reduce fees, the board's flexibility is jeopardized.

Regarding the option of transferring excess funds to the general fund, the licensees would find it unfair to utilize their unused fund balances to subsidize general fund activities.

Regarding PL No. 5, **Mr. Meloy** pointed out that some of the boards, due to the hours their professions keep, meet on weekends: this involves overtime for Bureau staff.

The biggest portion of PL No. 7 is tied to a \$70,000 legal contingency fund. In the past this used to be in the Legal Division's contingency budget. He stressed that this is not part of the real estate recovery fund; it is only for the boards that

get into legal problems. The only way a board can expend these monies is if they have the cash in their cash balances. The legal contingency fund was created so each board wouldn't have to have their own fund for this purpose. Other contracted services needs are for ski lift tramway inspection, public accountants, funeral inspectors, and many other things.

The Bureau agrees with the LFA regarding PL No. 11. After the Office of Budget and Program Planning (OBPP) cut the administrative services appropriation, the Bureau did not recalculate the recharges of the individual boards. Recharges will be recalculated later in the legislative session based upon the final outcome of all fiscal impact to the boards. If the committee accepts the new proposals on p. C-153, the Bureau will make sure an equal appropriation is given to the proprietary (pool) account. The Bureau agrees that all funding for new proposals should be contained within the new proposal requests but commensurate appropriation authority should be given to the proprietary account if the programs are approved; i.e., dual authority should be given.

Tape No. 4:A:000

Mr. Meloy then addressed the LFA issues with New Proposal No. 2. An increase in the Board of Medical Examiners base for legal services is warranted due to the steady diet of litigation this board experiences. The bureau-wide contingency fund is geared for use in emergencies.

LFA Issue b) on p. C-154 is incorrect. It is not accurate that \$126,548 all went to the Montana Wyoming Foundation, which received \$15,190. The board is asking for an additional \$5,000 due to increased complaints. The Foundation is just an ability for the Board of Medical Examiners to have an outside party determine if one of its members has a problem which the Board needs to address.

The Montana Professional Assistance Program (MPAP) has been extremely successful since its inception in 1985 and the increases in its budget correspond to increased participation in the program. Under the program doctors with problems are rehabilitated in Minnesota for six months and if this is successful they do not lose their licenses.

The Board has never produced a complete and comprehensive law and rule book and this increase would provide for that.

Questions: **CHAIRMAN DEBRUYCKER** wanted to know why there had been a 50% increase in complaints from 1990 to 1994. **Mr. Meloy** said it is argued that if the boards would do a better job of screening and responding to complaints, litigation could be reduced. There is a much greater consumer awareness since the "Hospice 6" case took place. The public realized the Board of Nursing was willing to respond to their complaints. The Board of Outfitters also receives a lot of complaints. **Mr. Noel** said the

complaints he has seen are usually from within the profession against the board.

CHAIRMAN DEBRUYCKER wanted to know what liability the state has if a board is sued. **Mr. Meloy** said the individual board members are indemnified by the state as long as they are acting within the scope and effect of their job, but they are personally liable if they go outside that scope.

REP. WISEMAN suggested that many of the boards were not trying very hard to bring their fund balances down. **Mr. Meloy** pointed out that in some cases these balances were large because the proposed spending had been turned down either by the OBPP or by the Legislature. He assured **REP. WISEMAN** that the boards were all working hard to reduce their cash balances. **Mr. Noel** said that if these boards weren't established by statute and therefore a part of state government, the people would pay their fees to a private association which would spend the money however they wished to. Part of the problem is that the Legislature does not control the money the boards collect but it does control the money they spend. The cash balances would not be an issue if the Legislature allowed the boards to spend whatever they collected.

The pros and cons of having the boards as part of state government were discussed as well as how to reduce cash balances.

SEN. JACOBSON said the persons being served by the boards consistently want more services rather than reduced fees and expect that the money they pay in should be spent as they see fit. **Mr. Noel** warned the committee that if the excessive fund balances were swept into the general fund this would meet major opposition. He said if this was done it would amount to a de facto tax on those professionals.

