CHAPTER NO. 497

HOUSE BILL NO. 606

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INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

February	6,]	L979				Introduced and referred to Committee on Business and Industry.
February	7, 1	L979				Rereferred to Committee on State Administration.
February	16,	1979				On motion by chief sponsor, Representative Sivertsen added as sponsor.
February	19,	1979				Committee recommend bill do pass as amended. Report adopted.
February	21,	1979				Printed and placed on members' desks.
February	22,	1979				Second reading, do pass.
February	23,	1979				Considered correctly engrossed
						Third reading, passed. Transmitted to second house.
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IN THE SENATE

February 23, 1979 .	Introduced and referred to Committee on Business and Industry.
March 5, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 7, 1979	Statement of Intent adopted.
	Second reading, concurred in as amended.

March 7, 1979	On motion, taken from Com- mittee on Bills and Journal and referred to Committee on Rules. Motion adopted.
March 9, 1979	Committee on Rules recommend bill with Statement of Intent be rereferred to second reading. Report adopted.
March 12, 1979	Second reading, concurred in.
March 14, 1979	Third reading, concurred in as amended.
IN THE HO	JSE
March 15, 1979	Returned from second house. Concurred in as amended.
March 17, 1979	Second reading, amendments rejected.
	On motion, Free Joint Conference Committee requested.
March 19, 1979	Free Joint Conference Com- mittee appointed.
March 22, 1979	Free Joint Conference Com- mittee dissolved.
	On motion, Free Conference Committee requested.
	Free Conference Committee appointed.
March 23, 1979	Free Conference Committee reported.
March 24, 1979	On motion, consideration passed until the 71st Legislative Day.

March 28, 1979 Second reading, adopted. Adopted by Senate. March 29, 1979 Third reading, adopted. Sent to enrolling. Reported correctly enrolled.

HOCHE BILL NO. 606 INTRODUCED BY Elles BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY REGULATION CREATED IN THE DEPARTMENT OF BUSINESS REGULATION: TERMINATING OPERATION OF THE BOARD OF REAL ESTATE ON JULY 1. 1979; ELIMINATING REFERENCES TO THE BOARD OF REAL ESTATE; PERMITTING ADOPTION OF A FEE SCHEDULE: AMENDING SECTIONS 2-8-121. 37-51-102. 37-51-205. 37-51-311. 76-4-1101. 76-4-1202, AND 76-4-1203, MCA; REPEALING SECTIONS 2-15-1642 AND 37-51-101, MCA; AND PROVIDING AN EFFECTIVE DATE."

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15 WHEREAS: the sunset law, sections 2-8-103 and 2-8-112.
16 will terminate the board of real estate and require a
17 performance evaluation of the board by the legislative audit
18 committee; and

19 WHEREAS, as a result of the performance evaluation, the 20 legislative audit committee recommends that the board of 21 real estate be abolished and regulation of the real estate 22 industry be transferred to the board of realty regulation in 23 the department of business regulation and that certain 24 statutory provisions be amended or repealed.

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2 <u>NEW SECTION</u> Section 1. Board of realty regulation.
 3 (1) There is a board of realty regulation.

4 (2) The board consists of five members appointed by 5 the governor with the consent of the senate. Two members 6 shall be licensed real estate brokers or salesmen who have

7 been actively engaged in the real estate business as a 8 broker or salesman in this state for not less than 5 9 continuous years before appointment. Three members shall be 10 representatives of the public who are not state government 11 officers or employees and who are not engaged in business as

- 12 a real estate broker or salesman. The members shall be:
- 13 (a) residents of this state; and

(b) appointed so not more than three members are fromthe same congressional district.

16 (3) Not more than three members, including the
 17 chairman, may be from the same political party.

18 (4) The members shall serve staggered terms of 4 19 years.

(5) The board is allocated to the department for
 administrative purposes only as prescribed in 2-15-121.

22 Section 2- Section 2-8-121, MCA, is amended to read:

23 #2-8-121. Effect of termination. Upon Unless otherwise
 24 provided. upon termination. each agency or unit shall
 25 continue in existence until July 1 of the next succeeding

-2- HBGOG INTRODUCED BILL

year for the purpose of winding up its affairs. During the 1 windup period, termination does not reduce or otherwise 2 3 limit the powers or authority of each respective agency except that no action may be taken which would continue in -4 effect beyond the 1-year windup period. Upon the expiration 5 of the 1 year after termination, each agency not modified or 6 reestablished shall be abolished and all unexpended balances 7 of appropriations, allocations, or other funds shall revert 8 9 to the fund from which they were appropriated or, if that 10 fund is abolished, to the general fund."

Section 3. Section 37-51-102, MCA, is amended to read: "37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply: (1) "Board" means the board of real-estate-provided for in-2-15-1642 reality regulation provided for in [section 16 1].

17 (2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or 13 19 who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, 20 21 purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to 22 23 collect rents or advertises or holds himself out as engaged 24 in any of the foregoing activities. The term "broker" also 25 includes an individual employed by or on behalf of the owner

or lessor of real estate to conduct the sale, leasing, 1 subleasing, or other disposition thereof at a salary or for 2 a fee, commission, or any other consideration. The term 3 "broker" also includes an individual who engages in the 4 business of charging an advance fee or contracting for 5 collection of a fee in connection with a contract by which 6 he undertakes primarily to promote the sale, lease, or other 7 disposition of real estate in this state through its listing 8 9 in a publication issued primarily for this purpose or for 10 referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to 11 12 aid, for a fee, any person in locating or obtaining any real 13 estate for purchase or lease. (3) "Department" means the department of professional 14 15 and-occupational-licensing-provided-for-in-Title-2y--chapter 15v--port--t6 business regulation provided for in 2-15-1801. 16 (4) "Person" includes individuals, partnerships, 17 associations, and corporations, foreign and domestic, except 18 19 that when referring to a person licensed under this chapter, 20 it means an individual. 21 (5) "Real estate" includes leaseholds as well as any 22 other interest or estate in land, whether corporeal,

23 incorporeal, freehold, or nonfreehold and whether the real
24 estate is situated in this state or elsewhere.

25 (6) "Salesman" includes an individual who for a

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a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate." Section 4. Section 37-51-205, MCA, is amended to read: #37+51-205. Compensation of members -- expenses---limitation. (1) Each member of the board shall receive as compensation for each one-half day or--portion--thereof actually spent on his official duties the sum of \$7#50 \$35 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of other duties provided for by the board. +2+--No-member-of-the-boord-may-be-reimbursed-from--the board-s--earmarked-revenue-fund-for-trave}-outside-the-state on-business-of-the-boords" Section 5. Section 37-51-311. MCA. is amended to read: #37-51-311. Fees -- deposit of fees. tly-The-following fees-shall-be-charged-by-the-department-and--paid--into--the cormarked--revenue-fund-for-the-use-of-the-boardy-subject-to 37-1-101+61+

salary, commission, or compensation of any kind is employed.

either directly, indirectly, regularly, or occasionally, by

21 (a)--for-each-examinationy-a-fee-not-to-exceed-\$25†
22 (b)--for-each-original--resident--broker*s---ltcense
23 issuedy-a-fee-not-to-exceed-\$50†
24 (c)--for--each--annual--renewal--af-a-resident-broker*s

25 licensey-a-fee-not-to-exceed-#30t

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1	revenue fund for the use of the board. The fees charged must
Z	be reasonably related to the cost incurred in regulating the
3	<u>real_estate_industry."</u>
4	Section 6. Section 76-4-1101, NCA, is amended to read:
5	*76-4-1101。 Definitions。 Unless the context requires
6	otherwise, in this part the following definitions apply:
7	 "Blanket encumbrance" shall be considered to mean
8	a trust deed or mortgage or any other lien or encumbrance,
9	mechanics* lien or otherwise, securing or evidencing the
10	payment of money and affecting land to be subdivided or
11	affecting more than one lot or parcel of subdivided land or
12	an agreement affecting more than one such lot or parcel by
13	which the owner or subdivider holds said subdivision under
14	an option, contract to sell, or trust agreement.
15	{2} "Board" means the board of reatestateyprovided
16	forin-2-15-1642 realty regulation provided for in [section
17	П •
18	(3) "Department" means the department of p rofessions ?
19	and-occupational-licensingy-provided-for-in-litle-2y-chapter
20	15ypart16 business regulation provided for in 2-15-1801.
21	(4) "Subdivision" and "subdivided lands" mean any
22	tract of land which is hereafter divided into five or more
23	parcels, a parcel of which is less than 5 acres in size, and
24	which is offered for sale or lease outside the state of
25	Montana."

Section 7. Section 76-4-1202, MCA, is amended to read: 1 #76-4-1202. Definitions. When used in this parts 2 unless the context requires otherwise, the following 3 4 definitions apply: (1) "Board" means the board of real-estates-provided 5 for-in-2-15-1642 realty regulation provided for in [section 6 7 11. (2) "Chairman" means the chairman of the board of reel 8 9 estate realty regulation. (3) "Department" means the department of professional 10 11 and-occupational-licensingy-provided-for-in-Title-2y-chepter 15y-part-16 business regulation provided for _ in _2-15-1801. 12 13 (4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken 14 15 for gain or profit. (5) "Offer" includes every inducement, solicitation, 16 17 or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit. 18 (6) "Person" means an individual, corporation, 19 20 government, governmental subdivision or agency, business estate. trust, partnership, unincorporated 21 trust.

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(7) "Purchaser" means a person who acquires or

association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial

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entity.

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attempts to acquire or succeeds to an interest in land.
 (8) "Subdivider" means any owner of subdivided land
 who offers it for disposition or the principal agent of an
 inactive owner.

5 (9) "Subdivision" and "subdivided lands" mean any land 6 which is divided or is proposed to be divided for the 7 purpose of disposition into five or more lots, parcels, 8 units, or interests and also include any land, whether 9 contiguous or not, if five or more lots, parcels, units, or 10 interests are offered as a part of a common promotional plan 11 of advertising and sale."

Section 8. Section 76-4-1203, MCA, is amended to read: m76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205(1).

17 (2) The board shall adopt reasonable rules relating to
18 the administration of this part, but not inconsistent
19 therewith, which may be amended or repealed. The rules shall
20 include but need not be limited to:

(a) provisions for advertising standards to assure
full and fair disclosure;

(b) provisions for escrow or trust agreements or other
means reasonably to assure that all improvements referred to
in the application for registration and advertising will be

completed and that purchasers will receive the interest in land contracted for:

(c) provisions for operating procedures; and

4 (d) other rules necessary and proper to accomplish the
5 purpose of this part."

Section 9. Transfer of funds. All unexpended balances
of appropriations. allocations. or other funds of the board
of real estate shall be transferred to the board of realty
regulation on the effective date of this act to be used for
the purpose of regulating the real estate industry.

Section 10. Transition. All orders and rules relating 11 to regulation of the real estate industry made by the board 12 of real estate remain in full force and effect until revoked 13 or modified in accordance with law by the board of realty 14 regulation. The records and documents of the board of real 15 estate are transferred to the board of realty regulation. 16 licenses, permits, and certificates issued prior to the 17 effective date of this act remain valid under the same terms 18 19 and conditions as when issued and are subject to the 20 provisions of Title 37, chapter 51.

Section 11. Effect of termination. Section 2-8-121
 does not apply to the board of real estate.

23 Section 12. Initial appointments. Within 30 days of 24 the effective date of this act, the governor shall appoint 25 the initial board of realty regulation. The initial terms

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1	shall consist of one term of 1 years one term of 2 years.
2	one term of 3 years, and two terms of 4 years.
3	Section 13. Codification. Section 1 is intended to be
4	codified in Title 2, chapter 15, part 18, and the provisions
5	of Title 2. chapter 15. part 18. apply to section 1.
6	Section 14. Repeater. Sections 2-15-1642 and
7	37-51-101, MCA, are repealed.
8	Section 15. Effective date. This act is effective on
9	passage and approval.

-End-

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STATE OF MONTANA

FISCAL NOTE

Request No. 273 79

Form BD-15

In compliance with a written request received <u>February 7, 1979</u>, there is hereby submitted a Fiscal Note for <u>House Bill 606</u> pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

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An act providing for regulation of the Real Estate Industry by a Board of Realty Regulation created in the Department of Business Regulation.

ASSUMPTIONS:

- 1. The duties of the Real Estate Board will be assumed under the Department of Business Regulation on July 1, 1979.
- 2. The Board will meet 12 times per year.
- 3. 4 FTE will be required to carry out the provisions of this act.
- 4. The workload after the transfer will remain the same.

FISCAL IMPACT:

	FY 80	FY 81
Anticipated revenue	\$160,187	\$1 <mark>64,78</mark> 9
Anticipated expenditures	160,187	164,789
Net fiscal impact	0	0
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Revenue and expenditures will accrue to an earmarked revenue fund account.

COMMENT:

This board, currently under the Department of Professional and Occupational Licensing contributes to the Centralized Services Program for services performed for the Department. The elimination of these funds could increase the amount contributed by the remaining boards not scheduled for sunset at this time.

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BUDGET DIRECTOR Office of Budget and Program Planning Date: <u>2-14-79</u>

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Approved by Committee on State Administration

1	HOUSE BILL NO. 606	1	
2	INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN	2	BE IT ENACTED BY THE LEGISL
3	BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	3	NEW_SECTION. Section
4		4	(1) There is a board of rea
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR	5	(2) The board consi
6	REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY	6	the governor with the cons
7	REGULATION CREATED IN THE DEPARTMENT OF BUSINESS REGULATION;	7	members shall be license
8	TERMINATING OPERATION OF THE BOARD OF REAL ESTATE ON-JULY-Ly	8	who have been actively enga
9	1979 IMMEDIAIELY; ELIMINATING REFERENCES TO THE BOARD OF	9	as a broker or salesman
10	REAL ESTATE; PERMITTING ADOPTION OF A FEE SCHEDULE; AMENDING	10	continuous years before app
11	SECTIONS 2-8-121, 37-51-102, 37-51-205, 37-51-311,	11	be representatives of th
12	76-4-1101, 76-4-1202, AND 76-4-1203, MCA; REPEALING SECTIONS	12	government officers or emp
13	2-15-1642 AND 37-51-101. MCA; AND PROVIDING AN EFFECTIVE	13	business as a real estate b
14	DATE-"	14	shall be:
15		15	(a) residents of this
16	WHEREAS+ the sunset law+ sections 2-8-103 and 2-8-112+	16	(b) appointed so not
17	will terminate the board of real estate and require a	17	the same congressional dist
18	performance evaluation of the board by the legislative audit	18	(3) Not more than
19	committee; and	19	chairman, may be from the s
20	WHEREAS; as a result of the performance evaluation; the	20	(4) The members sha
21	legislative audit committee recommends that the board of	21	years.
22	real estate be abolished and regulation of the real estate	22	(5) The board is al
23	industry be transferred to the board of realty regulation in	23	administrative purposes onl
24	the department of business regulation and that certain	24	Section 2. Section 2
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- 2-8-121. MCA. is amended to read:
- termination. Upon Unless otherwise

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SECOND READING

1 provided, upon termination, each agency or unit shall 2 continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. Ouring the 3 4 windup period+ termination does not reduce or otherwise limit the powers or authority of each respective agency 5 6 except that no action may be taken which would continue in 7 effect beyond the 1-year windup period. Upon the expiration 8 of the 1 year after termination, each agency not modified or 9 reestablished shall be abolished and all unexpended balances 10 of appropriations, allocations, or other funds shall revert 11 to the fund from which they were appropriated or. if that 12 fund is abolished, to the general fund."

13 Section 3- Section 37-51-102, MCA+ is amended to read: 14 "37-51-102- Definitions- Unless the context requires 15 otherwise, in this chapter the following definitions apply: 16 (1) "Board" means the board of real-estate-provided 17 for-in-2-15-1642 realty regulation provided for in [section 18 1]-

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1 in any of the foregoing activities. The term "broker" also 2 includes an individual employed by or on behalf of the owner 3 or lessor of real estate to conduct the sale, leasing, 4 subleasing, or other disposition thereof at a salary or for 5 a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the 6 business of charging an advance fee or contracting for 7 8 collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other 9 disposition of real estate in this state through its listing 10 in a publication issued primarily for this purpose or for 11 12 referral of information concerning real estate to brokers. 13 or both, and any person who aids, attempts, or offers to 14 aid, for a fee, any person in locating or obtaining any real 15 estate for purchase or lease.

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	2 (6) "Salesman" includes an individual who for	a 2		ticensev-o-f ee-not-to-exceed-630 f
	3 salary, commission, or compensation of any kind is employe	d• 3		t d}for-eac horig inal n onresidentbroker*slicense
	<pre>4 either directly, indirectly, regularly, or occasionally,</pre>	by 4		tssuedy-a-fea-not-to-exceed-\$58t
	5 a real estate broker to sell, purchase, or negotiate for t	he 5		ta}forcach-annua}-ren ewa}-of-a-nonresid ent-broker* s
	6 sale, purchase, exchange, or renting of real estate."	6		ticensar-o-fac-not-to-axcaed-\$3 8\$
	7 Section 4. Section 37-51-205, MCA, is amended to rea	d: 7		ffjfor- each-or iginal-salesman ^a s-licensa-issuedv-o-fee
	8 "37-51-205. Compensation of members expenses	8		not-to-exceed-\$25;
	9 Himitation. (1) Each member of the board shall receive	as 9		tg)for-each-annud)-renewal-of-a-solesman*s-licensey-a
10	10 compensation for each one-half day orportionthere	of 10		fee-not-to-excaed-\$15;
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1	15 t2)No-member-of-the-board-may-be-reimbursed-fromt	:he 15		{j}foreachd up }icateii censerwhere-the-ori gin s]
1	16 board*searmarked-revenue-fund-for-trove?-outs+de-tha-ste	ite 16		++cense-fs-+ost-or-destroyed-and-aff+dav+t-+smade+f se
1	17 on-business-of-the-board+*	17		not-to-exceed-\$10;
ł	18 Section 5. Section 37-51-311, HCA, is amended to rea	ed: 18	6	tkjfor-sach-duplicate-pocket-cardy-where-the-originsi
1	19 "37-51-311. Fees deposit of fees. {1} -*he-follow	ng 19	,	pockatcardistost-or-destroyed-and-affidevit-is-madev-a
2	20 fees-shall-be-charged-by-the-department-andpaidinto4	:he 20	t	fec-not-to-exceed-\$18v
2	21 esrmarkedrevenue-fund-for-the-use-of-the-boardy-subject-	-to 21		t2;
2	22 37-1-101(6)+	22	!	the linits-set-by-this-sectionv-Howevers-a -fee-once-set-for
2	23 to;for-each-examinationy-s-fee-not-to-exceed-\$25t	23	5	ona-of-the-items-forwhichafeeischargedconnotbe
2	24 tbjforeachoriginairesidentbroker*siicer	13e 24	•	increasedardecreaseduntilatleast-l-year-has-passed
z	25 taskedy-a-fee-not-to-exceed-\$50t	25	,	since-the-fee-for-that-particuler-item-was-lost-increased-or

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decreased. The board shall adopt a schedule of fees to be 1 Z charged by the department and to be paid into the earmarked 3 revenue fund for the use of the board. The fees charged must 4 be reasonably related to the cost incurred in regulating the 5 real_estate_industry." 6 Section 6. Section 76-4-1101, HCA, is amended to read: 7 "76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply: R 9 (1) "Blanket encumbrance" shall be considered to mean 10 a trust deed or mortgage or any other lien or encumbrance. 11 mechanics* lies or otherwise, securing or evidencing the 12 payment of money and affecting land to be subdivided or 13 affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by 14 15 which the owner or subdivider holds said subdivision under 16 an option, contract to sell, or trust agreement.

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tract of land which is hereafter divided into five or more
parcels, a parcel of which is less than 5 acres in size, and

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1 which is offered for sale or lease outside the state of 2 Montana."

3 Section 7. Section 76-4-1202, MCA, is amended to read:
4 "76-4-1202. Definitions. When used in this part.
5 unless the context requires otherwise. the following
6 definitions apply:

7 (1) "Board" means the board of real-estatev-provided 8 for-in-2-15-1642 realty_regulation_provided_for_in_[section 9 L1+

(2) "Chairman" means the chairman of the board of real
 estate realty_regulation.

12 (3) "Department" means the department of professional and-occupational-licensingy-provided-for-in-Title-2y-chapter
14 15y-pert-16 business regulation provided for in 2-15-1801.
15 (4) "Disposition" includes sale, lease, assignment, or
16 any other transaction concerning a subdivision if undertaken
17 for gain or profit.

18 (5) "Offer" includes every inducement, solicitation;
19 or attempt to encourage a person to acquire an interest in
20 land if undertaken for gain or profit.

(6) "Person" means an individual. corporation.
 government. governmental subdivision or agency. business
 trust. estate. trust. partnership. unincorporated
 association. two or more of any of the foregoing having a
 joint or common interest, or any other legal or commercial

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1 entity.

2 (7) "Purchaser" means a person who acquires or
3 attempts to acquire or succeeds to an interest in land.
4 (8) "Subdivider" means any owner of subdivided land
5 who offers it for disposition or the principal agent of an
6 inactive owner.

7 (9) "Subdivision" and "subdivided lands" mean any land 8 which is divided or is proposed to be divided for the 9 purpose of disposition into five or more lots, parcels, 10 units, or interests and also include any land, whether 11 contiguous or not, if five or more lots, parcels, units, or 12 interests are offered as a part of a common promotional plan 13 of advertising and sale."

Section 8. Section 76-4-1203, MCA, is amended to read: "76 --1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205+++.

19 (2) The board shall adopt reasonable rules relating to 20 the administration of this part, but not inconsistent 21 therewith, which may be amended or repealed. The rules shall 22 include but need not be limited to:

23 (a) provisions for advertising standards to assure
24 full and fair disclosure;

25 (b) provisions for escrow or trust agreements or other

1 means reasonably to assure that all improvements referred to 2 in the application for registration and advertising will be 3 completed and that purchasers will receive the interest in 4 land contracted for;

5 (c) provisions for operating procedures; and

6 (d) other rules necessary and proper to accomplish the
7 purpose of this part.^m

Section 9. Transfer of funds. All unexpended balances
of appropriations, allocations, or other funds of the board
of real estate shall be transferred to the board of realty
regulation on the effective date of this act to be used for
the purpose of regulating the real estate industry.

13 Section 10. Transition. All orders and rules relating 14 to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked 15 16 or modified in accordance with law by the board of realty 17 regulation. The records and documents of the board of real 18 estate are transferred to the board of realty regulation. 19 Licenses, permits, and certificates issued prior to the 20 effective date of this act remain valid under the same terms 21 and conditions as when issued and are subject to the 22 provisions of Title 37, chapter 51.

23 Section 11. Effect-of-termination IERMINATION OF BOARD
 24 DE_REAL_ESTATE. NOIWITHSTANDING_THE_PROVISION_DE_2-8-103(1):
 25 IHE_BOARD_GE_REAL_ESTATE_TERMINATES_ON_THE_EFFECTIVE_DATE_DE

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1	IHIS_ACIA Section 2-8-121 does not apply to the board of
2	real estate.
3	Section 12+ Initial appointments. Within 30 days of
4	the effective date of this act, the governor shall appoint
5	the initial board of realty regulation. The initial terms
6	shall consist of one term of 1 year; one term of 2 years;
7	one term of 3 years, and two terms of 4 years.
8	Section 13. Codification. Section 1 is intended to be
9	codified in Title 2+ chapter 15+ part 18+ and the provisions
10	of Title 2, chapter 15, part 18, apply to section 1.
11	Section 14. Repeater. Sections 2-15-1642 and
12	37-51-101, MCA, are repealed.
13	Section 15. Effective date. This act is effective on
14	passage and approval.
	-End-

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2 INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVER 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	SEN 2 3	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	3	
		NEW SECTION. Section 1. Board of realty regulation.
4	4	 There is a board of realty regulation.
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDIN	G FOR 5	(2) The board consists of five members appointed by
6 REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF	REALTY 6	the governor with the consent of the senate. Two INREE
7 REGULATION CREATED IN THE DEPARTMENT OF BUSINESS REGU	LATION; 7	members shall be licensed real estate brokers or salesmen
8 TERMINATING OPERATION OF THE BOARD OF REAL ESTATE BN-	4AFA-7▲ 8	who have been actively engaged in the real estate business
9 1979 IMMEDIATELY; ELIMINATING REFERENCES TO THE BO	ARD OF 9	as a broker or salesman in this state for not less than 5
10 REAL ESTATE; PERMITTING ADOPTION OF A FEE SCHEDULE; A	MENDING 10	continuous years before appointment. Three <u>TWO</u> members shall
11 SECTIONS 2-8-121+ 37-51-102+ 37-51-205+ 37-	51-311+ 11	be representatives of the public who are not state
12 76-4-1101, 76-4-1202, AND 76-4-1203, MCA; REPEALING S	ECTIONS 12	government officers or employees and who are not engaged in
13 2-15-1642 AND 37+51-101. MCA; AND PROVIDING AN EF	FECTIVE 13	business as a real estate broker or salesman. The members
14 DATE."	14	shall be:
15	15	(a) residents of this state; and
16 WHEREAS, the sunset law, sections 2-8-103 and 2	-8-112+ 16	(b) appointed so not more than three members are from
17 will terminate the board of real estate and rec	uire a 17	the same congressional district.
18 performance evaluation of the board by the legislative	e audit 16	(3) Not more than three members, including the
19 committee; and	19	chairman, may be from the same political party.
20 WHEREAS, as a result of the performance evaluation	on, the 20	(4) The members shall serve staggered terms of 4
21 legislative audit committee recommends that the t	oard of 21	years.
22 real estate be abolished and regulation of the real	estate 22	(5) The board is allocated to the department for
23 industry be transferred to the board of realty regula	tion in 23	administrative purposes only as prescribed in 2-15-121.
24 the department of business regulation and that	certain 24	Section 2. Section 2-8-121, MCA, is amended to read:
25 statutory provisions be amended or repealed.	25	#2-8-121. Effect of termination. Upon Unless otherwise
		-2

THIRD READING

1 provided, upon termination, each agency or unit shall 2 continue in existence until July 1 of the next succeeding 3 year for the purpose of winding up its affairs. During the 4 windup period, termination does not reduce or otherwise 5 limit the powers or authority of each respective agency except that no action may be taken which would continue in 6 7 effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency not modified or R reestablished shall be abolished and all unexpended balances Q 10 of appropriations, allocations, or other funds shall revert 11 to the fund from which they were appropriated or, if that 12 fund is abolished, to the general fund."

13 Section 3. Section 37-51-102, NCA, is amended to read: 14 "37-51-102. Definitions. Unless the context requires 15 otherwise. In this chapter the following definitions apply: 16 (1) "Board" means the board of real-estate-provided 17 for-in-2-15-1642 realty regulation provided for in [section 18 L].

19 (2) "Broker" includes an individual who for another or 20 for a fee, commission, or other valuable consideration or 21 who with the intent or expectation of receiving the same 22 negotiates or attempts to negotiate the listing, sale, 23 purchase, rental, exchange, or lease of real estate or of 24 the improvements thereon or collects rents or attempts to 25 collect rents or advertises or holds himself out as engaged

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1 in any of the foregoing activities. The term "broker" also 2 includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, 3 4 subleasing, or other disposition thereof at a salary or for 5 a fee, commission, or any other consideration. The term 6 "broker" also includes an individual who engages in the 7 business of charging an advance fee or contracting for collection of a fee in connection with a contract by which 8 9 he undertakes primarily to promote the sale. lease, or other 10 disposition of real estate in this state through its listing 11 in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, 12 13 or both, and any person who aids, attempts, or offers to aid. for a fee, any person in locating or obtaining any real 14 15 estate for purchase or lease.

16 (3) "Department" means the department of professional and-occupational-licensing-provided-for-in-fitle-2+--chapter
18 ±5+--part--16 business regulation_provided for_in_2-15-1801+
19 (4) "Person" includes individuals+ partnerships+
20 associations, and corporations, foreign and domestic+ except
21 that when referring to a person licensed under this chapter+
22 it means an individual+

(5) "Real estate" includes leaseholds as well as any
 other interest or estate in land, whether corporeal,
 incorporeal, freehold, or nonfreehold and whether the real

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estate is situated in this state or elsewhere. 1 (6) "Salesman" includes an individual who for a 2 salary, commission, or compensation of any kind is employed, 3 either directly, indirectly, regularly, or occasionally, by 4 5 a real estate broker to sell, purchase, or negotiate for the 6 sale, purchase, exchange, or renting of real estate.* 7 Section 4. Section 37-51-205. MCA. is amended to read: 8 "37-51-205. Compensation of members -- expenses----9 Himitation. (1) Each member of the board shall receive as compensation for each one-half day or--portion--thereof 10 actually spent on his official duties the sum of #7+58 \$35 11 and travel expenses, as provided for in 2-18-501 through 12 2-18-503, connected with the performance of other duties 13

14 provided for by the board.
15 {2}-No-member-of-the-board-may-be-reimbursed-from--the

16 board*s--earmarked-revenue-fund-for-travel-outside-the-state
17 on-business-of-the-boards*

18 Section 5. Section 37-51-311. MCA, is amended to read: 19 "37-51-311. Fees -- deposit of fees. <u>tlj-The-following</u> 20 fees-shall-be-charged-by-the-department-and--pold--into--the 21 earmarked--revenue-fund-for-the-use-of-the-boardy-subject-to 22 37-1-101(6)*

23 tal--for-each-exeminationy-a-fee-not-to-exceed-\$25t

24 tbt--for--each--originat--resident---broker*s---ticense

- 25 issuedy-a-fee-not-to-exceed-450;
 - -5-

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1 tet--for--coch--onnuot--renewot--of-o-resident-broker*s 2 ++censer-o-foe-not-to-excend-\$48+ 3 tdt--for-each--original--nonresident--brokeris--license . issuedy-a-fee-not-to-exceed-\$58+ 5 to) -- for--epch-ennual-renewal-of-s-nearesident-braker*s licenser-a-fee-not-to-exceed-\$30+ 6 7 tfj--for-each-origingl-selessenis-license-issued-a-fae . not-to-exceed-\$25t 9 tg)--for-each-onnuel-renewol-of-a-solesmonis-licenser-a 10 fee-not-to-exceed-515+ 11 tht--for-each-additional-office-or-place-of--businessy 12 en-ennuel-fee-not-to-exceed-\$25; 13 tit-for-each-change-of-place-of-business-or-change-of 14 employer-or-contractual-associater-a-fee-not-to-exceed--sife 15 +++--for--eoch--dup++cate--++censer--where-the-origina+ 16 ++cense-+s-+ost-or-destroyed-and-affidevit-+s--medev--e--fee 17 not-to-exceed-\$10; tkt--for-each-dupticate-pocket-cardy-where-the-original 18 19 pocket--card--is--lost-or-destroyed-and-offidavit-is-modey-a 20 fee-not-to-exceed-518* 21 t2t---The-board-shall-adopt-a-schedule---of--fees--within 22 the--fimits-set-by-this-section-Howevery-e-fee-ence-set-for 23 one-of-the-items-for--which--a--fee--is--charged--cannot--be

25 since-the-fee-for-that-particular-item-was-last-increased-or

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increased--or--decreased--until--at--least-l-veer-hes-passed

2 charged by the department and to be paid into the garmarked 3 revenue fund for the use of the board. The fees charged sust 4 be reasonably related to the cost incurred in regulating the 5 real_estate_industry_" 6 Section 6. Section 76-4-1101, MCA, is amended to read: 7 "76-4-1101. Definitions. Unless the context requires 8 otherwise, in this part the following definitions apply: 9 (1) "Blanket encumbrance" shall be considered to mean 10 a trust dead or mortgage or any other lien or encumbrance, mechanics! lies of otherwise, securing or evidencing the 11 payment of money and affecting land to be subdivided or 12 13 affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by 14 15 which the owner or subdivider holds said subdivision under 16 an option, contract to sell, or trust agreement. 17 (2) "Board" means the board of rest--estatev--provided 18 for--in-2-15-1642 realty regulation provided for in Isaction 19 11. 20 (3) "Department" means the department of professions? end-occupetional-licensingy-provided-for-in-fitle-2y-chapter 21 15v--pert--le business regulation provided for in 2-15-1801+ 22 (4) "Subdivision" and "subdivided lands" mean any 23 tract of land which is hereafter divided into five or more 24 parcels, a parcel of which is less than 5 acres in size, and 25

decreased. The board shall adopt a schedule of fees to ba

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1 which is offered for sale or lease outside the state of 2 Montana." Section 7. Section 76-4-1202, NCA, is amended to read: 3 *76-4-1202. Definitions. When used in this part, 4 unless the context requires otherwise, the following 5 definitions apply: 6 7 (1) "Board" means the board of real-estates-provided 8 for-in-2-15-1642 realty regulation_provided_for_in_[section 9 11. (2) "Chairman" means the chairman of the board of reat 10 11 estate realty_regulation. (3) "Department" means the department of professional 12 13 end-occupational-licensing-provided-for-in-litle-2--chapter #5v-pert-16 business regulation provided for in 2-15-1801. 14 15 (4) "Disposition" includes sale; lease; assignment; or 16 any other transaction concerning a subdivision if undertaken 17 for gain or profit. 18 (5) "Offer" includes every inducement, solicitation, 19 or attempt to encourage a person to acquire an interest in 20 land if undertaken for gain or profit. 21 (5) "Person" means an individual, corporation, government, governmental subdivision or agency, business 22 23 trust. estate. trust. partnership, unincorporated association, two or more of any of the foregoing having a 24 25 joint or common interest, or any other legal or commercial

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means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

5 (c) provisions for operating procedures; and

6 (d) other rules necessary and proper to accomplish the
7 purpose of this part."

8 Section 9. Transfer of funds. All unexpended balances 9 of appropriations, allocations, or other funds of the board 10 of real estate shall be transferred to the board of realty 11 regulation on the effective date of this act to be used for 12 the purpose of regulating the real estate industry.

13 Section 10. Transition. All orders and rules relating 14 to regulation of the real estate industry made by the board 15 of real estate remain in full force and effect until revoked 16 or modified in accordance with law by the board of realty 17 regulation. The records and documents of the board of real 18 estate are transferred to the board of realty regulation. 19 Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms 20 and conditions as when issued and are subject to the 21 22 provisions of Title 37. chapter 51. 23 Section 11. Effect-of-termination TERMINATION OF BOARD

24 DE_REAL_ESTATE. NOIWITHSTANDING_THE_PROVISION_DE_2-8-103(1)+

25 IHE BOARD DE REAL ESTATE TERMINATES ON THE EFFECTIVE DATE OF

(7) "Purchaser" means a person who acquires or

(8) "Subdivider" means any owner of subdivided land

(9) "Subdivision" and "subdivided lands" mean any land

who offers it for disposition or the principal agent of an

which is divided or is proposed to be divided for the

purpose of disposition into five or more lots, parcels,

units, or interests and also include any land, whether

contiguous or not, if five or more lots, parcels, units, or

interests are offered as a part of a common promotional plan

shall be administered by the board. In the administration of

this part, the board shall have all of the powers and duties

the administration of this part, but not inconsistent

therewith, which may be amended or repealed. The rules shall

as stated in 37-51-201(2), (3), and (4) and 37-51-205(1).

Section 8. Section 76-4-1203, MCA, is amended to read:

*76-4-1203. Administration and rules. (1) This part

(2) The board shall adopt reasonable rules relating to

(a) provisions for advertising standards to assure

(b) provisions for escrow or trust agreements or other

attempts to acquire or succeeds to an interest in land.

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entity.

inactive owner.

of advertising and sale."

include but need not be limited to:

full and fair disclosure:

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Z real estate. 3 Section 12. Initial appointments. Within 30 days of 4 the effective date of this act, the governor shall appoint 5 the initial board of realty regulation. The initial terms shall consist of one term of 1 year, one term of 2 years, 6 7 one term of 3 years, and two terms of 4 years. Section 13. Codification. Section 1 is intended to be 8 9 codified in Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to section 1. 10 Section 14. Repeater. Sections 11 2-15-1642 and 12 37-51-101, MCA, are repealed. 13 Section 15. Effective date. This act is effective on

IHIS_ACTs Section 2-8-121 does not apply to the board of

14 passage and approval.

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1 March 7, 1979.	1	March	7+	1979.
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1	STATEMENT OF INTENT RE: HB 606
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3	
4	A statement of intent is required for NB 606 in that it
5	delegates rulemaking authority to the board of realty
6	regulation in Section 8.
ד	Section 8 allows the board to prescribe rules relating
8	to:
9	"(a) provisions for advertising standards to assure
10	full and fair disclosure:
11	(b) provisions for escrow or trust agreements or ather
12	means reasonably to assure that all improvements referred to
13	in the application for registration and advertising will be
14	completed and that purchasers will receive the interest in
15	land contracted for;
16	(c) provisions for operating procedures; and
17	(d) other rules necessary and proper to accomplish the
18	purpose of this part."
19	It is intended that only those rules necessary to carry
20	out the above functions will be adopted by the board of
21	realty regulation. All rules should have as their primary
22	purpose the protection of the public. No rules may be
23	adopted which restrict entry into the real estate industry
24	except as expressly authorized by statute.
25	First adopted by the SENATE CONMITTEE OF THE WHOLE on

HB 606

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15 **4** ¹⁰

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1	HOUSE BILL NO. 606	1	OCCUPATIONAL LICENSING BE ESTABLISHED TO REGULATE. THE REAL
2	INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN	2	ESTATE INDUSTRY and that certain statutory provisions be
3	BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	3	amended or repealed.
4		4	
ć	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR	5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
6	REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY	6	NEW SECTION. Section 1. Board of realty regulation.
7	REGULATION CREATED IN THE DEPARTMENT OF BUSINESSREGULATION	7	(1) There is a board of realty regulation.
8	PROFESSIONALANDOCCUPATIONALLICENSING; TERMINATING	8	(2) The board consists of five members appointed by
9	OPERATION OF THE BOARD OF REAL ESTATE onJULY1v1979	9	the governor with the consent of the senate. Two <u>IHREE</u>
10	<u>IBHEDIATELY;</u> ELIMINATING REFERENCES TO THE BOARD OF REAL	10	members shall be licensed real estate brokers or salesmen
11	ESTATE; PERNITTING-ADDPTIONOFAFEESCHEOVLET AMENDING	11	who have-been <u>ARE</u> actively engaged in the real estate
12	SECTIONS 2-8-121• 37-51-102• 37-51-205• 37-51-311 •	12	business as a broker or salesman in this state for-not-less
13	76-4-1101, 76-4-1202, AND 76-4-1203, HCA; REPEALING SECTIONS	13	than 5 <u>3</u> continuou'syearsbeforeappointment. Three <u>IWO</u>
14	2-15-1642 AND 37-51-101, MCA; AND PROVIDING AN EFFECTIVE	14	members shall be representatives of the public who are not
15	DATE."	15	state government officers or employees and who are not
16		16	engaged in business as a real estate broker or salesman. The
17	WHEREAS, the sunset law, sections 2-3-103 and 2-8-112,	17	members shall be:
18	will terminate the board of real estate and require a	18	(a) residents of this state; and
19	performance evaluation of the board by the legislative audit	19	(b) appointed so not more than three members are from
20	committee; and	20	the same congressional district.
21	WHEREAS, as a result of the performance evaluation, the	21	(3) Not more than three members, including the
22	legislative audit committee recommends that the board of	22	chairman+ may be from the same political party.
23	real estate be abolished and regulation-of-therealestate	23	(4) The members shall serve staggered terms of 4
24	industry-be-transferred-to the board of realty regulation in	24	years. A MEMBER HAY NOT SERVE MORE THAN INC. TERMS OR ANY
25	the department of business-regulation <u>PROFESSIONAL_AND</u>	25	PORILON INEREOF.
			-2- HE 606

REFERENCE BILL

H8 0606/03

HB 0606/03

1 (5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. 2 Saction 2. Section 2-8-121: MCA, is amended to read: 3 #2-8-121. Effect of termination. Upon Unless otherwise 4 5 provided. upon termination, each agency or unit shall continue in existence until July 1 of the next succeeding 6 7 year for the purgose of winding up its affairs. Ouring the 8 windup period, termination does not reduce or otherwise 9 limit the powers or authority of each respective agency 10 except that no action may be taken which would continue in 11 effect beyond the l-year windup period. Upon the expiration 12 of the 1 year after termination, each agency not modified or 13 reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert 14 15 to the fund from which they were appropriated or, if that 16 fund is abolished, to the general fund." 17 Section 3. Section 37-51-102. MCA. is amended to read: #37-51-102. Definitions. Unless the context requires 18 19 otherwise, in this chapter the following definitions apply: (1) "Board" means the board of rest-estate-provided 20

21 for--in-2-15-1642 realty_regulation_provided_for_in_[section
22 1].

23 (2) "Broker" includes an individual who for another or
24 for a fee, commission, or other valuable consideration or
25 who with the intent or expectation of receiving the same

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1 negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of 2 3 the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged 4 in any of the foregoing activities. The term "broker" also 5 6 includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, 7 8 subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term 9 10 "broker" also includes an individual who engages in the 11 business of charging an advance fee or contracting for collection of a fee in connection with a contract by which 12 he undertakes primarily to promote the sale, lease, or other 13 disposition of real estate in this state through its listing 14 in a publication issued primarily for this purpose or for 15 referral of information concerning real estate to brokers, 16 17 or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real 18 19 estate for purchase or lease. 20 (3) "Department" means the department of professional and--occupational-licensing-provided-for-in-fitle-2v-chapter 21 22 23 PROFESSIONAL AND OCCUPATIONAL LICENSING, PROVIDED FOR IN 24 TITLE 2. CHAPTER 15. PART 16. 25 (4) "Person" includes individuals, partnerships,

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associations, and corporations, foreign and domestic, except
 that when referring to a person licensed under this chapter,
 it means an individual.

4 (5) "Real estate" includes leaseholds as well as any
5 other interest or estate in land, whether corporeal,
6 incorporeal, freehold, or nonfreehold and whether the real
7 estate is situated in this state or elsewhere.

8 (6) "Salesman" includes an individual who for a
9 salary, commission, or compensation of any kind is employed,
10 either directly, indirectly, regularly, or occasionally, by
11 a real estate broker to sell, purchase, or negotiate for the
12 sale, purchase, exchange, or renting of real estate."

Section 4. Section 37-51-205, MCA, is amended to read: 13 14 #37-51-205. Compensation of members -- expenses---limitation. (1) Each member of the board shall receive as 15 16 compensation for each one-half day or--portion--thereof actually spent on his official duties the sum of \$7+50 \$35 17 18 \$25 and travel expenses, as provided for in 2-18-501 through 2-13-503, connected with the performance of other duties 19 20 provided for by the board.

21 (2)--No--member-of-the-board-may-be-reimbursed-from-the
 22 board*s-cormarked-revenue-fund-for-travel-outside-the--state
 23 on-business-of-the-board**

 24
 Section-5v--Section-37-51-311v-MEAv-is-nmended-to-read*

 25
 #37-51-311v-Fees-----deposit----af--feesur---fly--The

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HB 606

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1	following-fees-shall-be-charged-by-the-departmentandpaid
Z	intotheeermarkedrevenue-fund-for-the-use-of-the-boardy
3	subject-to-37- 1-101(6) +
4	ta}for-cach-examinationy -a-f ee-not- to-exc eed-\$25
5	{b}foreachorigina}residentbroker*s}icense
6	tssuedy-a-fee-not-to-exceed-\$58f
7	tc}foreochannualrenewalof-a-resident-broker*s
8	}icensey-s-fac-not-to-excoed-\$301
9	td}for-eachoriginalnonresidentbroker=slicen se
10	issuedy-a-fee-not-to-exceed-\$589
11	te}foreach-annus}-renews}-of-s-nonresident-broker* s
12	licansev-a-fee-not-to -exc ood-\$381
13	{f}for-each-original-salesmon*s-license-issuedy-a-fee
14	not-to-exceed-\$25\$
15	{g}for-coch-annual-renewal-of-a-solesmon*s-licensey- a
16	fee-not-to-exceed-\$15;
17	th)for-coch-odditions1-office-or-placeofbusiness+
18	on-annual-fee-not-to-exceed-\$25;
19	ti)fore ach-change-of-płace-of - business-or-change -of
20	employer-or-contractual-associatey-n-fee-not-to-exceed\$15;
21	tj}forrachduplicatelicenserwhere-the-original
22	license-is-lost-or-destroyed-and-affidavit-ismodevafee
23	not-to-exceed-\$10;
24	tk)for-each-duplicate-pocket-cordy-where-the-original
25	pocketcordistost-or-destroyed-and-affidavit-is-madey-a
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1	fee-not-to-exceed-\$10+	1	(3) "Department" means the department of professional
2	{2}The-board-sha }}-adopt-a-scheduleoffeeswithin	2	and-occupations}-licensingy-provided-for-in-Title-2y-chapter
3	thetimita-set-by-this-sectionu-Howeverv-o-fee-once-set-for	3	15vpart16 <u>business-regulation-provided-for-in-2-15-1801</u>
4	one-of-the-itams-forwhichafeeischargedcannatbe	4	PROFESSIONAL AND OCCUPATIONAL LICENSING. PROVIDED FOR IN
5	increasedordecreaseduntilatleast-l-year-has-passed	5	IIILE 2. CHAPTER 15. PART 16.
6	since-the-fee-for-that-particular-item-was-last-increased-or	6	(4) "Subdivision" and "subdivided lands" mean any
7	decroosody <u>fhe-boord-shati-adopt-a-achedule-offeestobe</u>	7	tract of land which is hereafter divided into five or more
e	charged-the-department-ond-to-be-paid-into-the-socaarked	6	parcels, a parcel of which is less than 5 acres in size, and
9	<u>revenue-fund-for-the-use-of-the-boards-The-fect-therged-sust</u>	9	which is offered for sale or lease outside the state of
10	<u>be reasonably related to the cost incurred in regulating the</u>	10	Nontana•"
11	<u>real-estate-industrys"</u>	11	Section 6. Section 76-4-1202, MCA, is amended to read:
12	Section 5. Section 76-4-1101; MCA; is amended to read:	12	•76-4-1202。 Definitions。 When used in this part,
13	■76-4-1101. Definitions. Unless the context requires	13	unless the context requires otherwise, the following
14	otherwise, in this part the following definitions apply:	14	definitions apply:
15	(1) "Blanket encumbrance" shall be considered to mean	15	(1) "Board" means the board of realestatevprovided
16	a trust deed or mortgage or any other lien or encumbrance.	16	forin-2-15-1642 realty regulation provided for in [section
17	mechanics* lien or otherwise+ securing or evidencing the	17	1) •
18	payment of money and affecting land to be subdivided or	18	(2) "Chairman" means the chairman of the board of reat
19	affecting more than one lot or parcel of subdivided land or	19	estate realty regulation.
20	an agreement affecting more than one such lot or parcel by	20	(3) "Department" means the department of professional
21	which the owner or subdivider holds said subdivision under	21	and-occupational-licensingy-provided-for-in-Title-2y-chapter
22	an option, contract to sell, or trust agreement.	22	15ypart16 <u>business-regulation-provided_for-in-2-15-1801</u>
23	(2) "Board" means the board of rent-restatev-provided	23	PROFESSIONAL AND DCCUPATIONAL LICENSING, PROVIDED FOR IN
24	forin-2-15-1642 realty regulation provided for in [section	24	IIILE 2. CHAPIER 15. PART 16.
25	1].	25	(4) "Disposition" includes sale, lease, assignment, or
	-7- HB 606		-8- HE 606

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any other transaction concerning a subdivision if undertaken
 for gain or profit.

3 (5) "Offer" includes every inducement, solicitation,
4 or attempt to encourage a person to acquire an interest in
5 land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, 6 government, governmental subdivision or agency, business 7 trust, estate, trust, partnership, unincorporated 8 9 association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial 10 entity. 11

(7) "Purchaser" means a person who acquires or
 attempts to acquire or succeeds to an interest in land.

14 (8) "Subdivider" means any owner of subdivided land
15 who offers it for disposition or the principal agent of an
16 inactive owner.

17 (9) "Subdivision" and "subdivided lands" mean any land 18 which is divided or is proposed to be divided for the 19 purpose of disposition into five or more lots, parcels, 20 units, or interests and also include any land, whether 21 contiguous or not, if five or more lots, parcels, units, or 22 interests are offered as a part of a common promotional plan 23 of advertising and sale."

24 Section 7. Section 76-4-1203, MCA, is amended to read:
25 "76-4-1203. Administration and rules. (1) This part

1 shall be administered by the board. In the administration of

2 this part, the board shall have all of the powers and duties

3 as stated in 37-51-201(2)+ (3)+ and (4) and 37-51-205+1+.

4 (2) The board shall adopt reasonable rules relating to
5 the administration of this part, but not inconsistent
6 therewith, which may be amended or repealed. The rules shall
7 include but need not be limited to:

8 (a) provisions for advertising standards to assure
 9 full and fair disclosure;

10 (b) provisions for escrow or trust agreements or other 11 means reasonably to assure that all improvements referred to 12 in the application for registration and advertising will be 13 completed and that purchasers will receive the interest in 14 land contracted for;

15 (c) provisions for operating procedures; and

16 (d) other rules necessary and proper to accomplish the 17 purpose of this part."

18 Section 8. Transfer of funds. All unexpended balances 19 of appropriations, allocations, or other funds of the board 20 of real estate shall be transferred to the board of realty 21 regulation on the effective date of this act to be used for 22 the purpose of regulating the real estate industry.

23 Section 9. Transition. All orders and rules relating
24 to regulation of the real estate industry made by the board
25 of real estate remain in full force and effect until revoked

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or modified in accordance with law by the board of realty
 regulation. The records and documents of the board of real
 estate are transferred to the board of realty regulation.
 Licenses, permits, and certificates issued prior to the
 effective date of this act remain valid under the same terms
 and conditions as when issued and are subject to the
 provisions of Title 37, chapter 51.

8 Section 10. Effect-of-termination IERMINATION OF BOARD 9 DE REAL ESTATE. NOTWITHSTANDING THE PROVISION OF 2-8-103(1): 10 THE BOARD OF REAL ESTATE TERMINATES ON THE EFFECTIVE DATE OF 11 THIS AGE: Section 2-8-121 does not apply to the board of 12 real estate.

13 Section 11. Initial appointments. Within 30 days of 14 the effective date of this act, the governor shall appoint 15 the initial board of realty regulation. The initial terms 16 shall consist of one term of 1 year, one term of 2 years. 17 one term of 3 years, and two terms of 4 years.

Section 12. Codification. Section 1 is intended to be codified in Title 2. chapter 15. part 18 16. and the provisions of Title 2. chapter 15. part 18 16. apply to section 1.

 22
 Section 13. Repeater.
 Sections
 2-15-1642
 and

 23
 37-51-101, MCA, are repeated.

