

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 29, 1991, at
10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE BILL 144

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, sponsor of the bill, stated that he brings this bill to address a problem that arose here in Helena. The problem relates to SID's on condominiums. The section that is being amended is part of the unit ownership act, which is the act in which condominiums are created. If a land owner owns land in an area where there is SID's, in Helena if you file for a subdivision plot within the city you are required up front to form the SID's, get the paving done to the streets, sidewalks, curbs, etc. Then a developer who wants to build condominiums may take a single building lot and convert that to build say an eight unit condominium on that single building lot. The result of filing this declaration of unit ownership is to create eight units on a single lot. At the time that lot was created, at the clerk and recorders office, on the classification of appraisal the taxes, the SID's are assessed against that single lot. Once

the declaration of single ownership is filed, creating essentially eight individual units which can be separately owned as part as this one lot. The classification of appraisal office and the county treasurers office then need to create eight new parcels for the purpose of taxation. Each individual unit is owned by a separate tax payer who then has to be taxed. The county then has to break out the charges. The problem is that an owner of one of these building lots filed a declaration of unit ownership, but no notice is ever given to the city that this declaration was ever filed. So there is the real property taxes and assessments that every home owner gets filed under one pin number, but the city doesn't get notice of the fact that there has been a creation of a condominium. They don't get the opportunity to break out the SID's into these eight separate units. The problem that happened in Helena was an owner of the lot who created the condominiums simply went to the county and said just assess all the SID's against my lot, and then he proceeded to file bankruptcy. There were property owners who got hurt because there was confusion if they were responsible for part of the SID's or whether they were not part of the SID's. It created all kinds of confusion which caused problems with the city of Helena, it caused problems with the lender of the property. This bill would do nothing more than when the developer of the condominium at the time they file their declaration to create the condominium form of ownership, they would have to give a copy to the city so the city could look and it and know that they would have to change the allocation of the SID's on the tax bills, and make sure that all SID's aren't assessed into one unit.

Proponents' Testimony:

David Hull, towns city attorney, spoke in favor of the bill. He stated that this bill is a simple solution to a simple problem. It is merely a notice to the city so the city can make that break out of the taxes.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked if the city will notify the county about their taxes. He then asked if the city gives the county a property to property break out of their taxes and their SID's.

David Hull responded by saying that what happens is the county gives the information about the eight condominiums, but the city doesn't know that. The city gets one pin number of these eight which we bill all of the SID's. We don't know about the other seven pin numbers. When one pin files bankruptcy, they don't know what to do with the other eight they want to be fair with everybody.

Senator Lynch asked if he was correct in reading that this

would not apply to the consolidated counties of Butte, Silverbow, Anaconda, and Deerlodge.

Senator Mazurek responded that those counties have just one office that does their assessments.

Closing by Sponsor:

Senator Mazurek closed.

Senator Lynch stated to Senator Mazurek that since this may be unanimous maybe it should go to second reading rather than the consent calendar.

Senator Mazurek stated that they could use it on second reading.

HEARING ON SB 112

Presentation and Opening Statement by Sponsor:

Senator John Harp, sponsor of the bill, stated that SB 112 was requested by the board of reality regulations. There will be a slight amendment offered by the department rather than saying 'appointed', changing that to 'hired'. The board was reorganized in 1984, and prior to that there was an administrator to work with the board of reality, and after that this position has not been used. There has been an added work load to the board and this bill would simply allow them to add an FTE to overlook some of the board's duties. Referring to the fiscal note, the FTE would be a grade 16, step 2, with salary and benefits. For F190, as estimated on the fiscal worksheet it would be a little over 32,890 dollars. Also, under the operations expenses this applies to travel, rent, maintenance, messengers (Refer to Fiscal Note attached). This money is going to come from the reality recovery fund, and that money is composed of every time that you are originally going to get your license both for salesman and broker that thirty five dollars is deposited into this recovery fund. Currently under that recovery fund there is two hundred and thirty eight thousand dollars, and what they are asking for is the ability to take the money from the recovery fund to pay for this additional FTE.

Proponents' Testimony:

Marcia Allen, a licensed real estate owner and a member of the board of reality regulations, spoke in favor of the bill (See Exhibit 1 and 1A).

Brendan Beatty, representing the Montana association of realtors, spoke in favor of the bill. They association would like to go on record in support.

Steve Meloy, bureau chief for the professional occupational

licensing bureau which houses the board of reality regulation, spoke in favor of the bill. The question that he would ask as an administrator if they were to consider hiring an executive secretary is what that person would do that the administrative assistant isn't already doing. The additional duties would involve developing and implementing continued education caravan programs, develop a prelicensing or education curriculum for salesmen and brokers, implement a consumers publication program, edit and update time share exam and course, coordinate complaint investigative efforts, participate more actively in the national association of real estate license law officials, and keep the records current and trends in the real estate industry. There are three executive secretaries one is on the board of nursing, one is the board of pharmacy, and one is the board of medical examiners. The medical examiners board is the only board that has more licensees than the board of real estate regulations. The board is constantly reviewing the fees and trying to make them commence with cost. Every board that has subsided has made an effort to lower those fees. Everytime there is a subjected short fall of a fund, there is an across the board spending cut that effects earmarked accounts, which effects them by not allowing them to spend the money that has been appropriated, which automatically causes their ear marked cash balance to go up. The board of real estate regulation has an one hundred eighty thousand cash balance, and this just allows them to spend it the way that they legitimately feel it ought to be spent.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked if anyone has talked to the governor about this.