SEN. JENKINS wanted to know why the Board of Electricians and the Board of Plumbers had been relocated to the POL Bureau. **Mr. Meloy** said it better fit with what this bureau (licensing) than with the Building Codes Bureau. Inspection and permitting in these fields is still a part of the Building Codes Bureau.

SEN. JENKINS asked for **Mr. Meloy's** opinion on the LFA issue with PL Adjustment No. 6. **Mr. Meloy** disagreed that \$70,841 in each year of the request was for an appropriation which was statutory. The real estate recovery account and the legal contingency fund are two separate issues. Reducing the appropriation will prevent the bureau from having enough contingency funds to bail a board out of trouble.

Tape No. 4:B:000

Mr. Lloyd explained that the executive budget included the \$70,841 as a contingency fund for legal services in this program and funded that appropriation out of the Board of Realty Regulation account, which is statutorily appropriated. It all comes down to the detail of how this was funded out of what

account. The question is whether or not the committee wants to give the bureau the \$70,000 of contingency funding. The problem is where to "house" the authority. The authority they want is not a statutory appropriation authority.

In the base for all the boards is \$62,543 for legal fees in state special revenue authority. The executive is requesting two sets of increases: \$70,800 of contingency authority and about \$34,500 for other legal fees. The total executive request for legal fees is about \$168,000.

In response to **SEN. JENKINS**, **Mr. Meloy** said the \$40,000 in contracted services for the Board of Outfitters is no longer in the budget. When the request for 3.25 FTE was put in (New Proposal No. 2), the base was adjusted and \$40,000 was taken out at that time. The process is giving full faith value that the request will be approved and they will be able to continue doing the work with full time employees and there is a chance they will have to ask for the \$40,000 to be put back in, when this budget reaches the Finance and Claims Committee.

Mr. Meloy said that regarding PL No. 11, the bureau calculated the recharges on a larger pool budget than it should have. At a later point in the session the bureau plans to calculate a more accurate number.

In response to **SEN. JENKINS**, **Mr. Meloy** said the increase in fees to the Board of Outfitters has been supported by the two major players in the outfitting industry: Fishing Outfitters of Montana and the Montana Outfitters and Guides Association. Their wish is that the industry be better regulated. Under the uniform omnibus bill before the Legislature the only time a board will be able to penalize offenders with jail time is if they enjoin an unlicensed practitioner and the offense is repeated.

The 3.25 FTE being requested by the Board of Outfitters will be geared towards going after unlicensed practices as well as policing of the licensed outfitters. **Mr. Noel** added that for the first time in 20 years they are trying to bring the actual tests up to modern-day standards.

Motion: **SEN. JACOBSON** moved to accept PL Adjustments No. 4 through 13 on p. C-151, with No. 11 being further reduced to (\$125,926) in 1996 and (\$130,811) in 1997; **REP. JOHNSON** seconded the motion.

Discussion: **SEN. JENKINS** questioned the increase in the contingency for legal fees under PL No. 6. **Mr. Meloy** said the \$62,543 base represented the boards' out-of-pocket expenses. He stressed that if it was causing confusion, the \$70,000 should be removed from the real estate recovery account and housed in some other account.

Tape No. 5:A:000

He added that the \$70,000 had always been in their budget. Mr. Noel said that when the division administrator position was eliminated from the budget, this \$70,000 "got lost" in the process.

Amended motion: SEN. JACOBSON amended her motion to include language with PL No. 6 which would restrict the funds in the account to be line-itemed only for use as extra contingency authority for legal fees in the Milk Control Bureau, POL Bureau, Building Codes Bureau and the Weights and Measures Bureau. REP. JOHNSON seconded the amended motion. The motion carried unanimously.

Motion/vote: SEN. JACOBSON moved to accept New Proposals No. 1 and 2 on p. C-153; REP. JOHNSON seconded the motion. The motion carried with SEN. JENKINS opposed.