24 Section 14. Effective date. This act is effective on
25 passage and approval.
-End-

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1	STATEMENT OF INTENT RE: HB 606
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4	A statement of intent is required for HB 606 in that it
5	delegates rulemaking authority to the board of realty
6	regulation in Section 8.
7	Section 8 allows the board to prescribe rules relating
8	to:
9	*(a) provisions for advertising standards to assure
10	full and fair disclosure;
11	(b) provisions for escrow or trust agreements or other
12	means reasonably to assure that all improvements referred to
13	in the application for registration and advertising will be
14	completed and that purchasers will receive the interest in
15	land contracted for;
16	(c) provisions for operating procedures; and
17	(d) other rules necessary and proper to accomplish the
18	purpose of this part."
19	It is intended that only those rules necessary to carry
20	out the above functions will be adopted by the board of
21	realty regulation. All rules should have as their primary
22	purpose the protection of the public. No rules may be
23	adopted which restrict entry into the real estate industry
24	except as expressly authorized by statute.
25	First adopted by the SENATE COMMITTEE OF THE WHOLE on

1 March 7, 1979.

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HB 0606/05

1	HOUSE BILL NO. 606
2	INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN
3	BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
6	REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY
7	REGULATION CREATED IN THE DEPARTMENT OF BUSINESSREGULATION
8	PROFESSIONAL AND OCCUPATIONAL LICENSING: TERMINATING
9	OPERATION OF THE BOARD OF REAL ESTATE ONJULY1979
10	IMMEDIATELY; ELIMINATING REFERENCES TO THE BOARD OF REAL
11	ESTATE; PERMITTING-ABOPTION-OF-AFEESCHEDULE; PERMITIING
12	ADOPTION DE A FEE SCHEDULE: AMENDING SECTIONS 2-8-121,
13	37-51-102, 37-51-205, 37-51-311, 76-4-1101, 76-4-1202, AND
14	76-4-1203, MCA; REPEALING SECTIONS 2-15-1642 AND 37-51-101,
15	MCA; AND PROVIDING AN EFFECTIVE DATE."
16	
17	WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
18	will terminate the board of real estate and require a
19	performance evaluation of the board by the legislative audit

performance evaluation of the board by the legislative audit
 committee; and

21 WHEREAS, as a result of the performance evaluation, the 22 legislative audit committee recommends that the board of 23 real estate be abolished and regulation-of-the-real-estate 24 industry-be-transferred-to the board of realty regulation in 25 the department of business-regulation PROFESSIONAL_AND HB 0606/05

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1	OCCUPATIONAL LICENSING BE ESTABLISHED TO REGULATE THE REAL
2	ESTATE INDUSTRY and that certain statutory provisions be
3	amended or repealed.
4	
5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
6	NEW SECTION. Section 1. Board of realty regulation.
7	(1) There is a board of realty regulation.
8	(2) The board consists of five members appointed by
9	the governor with the consent of the senate. Two <u>THREE</u>
10	members shall be licensed real estate brokers or salesmen
11	who havebeen ARE actively engaged in the real estate
12	business as a broker or salesman in this state for-notless
13	then 5 <u>3</u> continuousyearsbefore-sppointment. Three <u>140</u>
14	members shall be representatives of the public who are not
15	state government officers or employees and who are not
16	engaged in business as a real estate broker or saleswan. The
17	members shall be:
18	(a) residents of this state; and
19	(b) appointed so not more than three members are from
20	the same congressional district.
21	(3) Not more than three members, including the
22	chairman, may be from the same political party.
23	(4) The members shall serve staggered terms of 4
24	years. <u>A MEMBER MAY NOI SERVE MORE THAN THO TERNS OR ANY</u>
25	PORIJON THEREOF.

REFERENCE BILL: Includes Free Joint Conference Committee Report Dated <u>J/29/49</u>

(5) The board is allocated to the department for 1 Z administrative purposes only as prescribed in 2-15-121. 3 Section 2. Section 2-8-121, MCA, is amended to read: #2-8-121. Effect of termination. Upon Unless otherwise 4 provided:__upon_termination; each agency or unit shall 5 continue in existence until July 1 of the next succeeding 6 7 year for the purpose of winding up its affairs. During the 8 windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency q except that no action may be taken which would continue in 10 11 effect beyond the 1-year windup period. Upon the expiration 12 of the 1 year after termination, each agency not modified or 13 reestablished shall be abolished and all unexpended balances 14 of appropriations, allocations, or other funds shall revert 15 to the fund from which they were appropriated or, if that fund is abolished, to the general fund." 16 17 Section 3. Section 37-51-102, MCA, is amended to read: 18 *37-51-102. Definitions. Unless the context requires 19 otherwise, in this chapter the following definitions apply: 20 (1) "Board" means the board of rest-estate-provided 21 for-in-2-15-1642 realty regulation provided for in [section Z2 11.

(2) "Broker" includes an individual who for another or
 for a fee, commission, or other valuable consideration or
 who with the intent or expectation of receiving the same

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1 negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of 2 the improvements thereon or collects rents or attempts to 3 collect rents or advertises or holds himself out as engaged 4 in any of the foregoing activities. The term "broker" also 5 6 includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, 7 subleasing, or other disposition thereof at a salary or for 8 9 a fee, commission, or any other consideration. The term 10 "broker" also includes an individual who engages in the 11 business of charging an advance fee or contracting for collection of a fee in connection with a contract by which 12 he undertakes primarily to promote the sale, lease, or other 13 14 disposition of real estate in this state through its listing 15 in a publication issued primarily for this purpose or for 16 referral of information concerning real estate to brokers, 17 or both, and any person who aids, attempts, or offers to 18 aid, for a fee, any person in locating or obtaining any real 19 estate for purchase or lease. 20 (3) "Department" means the department of professional

and-occupationol-licensing-provided-for-in-Title-2+--chapter
 15*--port--16 <u>business=regulation=provided-for-in=2=15=1891</u>
 PROFESSIONAL_AND_OCCUPATIONAL_LICENSING*_PROVIDED_FOR_IN
 IIITLE_2*_CHAPIER_15*_PART_16*
 (4) "Person" includes individuals, partnerships,

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associations, and corporations, foreign and domestic, except
 that when referring to a person licensed under this chapter,
 it means an individual.

(5) "Real estate" includes leaseholds as well as any
other interest or estate in land, whether corporeal,
incorporeal, freehold, or nonfreehold and whether the real
estate is situated in this state or elsewhere.

8 (6) "Salesman" includes an individual who for a 9 salary, commission, or compensation of any kind is employed, 10 either directly, indirectly, regularly, or occasionally, by 11 a real estate broker to sell, purchase, or negotiate for the 12 sale, purchase, exchange, or renting of real estate."

Section 4. Section 37-51-205, MCA, is amended to read: 13 #37-51-205. Compensation of members -- expenses---14 limitation. (1) Each member of the board shall receive as 15 compensation for each one-half day or--portion-thereof 16 actually spent on his official duties the sum of \$7.58 \$35 17 \$25 and travel expenses, as provided for in 2-18-501 through 13 2-18-503, connected with the performance of other duties 19 provided for by the board. 20

21 (2)--No-member-of-the-board-may-be-reimbursed-from--the
 22 board*s--earmarked-revenue-fund-for-trave}-outside-the-state
 23 on-business-of-the-boards*

 24
 Section-5w--Section-37-51-311w-HEAw-is-amended-to-readt

 25
 #37-51-311w-Feas-----deposit--of---feesw-----(1)*---The

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1	following-feas-shall-be-charged-by-the-department-and-paid
2	into-the-earmarked-revenue-fund-for-the-useoftheboardy
3	subject-to-37-1-101(6)+
4	tajfor-each-examinationv-s-fee-not-ta-exceed-\$25 t
5	{b}foreachorigina]residentbrokertslicense
6	issuedy-a-fee-not-to-axcood-\$50 f
7	tc;for-each-onnuol-renewalof- a-resident-broker* s
8	ticensey-a-fee-not-to-exceed-538;
9	{d } foreachoriginalnonresidentbroker*s-license
10	+ssuedy-o-fee-not-to-exceed-\$581
11	{e}for-each-annual-renewal-of-a-nonresidentbraker*s
12	licenser-s-fee-not-to-excded-s30 ;
13	{f}for-soch-originol-solesmon*s-license-issuedv-s-fee
14	not-to-exceed-\$25†
15	tg}for-each-annud}-renewa}-of-a-sa}esman*s-}icensev-a
16	Fee-not-to-exceed-#157
17	{h}foreachadditional-office-or-place-of-businessv
18	an-annual-fee-not-to-exceed-\$25\$
19	ti}for-coch-change-of-place-of-business-or-changeof
20	cmp}oyeror-contractuol - associatev -e -fee-not-to-exceed=\$251
21	tjj -for-each-duplicatelicensevwheretheoriginal
22	}icenseisiostor-destroyed-and-affidavit-is-madev-o-fae
23	not-to-exceed-\$10t
24,	{k}for-each-dup}icote-pocket-cord+-where-the-original
25	pocket-card-is-lost-or-destroyed-and-affidavitismodeva

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1 fee-not-to-exceed-#10v 2 3 the-finits-set-by-this-section-Howevery-a-fee-ance-set-for one--of--the--items--for--which--a--fee-is-charged-connot-be 4 5 increased-or-decreased-until-st--least--1--year--has--passed since-the-fee-for-that-particular-item-was-last-increased-or 6 7 decreased. The--board--shall-adopt-a-schedule-of-fees-to-be 8 charaad-by-the-deportment-and-to-be-paid-into-the-sermerked 9 revenue-fund-for-the-use-of-the-boards-The-fees-charged-must 10 be-reasonably-related-to-the-cost-incurred-in-reculating-the real-estate-industrys" 11 12 SECTION 5. THERE IS A NEW MCA SECTION THAT READS: 13 Schedule of fees. The board shall adopt a schedule of 14 fees to be charged by the department and to be paid into the 15 earmarked revenue fund for the use of the board. The fees 16 charged must be reasonably related to the cost incurred in 17 regulating the real estate industry. 18 Section 6. Section 76-4-1101, MCA, is amended to read: 19 "76-4-1101. Definitions. Unless the context requires 20 otherwise, in this part the following definitions apply: (1) "Blanket encumbrance" shall be considered to mean 21

21 (1) "blanket encumbrance" shall be considered to mean
22 a trust deed or mortgage or any other lien or encumbrance,
23 mechanics" lien or otherwise, securing or evidencing the
24 payment of money and affecting land to be subdivided or
25 affecting more than one lot or parcel of subdivided land or

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1 an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under 2 3 an option, contract to sell, or trust agreement. 4 (2) "Board" means the board of real--estatev--provided for--in-2-15-1642 realty regulation provided for in Esection 5 6 11. 7 (3) "Department" means the department of professional R and-occupational-licansingy-provided-for-in-fitle-2y-chapter 9 15y--port--16 business=regulation-provided_for-in-2-15-1801 10 PROFESSIONAL AND OCCUPATIONAL LICENSING. PROVIDED FOR IN 11 TITLE 2. CHAPTER 15. PART 16. 12 (4) "Subdivision" and "subdivided lands" mean any 13 tract of land which is hereafter divided into five or more 14 parcels, a parcel of which is less than 5 acres in size, and 15 which is offered for sale or lease outside the state of Montana." 16 17 Section 7. Section 76-4-1202, MCA, is amended to read: 18 #76~4-1202. Definitions. When used in this part. 19 unless the context requires otherwise, the following 20 definitions apply: 21 "Board" means the board of real-restatev--provided 22 for--in-2-15-1642 realty regulation provided for in [section 23 11. 24 (2) "Chairman" means the chairman of the board of reat 25 estate realty regulation.

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 1
 {3} "Department" means the department of professional

 2
 and-occupational-licensingy-provided-for-in-Title-2y-chapter

 3
 15y--part--16

 business-regulation-provided_for_in=2=15=1881

 4
 PROFESSIONAL_AND_OCCUPATIONAL_LICENSING*_PROVIDED_FOR_IN

5 TITLE 2. CHAPTER 15. PART 16.

6 [4] "Disposition" includes sale, lease, assignment, or
7 any other transaction concerning a subdivision if undertaken
8 for gain or profit.

9 (5) "Offer" includes every inducement, solicitation.
10 or attempt to encourage a person to acquire an interest in
11 land if undertaken for gain or profit.

means an individual, corporation, 12 (6) "Person" government, governmental subdivision or agency, business 13 estate, trust, partnership, unincorporated 14 trust. association, two or more of any of the foregoing having a 15 joint or common interest, or any other legal or commercial 16 17 entity.

18 (7) "Purchaser" means a person who acquires or
 19 attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land
 who offers it for disposition or the principal agent of an
 inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land
which is divided or is proposed to be divided for the
purpose of disposition into five or more lots, parcels,

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units, or interests and also include any land, whether 1 contiguous or not, if five or more lots, parcels, units, or 2 interests are offered as a part of a common promotional plan 3 of advertising and sale." 4 Section 8. Section 76-4-1203. MCA. is amended to read: 5 #76-4-1203. Administration and rules. (1) This part 6 shall be administered by the board. In the administration of 7 8 this part, the board shall have all of the powers and duties 9 as stated in 37-51-201(2), (3), and (4) and 37-51-205(1). 10 (2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent 11 therewith. which may be amended or repealed. The rules shall 12 13 include but need not be limited to: (a) provisions for advertising standards to assure 14 15 full and fair disclosure: (b) provisions for escrow or trust agreements or other 16 17 means reasonably to assure that all improvements referred to 18 in the application for registration and advertising will be 19 completed and that purchasers will receive the interest in 20 land contracted for; 21 (c) provisions for operating procedures; and

22 (d) other rules necessary and proper to accomplish the

23 purpose of this part."

24. Section 9. Transfer of funds. All unexpended balances
25 of appropriations, allocations, or other funds of the board

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of real estate shall be transferred to the board of realty
 regulation on the effective date of this act to be used for
 the purpose of regulating the real estate industry.

4 Section 10. Transition. All orders and rules relating 5 to regulation of the real estate industry made by the board 6 of real estate remain in full force and effect until revoked 7 or modified in accordance with law by the board of realty 8 regulation. The records and documents of the board of real 9 estate are transferred to the board of realty regulation. 10 Licenses, permits, and certificates issued prior to the 11 effective date of this act remain valid under the same terms 12 and conditions as when issued and are subject to the 13 provisions of Title 37, chapter 51.

14 Section 11. Effect-of-termination TERBINATION OF BOARD 15 OF REAL ESTATE. NOTWITHSTANDING THE PROVISION OF 2-8-103(1). 16 THE BOARD OF REAL ESTATE TERMINATES ON THE EFFECTIVE DATE OF 17 THIS_ACT. Section 2-8-121 does not apply to the board of 18 real estate.

19 Section 12. Initial appointments. Within 30 days of 20 the effective date of this act. the governor shall appoint 21 the initial board of realty regulation. The initial terms 22 shall consist of one term of 1 year, one term of 2 years, 23 one term of 3 years, and two terms of 4 years.

24 Section 13. Codification. Section 1 is intended to be 25 codified in Title 2, chapter 15, part 18 16, and the

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- 1 provisions of Title 2, chapter 15, part 18, apply to
- 2 section 1.
- 3 Section 14. Repeater. Sections 2-15-1642 and
- 4 37-51-101, NCA, are repealed.
- 5 Section 15. Effective date. This act is effective on
- 6 passage and approval.

-End-

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SENATE STANDING COMMITTEE REPORT (Business & Industry) That House Bill No. 606 be amended as follows: 1. Title, line 7. Following: "OF" Strike: "BUSINESS REGULATION" Insert: "PROFESSIONAL AND OCCUPATIONAL LICENSING" 2. Title, line 10. Following: "ESTATE;" Strike: "PERMITTING ADOPTION OF A FEE SCHEDULE" 3. Title, line 11. Following: "37-51-205," Strike: "37-51-311," 4. Page 1, lines 22 and 23. Following: "and" on line 22 Strike: "regulation of the real estate industry be transferred to" 5. Page 1, line 24. Following: "of" Strike: "business regulation" Insert: "professional and occupational licensing be established to regulate the real estate industry" 6. Page 2, line 9. Following: "than" Strike: "5" Insert: "3" 7. Page 2, line 21. Following: "years." Insert: "A member may not serve more than two terms or any portion thereof." 8. Page 4, line 18. Following: "16" Strike: "business regulation provided for in 2-15-1801" Insert: "professional and occupational licensing, provided for in Title 2, chapter 15, part 16" 9. Page 5, line 11. Following: "67-50" Strike: "\$35" "\$25" Insert: 10. Page 5, line 18 through line 5 on page 7. Strike: Section 5 in its entirety Renumber: all subsequent sections

March 5, 1979

Page 2 March 5, 1979 House Bill No. 606 11. Page 7, line 22. Following: "16" Strike: "business regulation provided for in 2-15-1801" Insert: "professional and occupational licensing, provided for in Title 2, chapter 15, part 16" 12. Page 8, line 14.
Following: "16" Strike: "business regulation provided for in 2-15-1801" Insert: "professional and occupational licensing, provided for in Title 2, chapter 15, part 16" 13. Page 11, line 9. Following: "part" Strike: "18" Insert: "16" 14. Page 11, line 10. Following: "part" Strike: "18" Insert: "16"

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 606 be amended as follows:

1. Page 2, line 8.
Following: "who"
Strike: "have been"
Insert: "are"

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2. Page 2, line 9. Following: "state" Strike: remainder of line 9 through "appointment" on line 10