Steve Meloy replied that under the current administration, in order for a bill to become an executive agents private executive branch package it has to go by the governor's office. The governor's office gave this their stamp of approval.

Senator Gage asked what a education caravan program was.

Marcia Allen replied by saying that because the current statute requires the licensees have a certain number of hours every two years for continuing education to meet these requirements, they seem to think that the association should offer some education for them. Especially the outlying areas of Glendive, Miles City, Havre, Libby where the licensees can't get somewhere to get the required hours. So they are looking towards the board for some way to help them out. The board is in process of organizing a caravan where instructors have prepared to go out to these rural communities to teach the required hours that they need to meet their education requirements.

Senator Gage asked who funds this caravan.

Marcia Allen responded that this would be funded out of the recovery fund.

Senator Gage asked how many staff members are there on the board of reality.

Steve Meloy replied that there were currently 1.5 staff members.

Senator Gage stated that in the testimony from Marcia Allen she stated that it is a most voluntary board, and asked what mostly voluntary meant.

Marcia Allen stated that it should say all voluntary board. There are five volunteers appointed by the governor to the board.

Senator Hager stated that the person appointed to executive secretary may not be an officer or a paid employee of the real estate association or group of real estate dealers or group. He asked if a person can resign and become the executive secretary, or are they trying to keep it away from anyone who has been in the industry.

Steve Meloy replied by saying to be consistent with the other boards they have the provisions in them. If that person is no longer under the employee of the real estate association rate group then he would be eligible for the position.

Senator Kennedy asked if any other boards supply the money for the CEO programs.

Steve Meloy replied that there are boards at POL that fund continuing education programs using licensee money.

Senator Kennedy asked if rent was involved in with the operating expenses listed on the fiscal note.

Steve Meloy replied that they have thirty three people in a eight thousand square feet. They have the ability to expand, but not the resources to do so. The operating expenses does include rent.

Senator Kennedy asked if they had computers.

Steve Meloy replied that they do, but they buy used computers because just to hook up a new computer would cost them around two thousand dollars.

Senator Lynch asked if each of the thirty three employees paying almost as much as their salaries in rent.

Steve Meloy stated that in the operating cost, rent is only a small part. The attorney fees come out of that, the administrative assistant fees, the salaries come out of that figure. What they have is an administrative support pool, it is a propriortary fund. What makes it a propriortary fund is they have to show it in the boards authority and then they have to show it in the division authority to spend that money. It is dual authority.

Senator Lynch asked if maybe they would have to hire another attorney to help with the additional work load.

Steve Meloy replied that would absolutely be a possibility hiring two FTE's instead of one.

Senator Williams asked about the operating cost of two hundred two thousand for the one and one half FTE's.

Steve Meloy replied that the two hundred and one thousand under current law is the operating costs of the pool. They anticipated increasing it by two hundred sixty thousand dollars. The pool is just the recharges the lower head costs to run all of these boards.

Senator Williams asked if for every one and a half FTE's it would cost 200,000 dollars to preform their function.

Grace Berger, administrative assistant for the board of reality association, replied by saying that the pool charges are determined by the total of the boards budget. A board may have one person assigned to them, they may have three people assigned to them. The bottom line in their budget that determines their pool charges. A boards budget can vary for a number of reasons. They may have FTE's that are exclusive travel FTE's.

Senator Williams asked what other group are drawing from this pool.

Grace Berger replied that all boards, all boards administrative assistants, all boards phones, all boards computer charges, all boards supplies, are drawing from this pool. There are thirty boards.

Senator Williams asked if this operating cost was high, or low.

Grace Berger replied that the board of reality is one of the higher bottom line budget boards. The reason being that they have a large travel budget. Trust accounts must be audited at least once every two years, and it is expensive to send the investigators out.

Senator Williams asked if Grace felt it was necessary to audit that often.

Grace Berger replied that isn't her decision for her to make. It is a board decision.

Marcia Allen stated that sending the investigators out to do the auditing of the trust accounts is really one of the key functions that they have. If they didn't audit the trust accounts they would have no way of knowing that the companies are misusing the consumers money. It does happen.

Senator Williams asked if Marcia Allen missed part of her testimony (See Exhibit 1).

Marcia Allen replied that the foreign land practice act is when out of state developers want to register in the state of Montana. She went on to say that they don't have the proper people to administer something like that. As more people are being attracted to Montana, you will see more developers come into this state to try to capture that market.

Senator Lynch asked if they hire another attorney, can they do that without letting the legislature know that there is another FTE there.

