

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 4, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 164; HB 185; HB 214;
2/24/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

HEARING ON HB 185

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: Robert Bold, MT Grain Growers Assoc.
Beth O'Halloran, State Auditor's Office
Ralph Peck, MT Department of Agriculture

Opponents: None

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, MALTA. SB 185 is at the request of
the MT Grain Growers Assoc. The Association is starting a
cooperative in the State for the expansion of our spring wheat

industry. This is one of the most encouraging things that I have seen in agriculture in 10 years. Producers are getting together to put up their own money for their own future without asking the Legislature for any money. This bill offers them the opportunity to do this. I have one amendment (**EXHIBIT 1**) that essentially changes the date to July 1, 1997. It gives the Auditor's Office the opportunity to get the rules together and give the opportunity to the people doing the meat packing to try and participate in this venture. This will be my closing. Thank you.

Proponents' Testimony:

Robert Bold, President, MT Grain Growers Assoc. I would like to hand out a copy of the reasons and the ways that have been put together for the grain growers to achieve what they are attempting to do (**EXHIBIT 2**) and a question and answer booklet about spring wheat processors (**EXHIBIT 2A**). United Spring Processors is a closed co-op, our first of its kind in Montana. A year ago a group of farmers got together and wondered if they could get 1000 wheat and barley producers in a four-state region to go together and make a closed co-op for spring wheat processing. The drive was made and over 4700 spring wheat producers said yes. Montana is one of those four states. We have 427 that have participated in the formation of United Spring Wheat Processors. This handbook is an excellent informational tool. As producers we have watched other neighboring states and have seen how they have participated in co-ops. They have done this in a very profitable way. We would like the opportunity to do the same. SB 185 would allow the Montana Securities the ability to allow the spring wheat producers exemption. The purpose of this exemption is to narrow the scope of the audience so that an offering is not made to individuals who are unfamiliar with the industry or would not be qualified individuals.

One out of six have decided to go into this closed co-op. We have 2800 members in MT Grain Growers Assoc. who raise wheat and barley. We are excited about these numbers as this is the first one that has been started here in Montana. We are looking forward to this opportunity.

Beth O'Halloran, State Auditor's Office. I will offer my testimony and some background on the Securities Act of Montana. I am handing in my written testimony (**EXHIBIT 3**).

Ralph Peck, Director, MT Department of Agriculture. For the reasons outlined by REP. BERGSAGEL we support this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked exactly what the group was looking to accomplish? **Mr. Bold** replied that the United Spring Wheat

Processors are thinking of a full range of things. They would start with flour milling and work all the way up to the baking and retailing.

SEN. STEVE BENEDICT asked how much money had been raised so far? **Mr. Bold** stated about \$15 million. Each member has put up \$5000.

SEN. EMERSON asked that a lot of exemptions were mentioned and wondered if the Dept. has extended exemptions to many companies? **Ms. O'Halloran** said that the list of exemptions has gotten longer.

SEN. BENEDICT asked if "buyer beware" is mentioned in the prospectus or somewhere else and asked if people could lose more than their \$5000? **Mr. Bold** stated that in the bill the only thing being asked for is an exemption for the registration in order to present the securities. Those who come in know the business and the risks.

SEN. BENEDICT then asked that in addition to the \$5000 being at risk, are they at risk for anymore if the venture goes into default? **Mr. Bold** said that they are not selling the farm, only what they are putting up front. The group will raise the capital first and then put the project together. No one is signing a blanket liability for their assets for those who choose to participate. The shares stand on their own. **SEN. BENEDICT** asked **Ms. O'Halloran** the same question. She answered that the sale of the security is the investment that is at risk. In terms of the liability that the co-op would experience if things would turn sour for them, the investors would not be liable for the liability. She would check that to be sure she was giving the correct answer. **SEN. BENEDICT** asked then who would be liable if the investors are not liable? **Ms. O'Halloran** was not certain about that. **Randy Johnson, Executive Vice President, MT Grain Growers Assoc.** said that it was his understanding that the risk is similar to a limited partnership except that the members of the cooperative have at risk their initial investment and to the degree that they want the company to succeed. Certainly United Spring Wheat Processors could someday get into a position where it would go to its members and ask for additional monies. If they were unwilling to put in more money, he was not sure who the liability would fall on. **SEN. BENEDICT** said that no one could answer his question.

