

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 28, 1995, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

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

Committee Business Summary:

Hearing: HB 66
HB 68
HB 168
Executive Action: HB 168 BE CONCURRED IN

HEARING ON HB 66

Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, Great Falls explained the Governor's Task Force to Renew Montana Government had recommended transferring licensing of construction blasters, boiler and steam engine operators, and crane and hoist operators from the Department of Labor to the Department of Commerce. HB 66 would implement that recommendation. Under existing law operators were licensed across the state with no uniformity and the Department of Commerce completed the bulk of all licensing and testing. **REP. WISEMAN** explained legislation would have to be enacted each

time and fees needed to be changed. He suggested the bill be amended to give discretionary authority to the Department of Commerce to set fees. He explained a considerable amount of time was spent in subcommittee coordinating HB 68 and HB 66. The basic function of HB 66 was to transfer licensing from the Department of Labor and Industry to the Department of Commerce.

Proponents' Testimony:

REP. JACK HERRON, HD 77, Kalispell stated support of HB 66 on behalf of the Mint Growers of the State of Montana.

Steve Meloy, Chief of the Professional Occupation and Licensing Bureau, expressed agreement with HB 66. He explained the difference between the departments was the way license fees were set. The 34 Professional Occupational Licensing Boards and program fees were set by rules, as the fees were commensurate with cost. In 1981, **SEN. BOB BROWN, Whitefish,** sponsored a bill recommending fees be commensurate with cost. There was much revenue oversight in the process, such as the oversight of budget and the oversight of the Code Committee. If the Department or the Board attempted to expand a program and the expansion was not within the intent of the legislation, the expansion could not be accomplished. **Mr. Meloy** reported during the last biennium five bureaus had rebated fees due to a large cash balance. **Mr. Meloy** explained a Board could experience legal problems and litigation. If the Board had to wait for the next legislative session to increase fees, the process could become cumbersome. If litigation occurred the Department would have to secure a loan from the General Fund to pay the incurred costs. He stated in an effort to solve the problems, **REP. DEBRUYCKER** had been contacted to discuss the possibility of setting fees in statute which would create a cash balance of not more than one half of the total year's appropriation.

Lauri Ekanger, Governor's Office, stated the proposed legislation originated with the Renew Montana Governor's Task Force. **Governor Racicot** supported the concept of bringing like functions together.

David Ashley, Deputy Director of the Department of Administration, Project Director of Governor Task Force to Renew Montana recommended the Committee concur HB 66 in.

Chuck Hunter, Department of Labor and Industry (DOL), explained HB 66 transferred boiler function licensing from the DOL to the Department of Commerce. House Bill 66 defined a new class of license for the Agricultural-Class Engineer License; set a fee schedule for licensing and defined when a crane or hoist operator was required to have a license.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SEN. SUE BARTLETT asked if there would be a Board of Boilers. **Mr. Meloy** replied there would not. The Department would only administrate. **SEN. BARTLETT** asked if similar professions existed without a professional board. **Mr. Meloy** stated there were presently three: private employment agencies, polygraph operators, and public contractors. He noted there was currently legislation which dealt with independent contractors.

SEN. BARTLETT clarified the proposed amendment of fees would only allow the Department to set fees commensurate with the cost of boiler engineer licensing functions. **Mr. Meloy** stated that was correct.

SEN. BARTLETT asked if the age "19" was an oversight concerning the amendment on page 6, line 12. She noted the bill read "the applicant must be over 18 years of age" in all other locations. **REP. WISEMAN** replied that was an oversight.

SEN. BAER asked **REP. HERRON** to explain the mint growers' situation. **REP. HERRON** explained a Flathead mint grower had approached him and asked for legislation to change the statute. The mint growers had problems with the original bill. He explained the state had overlooked the mint growers for a year consequently the mint growers presented a three month contingency study stating they would have to operate under a license for three months. The request was almost impossible to accomplish. The state developed a new license requiring the mint growers to take a test, have their boilers inspected, and have a license. If a person failed the test, the department had the rule making authority to dictate education. That particular part of the bill had to be stricken because it presented a hardship for the mint growers to leave their farms for three months to attend the required school. **REP. HERRON** noted the mint growers were still willing to take the test.

CHAIRMAN TOM KEATING asked **Mr. Hunter** to elaborate on **REP. HERRON'S** explanation. **Mr. Hunter** explained the discussion had to do with amendments that would be offered on HB 66. The Department made an arrangement with the mint growers to provide a license. The Subcommittee and the House drafter rewrote the bill but the agreement with the mint growers had not been added to HB 66 before it came to the Senate. The purpose of the proposed amendment was to restore the House amendment. The mint growers were required to pass a test to assure the Department the person operating the equipment was competent.

Closing by Sponsor:

REP. WISEMAN stated **SEN. BARTLETT'S** proposed amendment was appropriate.

HEARING ON HB 68Opening Statement by Sponsor:

REP. HERRON, HD 77, Kalispell, stated HB 68 was basically the second half of HB 66. The bill would revise certain industrial safety laws. The bill would require safety compliance language be expressly stated in a contract between a contractor and a government entity. HB 68 authorized the Department of Commerce to establish by administrative rule boiler engineer license fee schedules, inspection fee schedules and appropriate training courses. He explained the bill would impose a fee for all boiler inspections, clarify boiler engineer experience requirements, eliminate hearing or complaint requirements prior to the Department ordering work place safety improvements, and modify hoist engineer license standards to include either crane boom length or tonnage rating. REP. HERRON stated HB 66 and HB 68 were introduced early in the session and were poorly written. HB 68 had been placed in a subcommittee and part of the bills had been transferred from one bill to the other. HB 68 was a housekeeping bill by the Department of Labor and Industry to move licensing to the Department of Commerce and inspection to the Department of Labor. He explained section 1 dealt with contracts between a government and a government entity. Line 21 ensured a contractor, who was not a government entity, working for the state government complied with safety rules, codes, and Workers' Compensation provisions. The language was the state's guarantee section 2 was in compliance. HB 68 would provide for the employer's representative to go along. The representative would be in a good position to identify violations or problems with safety codes. Section 3, page, 3, allowed the Department to set fee schedules for licenses. Line 7 confirmed the Department could get their money back. Section 4 was the exception to the licensing concerning individuals with military experience, people moving into Montana, those having been educated in vocational schools, and etc.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry, explained the bill had originated as a request from the Department of Labor. HB 68 required a contractor working for state government to follow safety laws. The bill also provided for boiler inspections to be paid for with a fee for service arrangement and eliminated the need for Department hearings prior to the time of issuing an order for a safety hazard. That would allow the hearing to take place and the correction of the unsafe practice to be made. Appeals rights and due process rights would remain intact. He explained there were two amendments to the bill dealing with the coordination between HB 66 and HB 68. The main objective was striking section 4 entirely which had already been completed.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARTLETT referred to section 4 being stricken in HB 68. **Mr. Hunter** explained the provision for applicants to be credited for experience towards a license would be stricken. That provision would be replaced with the provision in HB 66 providing the applicant may, under the discretion of the Department of Commerce, be credited with experience towards a license. **SEN. BARTLETT** stated she would prefer to specify that provision in the rules. **Mr. Hunter** replied he would review the suggestion and noted the function would be going to the Department of Commerce and it might be appropriate for the Department to have the ability to specify what training was acceptable. The six month experience requirement should also be addressed; perhaps a portion of the requirements could be vo-tech training, etc. **SEN. BARTLETT** expressed she would prefer the appropriate department specify, in rule, when experience would be applied toward the license requirement. House Bill 66 language provided for the discretion of the Department of Commerce. **SEN. BARTLETT** stressed she wanted the requirements for licenses made clear. **Mr. Hunter** stated he would have no objection.

CHAIRMAN KEATING asked about safety, boiler inspections, and inspection fees. **Mr. Hunter** replied the inspection function would remain with the Department of Labor. The licensing function would be transferred to the Department of Commerce. He added HB 432 would also transfer the inspection function. **SEN. BARTLETT** requested licensing functions be handled through the rules. House Bill 66 dealt with licensing in the Department of Commerce; HB 66 would be the place to amend rule making for licensure purposes.

SEN. BENEDICT asked why there were still three bills concerning the same issues since the subcommittee had already worked with HB 66 & 68. **Mr. Hunter** replied the legislation from the Governor's Task Force resulted in a last minute shift in concept. The original report from the task force had placed the functions in the Department of Labor. **SEN. BENEDICT** suggested it would have been advantageous to have one bill instead of three.

CHAIRMAN KEATING asked if the Professional Operational Licensing Board would deal with licensing requirements by administrative rule. **Mr. Meloy** stated the Department of Commerce would use administrative rule. The POL Board would not be dealing with the issue. **Mr. Meloy** reported there had been no adopted rule since 1991 but the Director of the Department had the authority to designate administrative staff, call public hearings, and decide issues commiserate with the intent of the legislation.

CHAIRMAN KEATING stated the Senate committee must make sure the statutes provide for departmental rule making authority. **Mr. Meloy** expressed appreciation for the committee's close attention to detail. **Ms. McClure** stated she would research the situation.

CHAIRMAN KEATING referred to **SEN. GAGE'S** earlier bill which dealt with exemptions for school boiler operators and asked if there would be exemption possibilities in the Department's rule making authority. **Mr. Meloy** stated the POL's goal was to reduce and consolidate statutes and areas of rule making authority. The POL would be amiable in responding to legislative requests.

Closing by Sponsor:

REP. HERRON stated the three bills had come forward thus far and the Senate Committee had inherited the last part of the combination process. He urged the committee to create a workable solution.

HEARING ON HB 168

Opening Statement by Sponsor:

REP. SCOTT ORR, HD 82, Libby, stated HB 168 was designed to obtain more affordable Workers' Compensation rates for volunteer firefighters. **REP. ORR** stressed the volunteer aspect of firefighting. Paid firefighters had Workers' Compensation but volunteers struggled to get any kind of Workers' Compensation. He explained the problem volunteer firefighters had in attempting to obtain Workers' Compensation was the structure of their Departments. He stated there were city departments, county departments, and dual city-county departments. He explained city departments could obtain Workers' Compensation through the city and county departments that cover the entire county could obtain Workers' Compensation through the county. Departments covering only portions of the county were not eligible for the county Workers' Compensation. Dual Departments were not eligible either. A bill passed in the 1991 session to provide Workers' Compensation for these departments was too expensive; about \$2,000 per month. He stressed volunteer departments, funded by taxpayer dollars, could not afford Workers' Comp. In 1993, **SEN. NATHE** had carried a bill to address the problem; the bill was killed when he passed away. **REP. ORR** explained HB 168 reduced the cost from \$2000 to \$1200 a month; a sizable step toward making the insurance affordable. He stated more rural firefighter departments would be able to take advantage of the insurance. The formula was based in the title of the bill, lines 6 and 7. The rates would be based on training hours, response time and the time the volunteers spend at the fire hall. The fiscal note stated the State Fund was required to charge premiums to keep the State Fund self-supporting. The rates were actuarially sound and the classification would be similar to other classifications once it was implemented.

Proponents' Testimony:

Bob Gilbert, Montana Volunteer Fire Fighters' Association, reported the representatives from the State Fund had worked closely with the Association to draft the bill. The bill required the counties to provide coverage but until now the cost had not been affordable. HB 168 accomplished the goals set forth by the Association.

Jim Walker, President of Montana Firefighters' Association, stated he had been part of the Workers' Compensation Committee which had worked towards the creation of affordable rural firefighter legislation. **SEN. NATHE'S** legislation had set aside \$900 per month. Firefighters who do not respond to many calls still require the insurance. If the rural departments became more active they would be required to pay more.

Laurents Hubbard, State Workers' Compensation Insurance Fund, stated the State Fund's interest was to insure the appropriated methods had underwriting capabilities. Mr. Hubbard stressed the bill and any amendments to 79-118 must have underwriting capabilities. The language needed to be similar to language written for sole proprietors, working under partnership arrangements. He stated the classification experience would be reflected in the rates for all firefighters; the language identified a fair formula and achieved objectives outlined by the proponents.

Bob Worthington, Program Administrator, MMIA, informed the committee his Association insured cities and towns across the state. The Association was not represented by HB 168. The bill would correct a problem which had existed for seven or eight years as a result of crossover membership. The bill would alleviate past problems and make obtaining coverage for rural and county districts easier. It would also allow the different firefighter departments to work together more easily in the future.

Ray Barnicoat, Risk Manager, Montana Association of Counties, stated his Association, like MMIA, had a self insurance Workers' Compensation program which insured 15 counties throughout the state. **Mr. Barnicoat** stated he had participated in the drafting process. His Association was interested in the positive outcome of HB 168 because the bill would generate a better risk spread for rural firefighter underwriters. HB 168 would make the insurance more affordable for smaller district while maintaining a fair and equitable rate base.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SEN. BENEDICT asked if the incorrect technical problems mentioned in the fiscal note had been cleaned up. He referred to the language "the minimal annual premium, based on the minimal annual premium" was incomplete. He noted the intent, implied by the bill's title, appeared to be in conflict with the body of the bill. The title stated the amount was based on the minimum premium but elsewhere in the bill the language stated "subject to minimum premium". The bill appeared to have the language corrected throughout the bill. REP. ORR stated the language had been corrected and explained the problem with the fiscal note had been corrected by amending the title. The formula had been worked out to satisfy Workers' Compensation's concern about legislation being actuarially sound.

Closing by Sponsor:

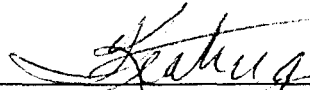
REP. ORR urged the Committee to give HB 168 a DO PASS recommendation.

EXECUTIVE ACTION ON HB 168


Motion/Vote: SEN. BAER MADE THE MOTION HB 168 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. SEN. BAER agreed to carry HB 168.

ADJOURNMENT

Adjournment: The meeting was adjourned at 2:05 p.m.



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

ROLL CALL

DATE _____

February 28, 1995

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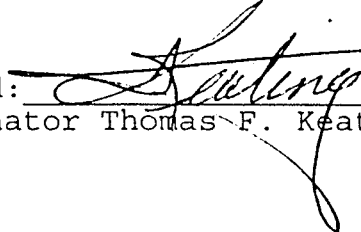
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SENATE STANDING COMMITTEE REPORT

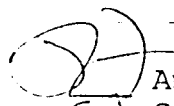
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
MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 168 (third reading copy -- blue), respectfully report that HB 168 be concurred in.

Signed: 

Senator Thomas F. Keating, Chair

 Amd. Coord.

 Sec. of Senate

SEN. BALD
Senator Carrying Bill

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