Steve Meloy answered by saying no, if the FTE authority isn't there they can't expand.

Senator Lynch asked if the FTE authority isn't there, why would they appropriate money for the recharges of that amount.

Steve Meloy replied that they would contract out for legal help. They do not need legislature to contract as long the authority is there to spend the pool money.

Senator Williams asked what percent of legal business from the pool is contracted.

Steve Meloy replied that it is a very small percent.

Senator Williams asked if there is any dollar limitations as to what can be contracted.

Steve Meloy replied if it exceeds five thousand you have to have a request of proposal. As long as they have the authority to spend money in the pool.

Senator Gage asked if a person could be an individual real estate dealer and qualify to be on the administrative association.

Steve Meloy replied no.

Marcia Allen replied that they represent just a portion of the licensees and it would create a conflict of interest for the other licensees.

Senator Gage stated that under the language it says that the person should have a bachelor's degree or college degree. He then asked if that meant a person who has a degree in basket weaving has a chance at the job compared to a guy that has worked all of his life in real estate but doesn't have a college degree.

Steve Meloy stated that they wanted to keep the cost as low as possible, and for that reason they just required a college degree. As long as that is in the bill, that person shall have a bachelor's degree, if that was not there, then the job would read degree or equivalent experience.

Marcia Allen replied that she didn't think the board would have a problem with that. They are not directly involved with the hiring of the people for the department of commerce.

Steve Meloy stated that the process of getting an administrative position is a difficult task to take on.

Senator Gage asked as a result of their pooling costs in actuality the costs comes to two hundred thousand instead of two hundred sixty thousand as allocated in recharges.

Steve Meloy stated that it carries over to the next year.

Senator Lynch asked Senator Harp ought this to ultimately end up in finance and claims.

Senator Harp responded that he wouldn't mind if the bill to move from the senate to the house.

Senator Lynch asked Mr. Meloy to explain to him, they already have one secretary, they have one and a half FTE's in the board of reality area, what will be the new set up.

Steve Meloy responded that in an attempt to reduce the recharges to the board of real estate so that two hundred and two thousand dollars goes down, what he would like to do is take some from the other boards.

Senator Lynch asked if the new person would be the boss, the thirty two thousand job, and then they would still write off the board of realtors have two point five FTE's.

Steve Meloy replied that it will now if this passes.

Senator Lynch asked if they would pool the clerical.

Steve Meloy replied yes, that 1.5 that is on the fiscal note does not belong to the board of real estate, it belongs to the pool.

Senator Lynch asked if they are changing the bill to read, an act requiring the department of commerce to hire an executive secretary.

Steve Meloy replied yes.

Senator Gage asked if the funding for this in the governor's budget or do they plan to amend the big bill to put this in

there.

Steve Meloy stated that the figures that are in the governor's budget now are the figures they have offered in the fiscal note. There is appropriations in the recovery fund that will be used in the current governor's budget to pay for this person.

Senator Lynch stated that on the fiscal note, current law is offered by the current budget.

Steve Meloy answered yes.

Senator Lynch stated that told him the FTE is not in the executive budget.

Steve Meloy stated that it is not in the line item, but there is money in the budget under another line item.

Grace Berger stated that part of the funds for this will be coming out of the recovery fund, which has an unexpended appropriation balance. Also part will be coming out of the board of reality's personal services that are currently budgeted and has remained unexpended.

Steve Meloy stated than that money would be transferred into an appropriation for FTE and for operating costs.

Senator Gage asked if the FTE is in the governor's budget.

Grace Berger replied that she didn't know that.

Steve Meloy stated that the governor's office did review this, he is not sure if they reviewed the fiscal note or not and allowed it to be part of the governor's package.

Senator Gage asked if Steve Meloy could find out for him.

Steve Meloy stated yes.

Closing by Sponsor:

Senator Harp closed by saying that he would be seeing the director of department of commerce, and he will ask him the questions about the FTE for the committee members. If this bill does go to finance and claims, he doesn't know if they should ask for a revised fiscal note to take away that pool of money. It is very misleading. Another thing that they should maybe ask for is to define under rental fee where that twenty four thousand dollars is going.

Senator Lynch asked if Senator Harp wanted this committee to put the amendment through before finance and claims gets it.

Senator Harp answered yes.

Senator Harp asked if they should just transfer the bill to finance and claims, or just make a motion during second reading to move it over.

Senator Lynch replied that some way it will end up in finance and claims.

Senator Harp asked that the committee to clean it up then send it over to finance and claims.

EXECUTIVE ACTION ON SB 144

Discussion:

Senator Hager stated that he would like a couple of days to review.

Senator Lynch stated that was fine.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

None.

EXECUTIVE ACTION ON SB 112**Motion:**

Senator Williams motioned to amend SB 112.

Discussion:

Senator Lynch asked if that was okay even though it substantially changes the title of the bill from the board of reality regulations to the department of commerce.

Bart Campbell replied that he didn't think this would be a problem. Ultimately the board of reality is under that department.

Senator Lynch stated that the bill will also be amended so that rather than saying appoint it will say hire.