Closing by Sponsor:

The sponsor did not close.

{Tape: 1; Side: A; Approx. Time Count: 9:24 AM; Comments: N/A.}

HEARING ON HB 164

Sponsor: REP. CARLEY TUSS, HD 46, BLACK EAGLE

Proponents: Steve Meloy, Bureau Chief, Professional & Occupational Licensing Bureau, Dept. of Commerce
 Kim Anderson, Board of Dentistry
 David Henian, Executive Director, MT Dental Assoc.
 A. Farrell Rose, Board of Appraisers
 Mona Jamison, MT Physical Therapy & MT Speech/Language Assoc.
 Michael Bergkamp, MT Alternative Health Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. CARLEY TUSS, HD 46, BLACK EAGLE. SB 164 was requested by the Department of Commerce. In 1995, we brought forth a uniform bill that gave due process to all members who were licensed and had professional board guiding. This bill brings those persons who are licensed in occupations not necessarily with board guidance into the same kind of arena. The first twelve sections of this bill deal with due process toward those persons who hold those occupational licenses. It then spells out the complaint process, investigation process, the appeal process, etc. Additionally the last portion of the bill does deal with specific board issues. The Board of Dentistry is included and there have been some changes in the composition of that Board. Hearing aid dispensers have been included and for the most part, the changes in that section are consumer protection issues. The naturopaths are dealt with in section 24 and their request is to have a formulary of what they are authorized to prescribe. There are changes for the real estate appraisers and primarily these are codifications. These are important to the different boards. There have been some changes in the House and would call your attention to these. On page 18, a section has been deleted and that dealt with an amendment that had been placed by a dentist. On pages 27 and 28, it originally was to allow electricians to do installations of low-voltage electrical systems. In reviewing those sections it was calling for scopes tests to be utilized. Historically, the plumbers have always done low voltage work and that scopes tests deal with temperature variations. The electricians did not understand what a scopes test was. It was therefore prudent to delete those two sections. There are people here to speak on behalf of this bill.

Proponents' Testimony:

Steve Meloy, Bureau Chief, Professional & Occupational Licensing Bureau, Dept. of Commerce. When HB 518 passed in 1995, we promised that you would see less of POL. In that regard, the Dept. took all of the requests from the 38 programs that we have and consolidated them all into one bill. That is this bill, HB 164. We like to support and forward to the Governor and the Legislature bills which are not controversial. My assessment is that this bill meets that requirement. We have here today a

staff, board members and chairmen who can answer any questions that you might have. I would like to offer one amendment (**EXHIBIT 4**) on behalf of the Board of Barbers to the committee. The Board of Barbers had submitted some legislation to the Dept. which the Dept. felt might not have met the above test and would have been controversial. They asked as a requirement that a barber have a high school education. We said no. The barbers did not have enough time to get a bill presented so they asked if we would put into this bill the things that the Dept. felt met their criteria. **REP. TUSS** allowed this amendment to be added. Essentially, the amendment is housekeeping in nature. It clarifies their authority.

Kim Anderson, Board of Dentistry. Our Board fully supports this bill before you. I would offer a letter (**EXHIBIT 5**) from Dr. Donald O. Nordstrom, Chairman, Board of Dentistry into the minutes outlining their support.

David Henian, Executive Director, MT Dental Assoc. I am pleased to tell you that we support this bill that will allow an additional dental hygienist to the Board of Dentistry. A letter from the Montana Dental Hygienists' Association (**EXHIBIT 5A**) is being handed in as support for HB 164.