Motion/vote: REP. WISEMAN moved to accept New Proposal No. 3; SEN. KEATING seconded the motion. The motion carried with SEN. JACOBSON opposed.

ADJOURNMENT

Adjournment: 11:36 a.m.



ROGER DEBRUYCKER, Chairman



DEBBIE ROSTOCKI, Secretary

DR/dr

The meeting was recorded on five 60-minute audiocassette tapes.

OPENING Chairman DeBruyker, members of the committee - Good morning, I'm Donald Hutchinson, Commissioner of the Division of Banking and Financial Institutions of the Department of Commerce.

Today, I'd like to speak briefly about four areas of our Division's responsibility and operation.

First: The importance of banking and financial regulation in Montana.

2nd: What the Division does.

3rd: What services are provided

4th: Why these services are important.

WHY STATE REGULATION IN MONTANA

Montana is a leader nationally, in chartering and regulating financial institutions.

At year-end 1994, the Division chartered and regulated:

- ⇒ 84 state banks with 21 branches (\$5 billion in assets)
- ⇒ 14 credit unions (\$420 million in assets)
- ⇒ 3 trust companies (\$2 billion in managed funds)

One may ask, "Why is it important that our state government charter and regulate banks, trust companies and credit unions? Why not rely on the Federal government to do it for us?" State regulation provides for local legislative control over bank, trust company and credit union practices and regulations, allowing regulation to be tailored to local conditions and concerns.

A state-chartered bank's *primary* regulator is the state regulator.

If the bank is a member of the Federal Reserve Bank, the federal regulator is the "fed;" and this arrangement is termed a "**state-chartered member bank.**"

The other method of obtaining a state charter is to become a state, non-member bank. In this case, the FDIC is the federal regulator, and the bank is a "**state-chartered non-member bank.**"

In all cases of state-chartered credit unions, the state is the primary regulator and NCUA is the federal regulator.

Trust companies which are state-chartered are regulated by the Division only, unless they choose Federal Reserve membership; then both agencies examine.

States have led the way in banking innovation, with state banks being first to introduce new products and services to the benefit of consumers.

State regulation costs less. This is important in an industry where leverage of financial resources is as powerful as it is in banking. Each \$1 a bank saves in regulatory fees can translate into \$10 in lendable funds to local communities. Montana state-chartered banks' present capitalization level is approximately 10%.

State regulation also provides local decision-makers who can be more responsive to both consumers **and** bankers in less time and with less bureaucratic interference.

Montana's state-chartered banks, credit unions and trust companies are an important Montana resource which will prove invaluable as our state confronts economic challenges in coming years.

The Division and the State Banking Board work to insure that adequate and safe financial services are provided to Montana's public, and that our state-chartered and regulated financial businesses conform to both state and federal statutory provisions.

The Division is totally funded by assessments and fees charged to regulated businesses. No General Fund resources are used by the Division.

The Division and the State Banking Board are responsible for chartering and supervising the safety and soundness of 84 state-chartered banks and 21 branches and three trust companies.

The Division also regulates and examines 14 state-chartered credit unions annually.

Additional regulatory functions include:

- ✓ Annual examination of 36 Montana consumer loan offices.
- ✓ Licensing 101 sales finance companies annually.
- ✓ Examine the designated portfolio of the Board of Investments' loans annually.
- ✓ Licensing and examination authority for eight escrow companies.

Hearing process

The State Banking Board and the Division conducts public administrative hearings for the purpose of approving/denying applications for the following:

- New banks
- New branches
- New trust companies
- Bank mergers and
- Bank relocations

The Banking Board may also act in an advisory capacity to the director of the Department of Commerce.

Since January 1, 1990, the State Banking Board and the Division have conducted 20 hearings on the following applications:

Application	# of hearings	Location/Decision
New Bank	4	Billings Yes
(de novo)		Hamilton No
charters		Missoula Yes
		Whitefish Yes
New Branches	9	Arlee
(all approved)		Darby
		Evergreen
		Florence
		Frenchtown
		Hot Springs
		Lakeside
		Pablo
		Richey
Mergers	6	Branches
American Bank - lead bank Billings	4 banks 3 branches	Bozeman, Big Timber, Livingston
Bank of Montana - lead bank Great Falls	14 banks 13 branches	Big Sandy, Chester, Chinook, Conrad, Glasgow, Great Falls (2), Havre, Helena, Missoula, Rudyard, Shelby, Valier

1st Interstate - lead bank Billings	8 banks 7 branches	Billings (2), Colstrip, Hardin, Miles City, Missoula (2)
Montana Bancsystem - lead bank Billings	12 banks 11 branches	Baker, Bozeman, Butte, Circle, Forsyth, Livingston, Missoula, Red Lodge, Roundup, Sidney, Superior
Rocky Mountain Bancorp - lead bank Billings	6 banks 5 branches	Broadus, Harlem, Plains, Stevensville, Whitehall
Farmers State Bank - lead bank Worden	2 banks 1 branch	Hysham
Bank Relocations	Western Bank, Billings	Approved

Presently, five applications are in review and processing for hearings in the first quarter, 1995.

Services Provided by the Division

The Division is required to examine state-chartered banks at least once every 24 months; in practice, we examine banks according to a schedule which considers each bank's current financial condition.

The purpose of our supervisory and examination function is to review and investigate each institution's method of operation to determine whether or not it is performing in a safe and sound manner.

Due to increased services and new areas of business financial institutions are entering, we continue to see examinations requiring more staff and FTE hours per examination, thus reducing the number of examinations that can be completed in a given time frame.

94 Summary

<u>Exam type</u>	<u>1993 Base</u>	<u>1994</u>
Bank	38	42
Trust co.	2	2
Credit union	10	14
Consumer Loan co	21	26
BOI	1	1

Why It's Important - Closing

The Division defines its mission as allocating the available resources of our examination, data processing and administrative support functions to continually improve our regulatory program for Montana's banks and financial institutions.

Our primary focus is to ensure the continuance of safe and sound financial practices in Montana's state regulated banks and financial institutions.

The services provided by these businesses should foster economic growth and meet the public demand for services within Montana's communities. To accomplish this, our Division is committed to the management and development of staff through educational opportunities, fair compensation and a work environment conducive to high productivity.

In closing, I'd like to remind the committee that the Division is totally funded by assessments and fees paid by the Montana businesses we regulate. The Division does not receive any General Fund appropriations.

Thank you very much for your time. I'll be happy to answer any questions.

PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU

BUDGET TESTIMONY

THE PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU PROVIDES ADMINISTRATIVE STAFF SUPPORT FOR BOARDS AND PROGRAMS WHICH ANNUALLY LICENSE OVER 55,000 PROFESSIONALS IN MONTANA. IN THIS REGARD, THE BUREAU PROCESSES DEPOSITS, LICENSES, LICENSES BY ENDORSEMENT AND RECIPROcity, PROCESSES CONTINUED COMPETENCY AND EDUCATION, INVESTIGATES AND PROCESSES COMPLAINTS, ASSURES COMPLIANCE, PROCESSES INJUNCTIONS AND PROVIDES FOR FIELD INSPECTIONS FOR 34 BOARDS AND 3 PROGRAMS WHOSE ACTIONS AFFECT ALL OF THE PEOPLE OF THIS STATE.

THE INCREASES IN BASE ADJUSTMENTS FROM FY 94 ARE CAUSED BY RISING FIXED COSTS AS WELL AS THE EXPANSION OF BOARD ACTIVITIES DUE TO GREATER CONSUMER AWARENESS, CONTINUED COMPETENCY AND EDUCATION PROGRAMS, INJUNCTIVE ACTIONS AGAINST UNLICENSED PRACTITIONERS AND A 50% INCREASE IN COMPLAINTS FROM 1990 TO 1994.

THE INCREASES FROM THE 1994 BASE FROM NEW PROPOSALS ARE TIED PRIMARILY TO THE INCREASE IN STAFF AS A RESULT OF RECOMMENDATIONS BOTH BY THE MONTANA BOARD OF OUTFITTERS AND THE GOVERNOR'S ADVISORY COUNCIL ON PRIVATE LAND AND PUBLIC WILDLIFE. THE COUNCIL RECOMMENDED LEGISLATION TO INCREASE AUTHORITY, FUNDING AND FULL TIME EQUIVALENT PERSONNEL FOR THE BOARD OF OUTFITTERS. THE INCREASED STAFFING IS IN RESPONSE TO THE RECOGNIZED NEED OF THE BOARD TO BETTER REGULATE A GROWING INDUSTRY.

BASICALLY, THE INCREASE OF BUDGETS OVER 1994 ARE DIRECTLY RELATED TO EXPANSION OF PROGRAMS AS A RESULT OF THE INCREASED ACTIVITY OF COMPLAINTS AND THE BOARDS EFFORTS TO CURB SUB-STANDARD OR UNLICENSED PRACTICE WITH THE GOAL OF PROTECTING THE PUBLIC HEALTH WELFARE AND SAFETY OF ALL OF THE CITIZENS OF THE STATE.

THE ENTIRE BUDGET FOR OPERATION FOR THE COMING BIENNIUM IS FUNDED BY LICENSE FEES OF THOSE LICENSED. NO MONEY COMES FROM THE GENERAL FUND. WE ARE ABLE TO REGULATE WITH FEES COLLECTED FROM A FEE SCHEDULE WHICH IS GENERALLY CONSIDERED BELOW THE NATIONAL AVERAGE.

IN ADDITION TO ASSURING THE COMPETENCY OF LICENSEES AND PROTECTING THE CONSUMING PUBLIC, THE BUREAU'S ACTIVITIES CONTRIBUTE TO A POSITIVE ECONOMIC IMPACT ON THIS STATE. GOOD REGULATION ENHANCES CONSUMER CONFIDENCE WHICH IN TURN ENHANCES INCREASED CONSUMER PARTICIPATION IN SERVICES OFFERED BY THIS STATE'S PROFESSIONALS.

WE FEEL THAT WE DO IN THE PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU GREATLY COMPLIMENTS A DEPARTMENT OF COMMERCE WHICH HAS

WORKED HARD TO ENHANCE ECONOMIC DEVELOPMENT THROUGH ATTRACTING AND HELPING TO CREATE NEW BUSINESS IN THIS STATE. HAND IN HAND WITH THE DEPARTMENT'S GOALS, WE FEEL IT CRUCIAL TO CREATE AND SUSTAIN HEALTHY, VIGOROUS AND PROSPEROUS PROFESSIONAL COMMUNITIES. AS ADMINISTRATIVE STAFF FOR THESE GOVERNOR APPOINTED BOARDS, WE ARE CONTINUOUSLY WORKING FOR BETTER PROTECTION FOR THE PUBLIC, BETTER DUE PROCESS FOR THOSE LICENSED, QUICKER RESPONSE TO COMPLAINTS, CLEARLY DELINEATED POLICY AND PROCEDURE FOR PROCESSING WORK AND CONSISTENCY IN THE WAY THE BOARDS CONDUCT THEIR BUSINESS.

WE ARE PROUD OF WHAT WE DO IN THE BUREAU. WE ARE CONSTANTLY REWARDED BY THE FACT THAT OUR EFFORTS DO ,IN FACT, MAKE THIS STATE A BETTER PLACE TO LIVE, WORK, AND RAISE OUR FAMILIES.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

NAT. RESOURCES

SUB COMMITTEE

BILL NO. _____

DATE 2/8/95

SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jon Noel	Commerce	✓	
Jack Hane	Commerce		
Bill Ross	Commerce		
Bill Hoffmann	COMMERCE		
Burt Chant	Commerce	✓	
Steve Meloy	Commerce	✓	
Dwa Cowman	Commerce	✓	
Ralph J. (Jair)	Commerce		
Donald W. Hutchinson	Commerce	✓	
Bill LEARY	N.C. BANKERS ASSN.	✓	

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