Amendments, Discussion, and Votes:

The amendments for SB 112 passed unanimously.

Senator Lynch asked if there was any language for equivalency in any other job descriptions.

Bart Campbell replied that there is equivalency, but usually what that would mean is that you would need a degree in force management. This is just saying that you need a college degree, it does not say in reality.

Senator Bruski stated that what bothers her about it is it's an ambiguous statement saying a bachelor's degree. If you have a bachelor's degree in home making and apply for this job, it would mean that you are qualified.

Senator Lynch stated that you are still allowing the board to advise the department, and that wouldn't be the case. Common sense would tell you that the board would not hire someone with a degree in home making to run the board of reality.

Senator Bruski stated on the same note wouldn't it mean

equivalent experience the board should be able to decide on that to.

Senator Lynch stated yes, but it should say in the reality business.

Senator Gage stated that an individual that is selling real estate on his own does not qualify for this. He also stated that he is not sure why it says that the person must be a citizen of the United States of America. There are a lot of people in Montana that aren't citizens.

Senator Thayer stated that when this bill came in establishing the board of reality there was problems about grandfathering. Perhaps the idea of equivalency was already dealt with.

Marsha Allen stated that it is for the licensing purposes for the grandfather.

Senator Williams asked Senator Gage if he had a problem with just striking lines 16 and 17.

Senator Gage responded by saying no. He thinks they are making a mistake leaving it in there.

Senator Lynch commented that he thought a grade 16 usually applies to a college graduate.

Senator Franklin commented that she supports Senator Gage's thought, but she didn't know what the indications are for them, the whole civil service act of it.

Senator Lynch stated that the bottom grade in state government was grade 16. The reason it is grade 16 is because of the education.

Senator Franklin asked if there was a precedence then for grade 16 to be at least a bachelor's degree or equivalent experience as approved by the board.

Bart Campbell stated that he does not know the answer.

Senator Franklin asked how they could find out.

Bart Campbell stated that he could research that and let the committee know.

Senator Lynch asked why they would have to start at a grade 16. That is a relatively high starting point.

Steve Meloy replied that there would definitely be a recruiting problem even at grade 16.

Senator Thayer asked if the person would have to qualify for at least a grade 16, or substitute that language which still wouldn't give them the starting salary that they're looking for.

Senator Kennedy asked if they took out 2A by what authority would they have to set the salary that they advertise that position.

Steve Meloy replied the reason that the department thinks it necessary for that language is so they aren't thrown out by administration when they ask for a 16. If they throw 2A out they would still have the authority to write a position description that based on administration standards to give that person a grade 16.

Senator Kennedy asked if that means at the time of hire.

Steve Meloy replied yes.

Senator Lynch commented that maybe the whole bill should be sent to finance and claims, because they will get it anyway.

Senator Noble asked if the committee could let the people could work on it a couple days to make the language acceptable.

Senator Lynch replied yes, and asked Steve Meloy if that was okay with him.

Steve Meloy replied yes, he would work with the board of real estate.

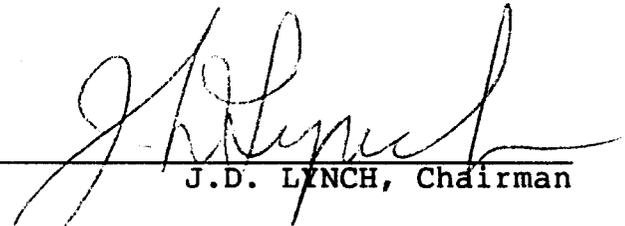
Recommendation and Vote:

Senator Lynch commented that they would take it up another day. They won't make any amendments until they act on the bill again.

Senator Lynch closed the executive session of SB 112.

ADJOURNMENT

Adjournment At: 11:25 a.m.



J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 1/29/91 Bill No. SB112 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: WILLIAMS TO AMEND SB112

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 29th day of January, 1991.

Name: David N. Hull

Address: P.O. Box 534
Helena, MT 59621

Telephone Number: 423-6030

Representing whom?
City of Helena

Appearing on which proposal?
SB 144

Do you: Support? Amend? Oppose?

Comments:
The proposed bill is a solution
to a minor problem

MANUELA ALLEN
1/29/91

SENATE BUSINESS & INDUSTRY
COMMITTEE NO. 1
DATE 1/29/91
BILL NO. SB 112

MR. CHAIRMAN, MEMBERS OF THE SENATE BUSINESS AND INDUSTRY COMMITTEE. I AM A LICENSED REAL ESTATE BROKER AND A MEMBER OF THE MONTANA BOARD OF REALTY REGULATION. I AM ~~SPEAKING AS~~ A PROPONENT OF SB 112.

HISTORICALLY, THE BOARD OF REALTY REGULATION HAS HAD AN ADMINISTRATOR ON ITS STAFF. THE DEPARTMENT OF COMMERCE, PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU WAS REORGANIZED IN 1985 THE ADMINISTRATOR POSITION WAS SHIFTED TO THE LEGAL POOL FOR THE POL BUREAU.