A. Farrell Rose, MT Board of Real Estate Appraisers. We are in support of this bill.

Mona Jamison, MT Physical Therapy Assoc. & MT Speech, Language and Hearing Assoc. We stand in strong support of this bill. It does allow for the exams to be taken by computer. The significant changes are the ones that relate to hearing aids and hearing aid dispensers. Audiologists are the only group that need two licenses before they can enter their profession. They must be licensed by the Board of Speech, Language and Hearing and the Hearing Aid Dispensers. On page 13 there is much for the protection of the consumers. We believe that these provisions are important. Many times for the older consumers, it is necessary that they have the opportunity to try the hearing aids out and if they are not workable after a time of trial be able to return the hearing aid at least for a portion of their expenditure. Thank you.

Michael Bergkamp, Chair, Alternative Health Care Board. On page 16, we are trying to put together a formulary committee that will make a list of what is available for the naturopath physician to prescribe. Currently it is very vague language. The communication between the pharmacy, the naturopath and the patient was not always clear with what the prescription actually was. The committee would consist of two naturopaths, one medical doctor, one public member and one pharmacist. This way would allow the circle of communication to work. This model has worked in other states.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BENEDICT asked if there is a standardization among these boards concerning complaints, investigations, conduct standards, etc. Mr. Meloy said that this is exactly what is driving this bill--to get standardization on this issues. SEN. BENEDICT asked if the boards are looking more at "shall" than at "may". They need some latitude, but they should definitely have standardization. Mr. Meloy responded that as far as policy procedure goes, this is where they are headed; but the board still has some discretion.

SEN. EMERSON asked if the Federal Drug Administration is getting too much into the control of herbal medications? Mr. Bergkamp replied that no, not really. If it is a controlled substance, they would always be involved and we would always come under the same rules and regulations. But with herbs in particular, there is a move to bring standards up and its claims to be substantiated. This bill does not address this specifically.

SEN. EMERSON asked about fire suppression systems and the rules that are being set up concerning them. A constituent has been having trouble in getting a license for one of their employees. Mr. Jerry Driscoll stated that the installers must be licensed but they do not have a board. The Dept. sets the rules in how to get the license. SEN. EMERSON then asked another question about how to get a license.

{Tape: 1; Side: B; Approx. Time Count: 9:49 AM; Comments: N/A.}

Mr. Meloy asked that Carol Grell, Staff Attorney, Dept. of Commerce, answer the follow-on question of SEN. EMERSON. Ms. Grell stated that the NICIT certification is the standard testing. When the program came over from the Dept. of Justice, the rules were changed and the Dept. of Commerce set up elements of the NICIT certification and these are presently contained in a rule. Each of those elements must be met for whatever level of endorsement a person is seeking. It has been brought to the program managers attention that those endorsements are not a standardized way of testing so the rule has been identified as problematic and what we are currently doing is seeking information on how it needs to be amended because all of the elements are not necessary for certification within each endorsement, yet our rule sets it up that way. It appears that we have a standard higher than the national standard.

SEN. EMERSON asked how soon these changes can be made because a company in Bozeman is having serious problems in getting an employee certified. Ms. Grell said that the rules have not yet been amended and we need to complete our research to make sure we are not diluting our rules too far and that the rules are made according to statute. It is probably several months away. SEN.

EMERSON said that the rules need to get changed right away--not in several months. Maybe something should be done in this bill.

SEN. DEBBIE SHEA asked about the examinations that the boards develop and wondered if the Dept. has any say in this? Mr. Meloy replied that the boards have the discretion on how they are going to examine their applicants. They have been encouraged to utilize testing agencies nationally. SEN. SHEA continued with a question concerning coordination of efforts with those who are administering or developing these tests. Mr. Meloy said yes there is a coordination. They are in contact with those in the field to make sure that what they are asking is germane to certain areas of expertise. Accommodations are made to handle those applicants who do not take written tests well. Oral tests are encouraged if necessary.

Closing by Sponsor:

REP. TUSS closed. Thank you for a good hearing. Standardization is important and this bill is a continuation of HB 518 concerning the due process, the complaint, the appeal, the investigation, etc. I ask the committee to support the bill and the amendments. I would resist other amendments.