SINCE THAT TIME, THE BOARD HAS BEEN ADDING TO THE LIST OF PROGRAMS IT IS RESPONSIBLE FOR IMPLEMENTING AND OVERSEEING. THESE PROGRAMS INCLUDE THE REGISTRATION OF TIMESHARE DEVELOPMENTS AND THE LICENSING OF THE TIMESHARE SALES STAFF. PRE-LICENSING AND CONTINUING EDUCATION REQUIREMENTS HAVE BEEN IMPLEMENTED TO UPGRADE THE QUALITY OF OUR LICENSEES. FOREIGN LAND SALES PRACTICE ACT HAS INCREASED IN ACTIVITY IN THE RECENT PAST.

THE BOARD IS ATTEMPTING TO GET BACK IN THE SERVICE BUSINESS. TO OUR LICENSEES AS WELL AS TO THE CITIZENS OF MONTANA. IN ORDER TO DO THIS, WE MUST HAVE A FULL TIME STAFF MEMBER WHO HAS THE QUALIFICATIONS TO IMPLEMENT THE NEW PROGRAMS WE HAVE ADDED, CAN KEEP OUR BUDGET ON TRACK, AND PROVIDE LEADERSHIP AND CONSISTENCY WITH ALL ASPECTS OF THE BOARD PERFORMANCE, FROM COMPLAINTS AND INVESTIGATIONS TO ISSUING LICENSES AND EDUCATION.

THE EXTENSIVE EDUCATIONAL PROGRAM THAT THE BOARD IS TRYING TO

IMPLEMENT IS A MAJOR CONCERN TO ALL LICENSEES. THE BOARD HAS AN EDUCATION FUND ESTABLISHED, AND A VISION OF A PROGRAM THAT WOULD BENEFIT THE CONSUMING PUBLIC AS WELL AS ASSIST THE LICENSEE IN MEETING THE REQUIRED CONTINUING EDUCATION REQUIREMENT BY OFFERING QUALITY, TIMELY EDUCATION INSTEAD OF ALLOWING ALMOST ANY COURSE APPROVAL SIMPLY BECAUSE WE DO NOT HAVE THE STAFF TO MANAGE A COMPREHENSIVE PLAN.

IN ADDITION TO EDUCATION, OTHER PROGRAMS CONNECTED WITH THE BOARD OF REALTY REGULATION HAVE INCREASED IN ACTIVITY AND COMPLEXITY. TIMESHARE REGISTRATION AND LICENSING IS COMING OF AGE AS DOMESTIC TRAVEL INCREASES AND MONTANA EARNS A NAME IN THE VACATION INDUSTRY. THE REVIEW AND APPROVAL OF THESE PROJECTS HAS FALLEN ON THE SHOULDERS OF PART TIME STAFF AND A MOSTLY VOLUNTARY BOARD MEMBER. A FULL TIME STAFF MEMBERS COULD MONITOR PROJECTS AND WORK CLOSELY WITH DEVELOPERS IN GETTING THEIR PROJECTS TO MEET MINIMUM REQUIREMENTS. THE BOARD DEVELOPED LICENSING EXAMS AND CORRESPONDENCE COURSE WILL REQUIRE CONSTANT EDITING AND UPGRADING.

THE UNIT OWNERSHIP ACT AND THE FOREIGN LAND SALES PRACTICE ACT ARE CURRENTLY BEING ADMINISTERED BY THE BOARD OF REALTY REGULATION STAFF. THESE PROGRAMS ARE MAKING GREATER DEMANDS ON THE CURRENT STAFF, AND ARE REQUIRING A GREATER WORKING KNOWLEDGE OF THE LAWS AND RULES SPECIFIC TO THOSE AREAS.

THE BOARD IS COMMITTED TO THE CONCEPT OF PROTECTION OF THE

PUBLIC. THE PHILOSOPHY OF THE BOARD IS TO RAISE THE STANDARDS OF EDUCATION AND CONSUMER PROTECTION. IN ORDER TO DO THIS, WE NEED TO HAVE AN EXECUTIVE SECRETARY AVAILABLE TO DEVELOP THESE PROGRAMS AND NURTURE THEIR EXPANSION.

WE HAVE A VISION OF THE FUTURE THAT INCLUDES EXPANSION OF OUR EDUCATION PROGRAMS, BOTH EDUCATION OF LICENSEES AND CONSUMER PROGRAMS AND PUBLICATIONS TO ASSIST IN THE LARGEST INVESTMENT MOST PEOPLE WILL MAKE IN THEIR LIFE.

MONTANA MUST MOVE AHEAD IN ORDER TO MAINTAIN CURRENT LICENSING STANDARDS BEING SET FOR THE REAL ESTATE INDUSTRY. OUR CURRENT AND FUTURE LICENSEES ARE DEMANDING MORE FROM THEIR LICENSING BOARD. THE GENERAL CONSUMER IS DEMANDING A MORE SOPHISTICATED AND KNOWLEDGEABLE LICENSEE TO ASSIST THEM IN A REAL ESTATE TRANSACTION.

AS A MOSTLY VOLUNTARY BOARD, WE RELY HEAVILY ON OUR STAFF TO HANDLE THE OPERATION OF THE BOARD OFFICE. WE SEE A MORE ACTIVE ROLE FOR THE BOARD OF REALTY REGULATION IN THE FUTURE. WE SEE A NEW PROFESSIONALISM ENTERING THE REAL ESTATE INDUSTRY, AND THE BOARD AND ITS STAFF BEING THE FRONT RUNNER IN THIS AREA. CURRENT STAFF LIMITS DO NOT ALLOW FOR EXPANDED WORKLOAD, NOR DO THE CURRENT STAFFING LEVELS ALLOW THESE DUTIES TO BE ABSORBED.

WE RESPECTFULLY REQUEST A DO PASS RECOMMENDATION ON SENATE BILL 112.

BOARD OF REALTY REGULATION

DEPARTMENT OF COMMERCE

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1A

DATE 1/29/91

BILL NO. SB112

STAN STEPHENS, GOVERNOR

STATE OF MONTANA

ARCADE BUILDING
111 N. JACKSON
HELENA, MONTANA 59620-0407

(406) 444-2961 Main desk



January 28, 1991

TO: J. D. Lynch, Chairman
Senate Business and Industry Committee

FROM: John Dudis, Chairman
Board of Realty Regulation

As the chairman of the Board of Realty Regulation, I would like to be placed on record as a proponent for SB 112. This bill would create an Executive Secretary position for the Board of Realty Regulation.

Under the Department of Commerce, The Board of Realty Regulation was reorganized in 1985. Prior to that time, the Board had an Administrator to oversee the various responsibilities and coordinate the efforts of the Board. That position was shifted to the legal pool and the board lost their Administrator.

The industry does support this legislation. We are a self funded program and receive no general fund monies. The creation of this position will not increase our fees as we are currently involved in a cost containment program, and have had a positive cash balance and unexpended appropriation in the past.

As the real estate industry has evolved, the board has been required to become more responsive to the licensees and assist them in the day to day dealings of todays market place. As issues like agency, psychologically affected properties, disclosure, and licensee liability come to light, the Board staff is being called upon to answer inquires, interpret situations and become involved in complaints that extend beyond the usual real estate situation.

The implementation of pre-licensing education and continuing education has resulted in unruly monsters that are running the board, rather than the board running either program. Funds are available, and will be used to develop a curriculum for both pre-licensing and continuing education. This area is of great concern to the board, as the potential to educate the licensees and eliminate liability to both the licensee and the consumer can best be accomplished by a higher standard of education. The

current situation where the instructors and course sponsors are dictating what educational topics, the number of hours, and methods of presentation available to the licensee is unacceptable.

The programs assigned to the Board and its staff have expanded considerably. The Board is now registering timeshare developments and licensing its sales staff. This entails the continual modification of the licensing exam and course used to license these individuals. The review of the developments application is also an added responsibility that requires a certain expertise in the timeshare regulation area.

The Board is attempting to implement a property management licensing program. This program will involve a pre-licensing and continuing education requirement and specific laws and rules for the regulation of this industry. The Board will need a professional in charge of the implementation of this program and the development of the educational programs and exam, in addition to the other charges already in existence.

The Foreign Land Sales Practice Act is requiring expanded attention. The implementation of this charge has been passed along to the Board's staff.

The Board has initiated some internal programs that must be directed by the staff. It is the vision of the board that this Executive Secretary position will be responsible for the development and implementation of a continuing education program, including an annual caravan program. The development of a broker and sales pre-licensing curriculum must also come from this position. The complaint/investigative process will be coordinated and monitored through the Executive Secretary. The newsletter and additional educational programs will be the responsibility of this position, as well as supervising the staff of the Board of Realty Regulation.

Montana must move ahead in order to maintain current licensing standards being set for the real estate industry. Our current and future licensees are demanding it. The general public is demanding a more sophisticated and knowledgeable licensee. The Board is pursuing this philosophy by becoming more involved in the National Association of Real Estate License Law Officials. We have relied heavily on our staff to add consistency and direction to this pursuit. This organization lends support and information in our endeavors to expand our education programs and modernize this industry and its regulation.

As a mostly voluntary board, we rely heavily on our staff to handle the operation of the board office. We have not been unhappy with the performance of our staff, or the Department of Commerce. We do, however, see a more active role for the Board of Realty Regulation in the future. We see a new professionalism entering the real estate industry, and the Board and its staff

TESTIMONY

Senate Bill 137 - An Act to Revise the Provisions of the Securities Act Relating to Investment Advisers

January 29, 1991

Robyn J. Young, Deputy Commissioner of Securities

At the request of the Senate Business and Industry committee chairman, Senator J. D. Lynch, I respectfully submit the following written explanation of the impact of Senate Bill 137 on existing regulations relating to investment advisory activities.

SECTION-BY-SECTION-ANALYSIS

SECTION 1. Definitions

Page 5, lines 15-22.

Amends 30-10-103(11), MCA, "Definition of Investment Advisor," to more specifically include firms and individuals that hold themselves out as providers of financial planning and related services. In addition, several current exclusions from the definition are eliminated and replaced with exemptions from registration (See also Section 2).

Current Law:

The current language causes a great deal of confusion relating to which advisers and what advisory activities come under the jurisdiction of the Montana Securities Department and the Securities Act. Excluding various categories of advisers from the definition of "investment adviser," creates a false belief that these excluded individuals are not governed by any of the Securities Act's antifraud sections pertaining to investment advice. The current definition of "investment adviser" was derived from the Investment Advisers Act of 1940. The language in the antifraud portions of this federal law are consistent with the definition and refer only to "investment advisers."

The Montana Securities Act is patterned after the Uniform Securities Act, which is a model that has been developed by the North American Securities Administrators Association. The language in these state laws is confusing because the antifraud sections of the acts refer to "any person." This was intentional on the part of the drafters of the Uniform Securities Act. Although they wanted to provide a number of exceptions to registration requirements, they also intended

that there should be no exemptions from the antifraud provisions. This provides the state securities agencies broader antifraud powers than what the federal law grants to the Securities and Exchange Commission.

Under current law, attorneys and accountants who advertise or "hold themselves out" to the public as investment advisers, cannot rely on the "solely incidental" exclusion, and therefore must register as investment advisers. Although Mr. MacKenzie testified that we had not adopted specific rules in Montana to require this, we have never felt that it was necessary to adopt rules. In 1987, the United States Securities and Exchange Commission and the North American Securities Administrators Association issued a joint interpretive opinion addressing the applicability of both the state and federal investment adviser laws to financial planners and professionals who provide investment advisory services as part of their other business activities. This opinion concluded that the professional exclusion from registration is not available to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services.

Purpose:

The amendments in Section 1 of Senate Bill 137 eliminate the confusion described above. People will understand that an exemption from registration as an investment adviser does not mean that the exempt person can commit securities or investment advisory fraud and escape regulation by the Securities Department. Mr. Harrison's testimony was solid evidence of the lack of understanding of the current law. He clearly had no prior knowledge of the investment advisory regulations currently imposed on his profession.

Mr. MacKenzie was correct when he testified that Sections 1 and 2 of Senate Bill 137 would result in Montana's investment adviser laws being different from the Uniform Securities Act. However, the Uniform Securities Act is a merely a guide. States frequently adopt statutes that depart from the uniform language in order to tailor their laws to the needs of their state. Senate Bill 137 would allow the Montana Securities Department to use our limited resources more effectively by registering only those investment advisers who are not currently licensed or registered with another state agency.

SECTION 2. Registration of Investment Advisers and Investment Adviser Representatives

Page 11 and 12.

Amends 30-10-201(3), MCA, "Registration of investment advisers", to provide exemptions from registration for various individuals and firms.

Current law:

Professionals who are already subject to other state licensing requirements and supervised by other regulatory bodies could be investment advisers by definition, if they engage in investment advisory activities or hold themselves out as financial planners. The Montana Securities Department could vociferously enforce this registration requirement if it had a larger staff and additional financial resources. Since attorneys and accountants are already required to be licensed to practice in Montana, the enforcement benefits obtained through registration with the Securities Department may be a duplication of other existing professional licensing processes.

Purpose:

The Montana Society of Certified Public Accountants asked the Securities Department to provide more lenient investment adviser registration requirements. The intent of the exemptions is to decrease the regulatory burden of registration for individuals and firms that are already subject to regulation by another licensing body.

In addition, the "solely incidental" language was deleted and replaced with the requirement to be licensed as a professional in Montana. This provides a complete exemption from registration for Montana's attorneys and accountants. This is clearer than the current language, because there is no need to define what constitutes "solely incidental." Although the Securities Department relinquishes the authority to require registration of many accountants and attorneys, the new language will be very clear and more efficient to enforce.

SECTION 2: continued

Page 16, lines 5-9.

Amends 30-10-201(11), MCA, to allow the commissioner to adopt rules to require "registered" investment advisers to disclose information as necessary to protect advisory clients. This requirement is similar to the Federal Securities and Exchange Commission's rule that registered investment advisers provide prospective clients with a disclosure brochure.

Current Law:

This requirement is similar to one of our investment adviser rules. This rule applies only to "registered" investment advisers.

Purpose:

This amendment merely includes the requirement in the registration statute. It would still only apply to "registered" investment advisers.

SECTION 3. Fraudulent and other prohibited practices

Page 21, lines 20 and 21.

Amends 30-10-301(2), to grant the commissioner the authority to adopt rules specifying dishonest or unethical practices by persons engaging in investment advisory activities.

Current Law:

We currently have rules defining "unethical" practices by investment advisers that can only be used as grounds to revoke, deny, or suspend the registration of "registered" investment advisers. Therefore, the responsible investment advisor who complies with our registration requirements is required to follow more stringent rules than an "unregistered" person.

Purpose:

The exact language in this amendment was included in the 1986 Amendments to the Uniform Securities Act as adopted by the North American Securities Administrators Association. The amendment to 30-10-301(2), MCA, would allow the Securities Commissioner clearer authority to better define what constitutes investment advisory fraud. Many other states including; Idaho, Washington, North Dakota, and South Dakota have adopted rules defining "unethical business practices." The nature of the financial planning and investment advisory businesses are constantly changing. Rules allow more flexibility in addressing the needs of consumer protection, and eliminate the necessity to request technical legislation every time a minor change is needed.

SECTION 4. Civil Liabilities--limitations on actions

Page 24, lines 24 and 25, and Page 25 lines 1-10.

Amends 30-10-307, MCA, by adding a new Subsection (2) that permits private remedies for violations of 30-10-301(2)-(6), MCA, pertaining to fraudulent or prohibited practices involving advisory activities in cases where the victim does not purchase a security.

Current Law:

Section 30-10-307, MCA, is the statute that provides "clout" in cases involving securities law violations that are not serious enough to warrant criminal prosecution. When the Commissioner of Securities issues a permanent Cease and Desist Order, that order is prima facie evidence against the violator in an action brought against him in a civil suit under this statute.

An astute attorney understands that this statute is the most efficient way to get an investor's money back when he has been defrauded. First, the case is investigated by the Department. If we find sufficient evidence of a violation, the Commissioner issues a Cease and Desist Order. The subject of the order has a right to an Administrative hearing. If, after the subject has had an opportunity to plead their innocence at a hearing, the hearing officer finds that the alleged violations did occur, then the Cease and Desist order becomes permanent.

The victim's attorney can then file a private action in a court of law and he does not have to retry the entire case. He can utilize 30-10-307, MCA, to simplify the collection of damages on behalf of his client. The existence of this statute does not eliminate the victim's right to sue under other civil liability statutes.

Therefore, if the Securities Department issues a permanent Cease and Desist order against a person for a violation of 30-10-301(2), MCA, where there was a "device, scheme, or course of business" to defraud a consumer, that person would not be able to recover some of his losses. For example, if an investment adviser fraudulently induces a consumer into paying him an exorbitant fee to manage his retirement investments, but the investment adviser never follows through with any of his promises, the victim would not be able to recover the lost fees under the current statute.

Purpose:

Although the vast majority of violations of the Montana Securities Act involve a purchase of a security, there are many cases and circumstances that do not. The new Section 30-10-307(2) provides a civil remedy for these advisory activities.

The language in this section was taken from the 1981 Amendments to the Uniform Securities Act. As of 1987 over 20 states had adopted this statute.

Summary:

The testimony from opponents to Senate Bill 137 may have confused the members of the committee. This confusion is understandable because the opponents clearly did not comprehend the regulations imposed upon their professions by the current laws. Senate Bill 137 is not the regulatory nightmare that the opponents made it out to be. Senate Bill 137 is designed to eliminate the false belief that the antifraud provisions of the Montana Securities Act merely apply to the conventional securities industry.

In addition, Senate Bill 137 updates the antifraud and civil liabilities sections of the Montana Securities Act to include 1981 and 1986 Amendments to the Uniform Securities Act. Sections 3 and 4 provide improved consumer protection to address the ever increasing problem of investment adviser and financial planner fraud. Mr. MacKenzie's testimony that the bill departs from Uniform Act language simply does not apply to the amendments contained in Section 3 and Section 4.

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0112, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing the Board of Real Estate to appoint an executive secretary and providing an effective date.

ASSUMPTIONS:

1. The proposed executive secretary of the Board of Real Estate will be a grade 16 position.
2. The expansion of the Board of Real Estate will require additional office space, operating costs and office equipment.
3. Administrative overhead expenses will increase. Administrative overhead is represented in the budgets for the Board of Realty and the Professional and Occupational Licensing Bureau of the Department of Commerce.
4. Current level revenues will remain unchanged. Increased cost will be paid from current level revenues and the balance of the real estate recovery fund which is projected to have a FY91 ending balance of \$238,253.
5. Current law is represented by the executive budget recommendation for the Board of Real Estate of the Department of Commerce.

FISCAL IMPACT:

Board of Realty:

Expenditures:

	FY 92		FY 93	
	Current Law	Proposed Law	Difference	
FTE	1.50	2.50	1.00	1.00
Personal Services	46,039	78,247	32,208	32,888
Operating Costs	202,457	229,339	26,882	24,767
Equipment	0	4,301	4,301	0
Total	248,496	311,887	63,391	57,655

Funding:

State Special	248,496	311,887	63,391	57,655
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Revenues:

Bd of Real Estate Fees (02)	263,950	263,950	0	0
Real Estate Recovery (02)	22,000	22,000	0	0
Total	283,950	283,950	0	0

Rod Sundsted 1-21-91

ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

John G. Harp

JOHN G. HARP, PRIMARY SPONSOR

1/23/91

DATE

Fiscal Note for SB0112, as introduced

SB 112