{Tape: 1; Side: B; Approx. Time Count: 10:06 AM; Comments: A 12 MINUTE BREAK WAS TAKEN.}

HEARING ON HB 214

Sponsor: REP. ED GRADY, HD 55, CANYON CREEK

Proponents: Jean Riley, Petroleum Tank Release Compensation Board
Denise Mills, Department of Environmental Quality
Ronna Alexander, MT Petroleum Marketeers

Opponents: None

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, CANYON CREEK. I bring you this morning HB 214. This bill authorizes the board to request and receive loans from the Board of Investments. Projections indicate the Petroleum Tank Release Cleanup Fund will reach a zero balance before the next legislative session. The bill keeper of the board could borrow money and will allow the board to continue to reimburse the corrective action costs of petroleum storage tanks which in turn will allow owners to continue with their corrective action on sites. The bill further defines a corrective action which would be reimbursed by the board. It will allow the board to reimburse for corrective action costs associated with petroleum release from an eligible petroleum storage tank even if the contamination is intermingled with non-petroleum waste. The board would determine the costs associated with the petroleum

contamination and only reimburse reasonable costs for petroleum corrective action. This will save the fund money as the board will only be reimbursing reasonable costs for petroleum corrective actions. The bill also allows the board the ability to determine when property damage will be assessed. If the property damage is assessed at the time of the release discovery and before the corrective action is completed, the property damage may be greater than if the damages are assessed at the conclusion of the corrective action. There may be no property damage once the corrective action is completed. This may save the fund money when figuring property damages. With that I will turn it over to the Department to explain it a little further.

Proponents' Testimony:

Jean Riley, Executive Director, Petroleum Release Compensation Board. The Board actually requested HB 214. I will give my testimony and hand in my written copy (EXHIBIT 6).

Denise Mills, Administrative Division, Department of Environmental Quality. The DEQ's interest in this bill is the language provided in section 2 which clarifies the eligibility for reimbursement from the Petroleum Tank Release Fund. The DEQ oversees corrective actions at sites of petroleum storage tank releases as well as remedial actions at other sites under different programs. Without the amendment provided in section 2, the law can be confusing for entities seeking reimbursement from the Board. The DEQ supports HB 214 and has worked with the Board in developing this bill. Thank you.

Ronna Alexander, Petroleum Marketeers Assoc. As you have heard, the Petroleum Tank Release Compensation Board was created by the 1989 Legislature. The Association was responsible for writing and presenting the legislation that created this program. At the time it was critical that some type of fund be established as you have heard the requirements by EPA which the tank owners found impossible to meet. Private insurance was simply not available at any price for those limits. The Association based their legislation upon what other states had done. This industry has a vested interest in the program and there is a large responsibility to assure the viability of it now and what happens to it in the future. The 1998 deadline is approaching for those tank upgrades and removals so the fund will see a greater financial demand on it in the next few years. I have handed out a couple of information sheets (EXHIBITS 7 & 8) that I get questions from people. The first is a comparison between states. The second sheet is the status of revenues generated for these types of programs. Several states are moving toward privatizing or sunseting their programs. The industry believes that private insurance is going to become available at some future date. Right now, though, we need to solve the cash flow problem, if you will. The industry feels that HB 214 meets these needs. All three parts of the bill are essential to the continued security of the fund.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked about the repayment of the loan. The response by Ms. Riley was totally unclear to me, the secretary.

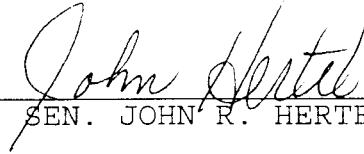
SEN. EMERSON asked if they make sure there is enough income to handle the loan that is taken out? Ms. Riley said that presently the amount of money that comes into the fund each year is approximately between \$5.8 and \$6 million. We are looking at loan repayments of \$60,000 for a \$1 million loan.

Closing by Sponsor:

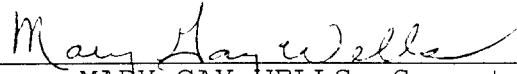
REP. GRADY closed. There are probably 7,000 tanks that still need to be replaced or closed up. You can see that this program has to go on. This bill will keep it solvent and it is a very important bill for our environment. Thank you.

ADJOURNMENT

Adjournment: 10:23 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW