

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 4, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 68, HB 66, HB 53
Executive Action: HB 53

CHAIRMAN SIMON stated the Commissioner of Labor has agreed to
prepare a visit for the Committee that will include a
presentation from the Department of Labor and Workers'
Compensation. This meeting will take place at 9:00 AM on Monday.

HEARING ON HB 68Opening Statement by Sponsor:

REP. DORE SCHWINDEN, HD 98, Roosevelt County stated this bill was per the request of the Department of Labor and Industry. The purpose of this bill is intended to make enforcement consistent with other aspects of the safety code. First, the bill would move the license fees for boiler operators and crane hoist operators from statute to administrative rule. Because these fees have been set in statute they have not been adjusted to reflect the cost of doing business since 1967. In an attempt to clarify the Bureau's responsibility in relation to federal OSHA, HB 68 requires safety compliance language to be expressly stated in the contracts between public agencies and a public contractor doing work on tax supported projects. Finally, under current authority, the hearing must be held prior to issuing mandatory safety orders which would allow an employer to continue operations without stopping identified hazards until after the hearing process. The department is proposing to have the hearing after the orders have been issued. Other minor items in the bill include the clarification of boiler operator experience requirements and those would apply to growers operations, school janitors, bee keepers and others. It would modify the existing hoisting engineer license requirements. This bill is an attempt by the Department of Labor and Industry to improve the services provided to the citizens.

Proponents' Testimony:

Chuck Hunter, Employment Relations Division, Department of Labor and Industry, said this bill will clarify the responsibility for those who perform work on public contracts, speed the elimination of workplace hazards and change the manner in which boiler licensing and inspections are funded. Currently, these are funded through the Workers' Compensation assessment on insurers. It will clarify and streamline the requirements of obtaining a boiler license. Mr. Hunter then clarified the sections of the bill.

Darrell Holzer, AFL-CIO stated he was supportive of this bill by saying that anything his organization might do to enhance the safety of workers in Montana would be beneficial. He stated that an amendment on page 1, line 29 following "conference with an employer," insert an "employee representative." That individual could be selected through a very similar process that is described in the Montana Safety Culture Act. The purpose is inclusive and makes workers feel that they are actively participating in this safety process.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIS questioned the inclusion of both employer and employee representation. **Mr. Hunter** stated this was correct.

REP. HERRON questioned the requirements for a farmer to operate a boiler on his farm. **Mr. Hunter** said the rules and regulations would vary depending upon the type of boiler that is being operated. There are first, second and third class licenses. Depending upon the type of equipment and the pressures operated, the type of license varies. **REP. HERRON** then questioned the specifics of a 125 pound boiler. **John Mahoney, Chief, Safety Bureau, Department of Labor and Industry** said this was third class. **REP. HERRON** then questioned how much experience was needed. **Mr. Mahoney** said the requirements would be one year full time experience in the operation of the boiler under an engineer who holds a valid license and successfully passes the written examination the department administers and be eighteen years of age. **REP. HERRON** then said that owners were finding it difficult to find a place for this instruction to have a years experience under a third class engineer. **Mr. Mahoney** said the department was not going to eliminate anyone who was not currently already outside the statutes. They are trying to encourage people to substitute training at a vocational technical center in lieu of experience.

REP. LARSON questioned if inspections were handled by the state or private inspectors. **Mr. Mahoney** said inspections were conducted by the state. **REP. LARSON** asked of the cost of inspections. **Mr. Mahoney** stated the cost depended upon the size of the boiler. **REP. LARSON** asked who determined these inspections. **Mr. Mahoney** said according to the statutes, the boilers are to be inspected once a year.

REP. FORBES asked how many inspections were done on an annual basis. **Mr. Mahoney** stated that the Safety Bureau is responsible for inspecting the boilers that are not licensed by insurance companies (according to the statutes). These insurance companies are responsible to inspect their own boilers. There are two full time boiler inspectors and one supervisor. Those three individuals inspect approximately 4,000 to 5,000 boilers a year.

REP. OHS questioned the fees for licenses. **Mr. Mahoney** said the fees for a first class boiler license was \$30.00 with a proposal to increase to \$50.00. The majority of the licenses being issued now are renewals. Renewal fee is \$4.00. It costs \$9.00 to issue that license. Renewals are proposed to be raised to \$20.00. People who currently hold boiler licenses and who have held them for 35 to 40 years routinely renew their license for \$4.00. These people have not kept up with the technology. Some of these people, should they get a job, would be a real safety hazard. An increase in fee may deter some of the renewals and thus not create an unsafe condition. The class 2 boiler is currently \$20.00 and there will be a proposed increase to \$40.00 and class

3 is currently \$12.00 and increasing to \$25.00. Tracker licenses are \$8.00 with an increase to \$15.00. Low pressure is currently \$8.00 and going to \$15.00.

REP. COCCHIARELLA stated that the assessment would be removed from Workers' Compensation and applied directly to the people who are being inspected and this seemed unfair. What amount of money has been assessed in the past? **Mr. Hunter** stated yes. The three full time boiler persons that run the program cost approximately \$120,000.

CHAIRMAN SIMON asked if it was the intention of the department to set the fees to cover the costs of those inspection fees and not to add additional money which would not be required to meet the cost of the actual inspections. **Mr. Hunter** said they were substituting one fund source for another and they are not looking for an increase in dollars or increase in staff but merely to place a more direct charge for service.

CHAIRMAN SIMON said there was not indication in the statute nor in the bill as to where the money eventually goes - does it go to the general fund, a special revenue account or where. **Mr. Hunter** said the money collected would come into the same special revenue fund as the assessment is today and would abate the assessment dollar for dollar. The Workers' Compensation assessment and the licensing fees are both special revenue funds.

CHAIRMAN SIMON asked if these were special revenue funds and deposited into a special revenue account for the particular purpose of paying for the inspections. **Mr. Hunter** indicated this would be a special fund.

REP. MILLS asked if certain inspections are paid for by insurers and if the inspections now going to be paid for the same way and be paid for by the contractor or operator. **Mr. Hunter** stated the affirmative and they would be paid for in the same way. **REP. MILLS** then asked if this would be a reduction on income from the insurers and an increase to income directly from the people who own the boiler who are really responsible for the boiler at the time of the inspection. **Mr. Hunter** said yes.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 66

Opening Statement by Sponsor:

REP. WILLIAM R. WISEMAN, HD 41, Cascade County said this bill was a transfer of the licensing of construction blasters who are people who use dynamite in construction jobs. These will be transferred from the Department of Commerce to the Department of

Labor and Industry. The reason for this transfer is because the Department of Commerce is in the business of licensing all kinds of people. This bill would also raise the minimum age to 18 years of age.

Proponents' Testimony:

Laurie Eckinger, Office of the Governor said the goal is to take all of the licensing functions and put them in the same place.

Mr. Hunter said the licensing functions are housed in the Safety Bureau. Despite the bills rank, the true substance of this bill is contained on page 1, line 23 where it simply substitutes the word "Commerce" for Department of Labor and transfers those functions to the Department of Commerce. The licensing function is part of the responsibility of the Department of Labor but the inspection functions are also performed. It is best when these functions are kept together. The consideration of the licensing function, the transfer of the inspection function and the coordination of the changes should be considered all of a piece because they all fit together.

Steve Meloy, Chief, Professional Occupational Licensing Bureau, Department of Commerce does not object to the transfer providing HB 68 passes the coordination language and provides the bureau with rule making authority.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. PAVLOVICH asked if the Department of Labor and Industry would lose some FTE's and the Department of Commerce gain some FTE's. **Mr. Hunter** expected that the functions of the FTE's which are currently in the Safety Bureau will transfer to the Department of Commerce.

REP. HERRON questioned page 3, line 13 "shall hold a valid third-class engineer's license" and is there not a contract. **Mr. Hunter** said these bills would need to be coordinated. The changes for the licensing requirements were in the previous bill. That requirement should be changed and would apply whether it went to the Department of Commerce or not.

REP. ELLINGSON said HB 66 provides that it is transferring the licensing of not only construction blasters but boiler and steam engineers to the Department of Commerce. Yet, the bill as it is drafted in section MCA 37-72-101 only refers to transferring construction blasters' licensing to the Department of Commerce. **Mr. Hunter** said the bills would need to be coordinated. Should the transferring bill be viewed favorably, the need to change the provisions in the departments' bill would change the ability to

do licensing fees. **REP. ELLINGSON** said then that coordination and amending some of the language would be necessary and **Mr. Hunter** said yes.

REP. LARSON said the consolidation of licensing and inspection functions in one department seemed logical. What other licensing and inspections does the Department of Commerce oversee now? **Mr. Meloy** said the department provides administrative staff support for boards that license over 36 professions and occupations.

REP. ELLIS asked if health inspections were conducted. **Mr. Meloy** said this was not done by his department. Radiological technicians are regulated by their department and by the Department of Health. The Department has the responsibility of the machines being up to par. The persons who are the operators of the machines are the responsibility of the Department of Commerce. The Department of Commerce regulates the people and the Department of Health regulates machinery. Regarding the boilermaker, they were receptive to this idea because the department was making sure the blaster would know what he was doing. If there is schooling necessary or continuing education, this person is trained.

REP. FORBES asked if in the licensing of one area would this be a cost saving. In HB 68 the department is wanting more money for the renewal fees. If there is going to be some cost savings through this why is there a proposition to increase fees by more than the actual cost is now. **Mr. Meloy** said their fees were commensurate with the cost of regulating. The fees which are being regulated and licensing has not been enough. It is subsidized with Workers' Compensation assessment fund monies. There won't be a cost savings. The Worker's Compensation assessment fund won't be abated anymore, it will go into a special revenue account set up for those three occupations.

REP. MILLS questioned the splitting up of inspections. **Mr. Meloy** said the equipment was the responsibility of the Building Codes which is in the Department of Commerce. **REP. MILLS** elaborated further on the two departments. **Mr. Meloy** said there would be two processes. Building Codes will issue a permit that equipment is safe to operate and a license will then be issued and the operator is considered safe to operate the equipment. **REP. MILLS** said that there would be a permit to operate the boiler and a whole separate set of approvals to have the boiler safe. The safety of the boiler each year would be the responsibility of a different bureau within the department. **Mr. Meloy** affirmed this.

TAPE 1, SIDE B

Closing by Sponsor:

Sponsor closes.

CHAIRMAN SIMON stated that the above mentioned bills would be assigned to a subcommittee for coordination. **REP. HERRON** will chair the committee with **REPS. LARSON** and **OHS** to also serve on the committee.

HEARING ON HB 53

Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, Dawson County stated this bill was an act expending rulemaking authority for the Board of Pharmacy to adopt rules to implement statutes concerning out-of-state mail service pharmacies. This bill deals with the pharmacists. Part 1 is a general section, part 2 deals with pharmacies, part 3 deals with licensing. Under part 2 the Department of Commerce shall publish rules for carrying out and enforcing parts 1 through 3 of this chapter. Part 4 deals with prescriptions and their regulations. There is no rulemaking authority in part 4. Part 5 is drug product selection. Part 6 deals with wholesale distributorship of pharmaceutical products. That part provides for rulemaking authority. Part 7 does not provide for rulemaking authority for the Board of Pharmacy to license out-of-state mail order pharmacy. The Board of Pharmacy attempted to make rules this past year but were notified they did not have the authority to do so.

Proponents' Testimony:

Jim Smith, Executive Director, Montana State Pharmaceutical Association distributed **EXHIBIT 1** which stated the Association consisted of 346 pharmacists licensed in the state and 130 pharmacies licensed by the state. The Board is the entity responsible for the regulation of the profession of pharmacy in order to protect the public. This bill will give the Board the authority to adopt administrative rules regarding the provisions of the entire chapter, including out-of-state mail service pharmacies

Mary McCue, Legal Counsel, Montana State Pharmaceutical Association addressed the technical aspect of the bill that was originally enacted in 1991. When the code sections were enacted by the legislature, the bill contained a statement of intent. Anytime the legislature is expanding the rulemaking authority of an agency for granting new rulemaking authority, the bill needs a statement of intent. That bill did have the intent. The rulemaking language needed to be reviewed and realized it did not meet with the new material and should have included it. The legislature did intend for the Board to have rulemaking authority because of the statement of intent.

Peter Wolfgram a registered pharmacist owns three pharmacies. Members of the MSPA wish to maintain the high integrity of the practice of pharmacy in the state and feel that the Board and its rulemaking authority is integral to maintain their high

integrity. License fees cost more than \$1000 for pharmacists and pharmacies. All pharmacies practicing this profession in this state need to be governed by the Board and the same rules and regulations need to be followed.

Dennis Iverson, American Managed Care Pharmacy Association appeared as a reluctant proponent because of the language which problems in the statute which had to do with amendments appeared. He preferred answering all of the questions in one piece of legislation.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. LARSON asked what the makeup of the Board of Pharmacists consisted of. **Mr. Smith** said the Board consisted of 6 members appointed by the governor. Two are licensed pharmacists and two are members of the public at large, 2 are pharmacists working in hospital settings. **REP. LARSON** asked if there were any out-of-state pharmaceutical companies represented on the Board. **Mr. Smith** stated no. **REP. LARSON** asked if in effect, the in-state pharmacies were regulating the out-of-state. **Mr. Smith** said the in-state and out-of-state pharmacies are regulated.

REP. PAVLOVICH asked how many times a statement of intent had gone through a department and the whole thing had been refused and the rulemaking authority actually did not follow the statement of intent. If a hearing is required there must be a hearings officer and both sides present their side of the case and still they won't follow the statement of intent. **Ms. McCue** indicated she did not have an answer to the question. It occurs but that is not the circumstance here. This is a technical error. We are not at the stage where there is argument about the content of the rules. The authority to go ahead and enact these rules is the intent. The Board cannot assess a fee against these licensees because, to be fair to them, they must give these licensees notice of what the proposed fee must be and give them the opportunity to reject it. **REP. PAVLOVICH** asked if it would not be better to eliminate the rulemaking authority of every department and just state the statement of intent and save confusion. **Ms. McCue** said the reason this cannot be done is because citizens need notice of how they will be impacted and that is done through the rulemaking process.

REP. SLITER questioned the effective date. **Mr. Smith** said an immediate effective date would be consistent with the legislative intent. The rules were put on hold until they could be remedied in this session. **REP. SLITER** said that **Ms. McCue** mentioned it was important that everyone was notified of rules and regulations that had taken effect and if and when this bill passes that the out-of-state companies should be extended that same courtesy.

Mr. Smith indicated that the Board would notify the out-of-state parties.

REP. MARSHALL asked if the fees for non-residents be the same as the fees of residents. **Mr. Smith** said the rules that were promulgated last summer assessed the fee of \$200 which was the same for both in-state and out-of-state.

CHAIRMAN SIMON said he recalled the Board of Pharmacy had developed rules and had held a hearing on those rules during the special session of '93 and at that time were concerned that the Board was going beyond what the legislature had intended when the rules were promulgated. These were based upon the amendments. Some of the Board attended these hearings when these rules were discussed. The Board stayed with that whole process and refused to bend even though they were told they were going beyond what was the legislative intent. The Board was told they did not have the rulemaking authority and stopped them. This committee needs the assurance that when rules are adopted they be based upon rule-making authority and legislative intent is followed. Rule making authority when granted is based upon legislative intent and not based upon what the Board wanted to do but rather what the law says or what the legislature intended when they passed the laws. He then asked if this was the understanding of rule making authority. Is this the understanding of the Board of Pharmacy? **Mr. Meloy** indicated yes. The boards were attached to the department for administrative purposes only. There is a statute that says they are atonomists. The department can advise a board. The boards are accused of protectionism or limiting entry into the profession. The Board of Pharmacy chose to not attend the hearing. What was supposed to happen did not happen.

CHAIRMAN SIMON said the legislature did not do as good a job as it should have in developing legislative intent through the minutes. The staff has been instructed to do a better job in establishing that. We must understand what we are granting and it is clear to a board when they are granted rule making authority and what their authority is. Members of this committee must realize that this is an important issue. When questions are asked and making statements with regard to this, to clarify what the intent is. That is the record the legislature is going to refer to. Rules must reflect what legislative intent is all about. **Mr. Meloy** said he would find out what advice was given by the attorney to that board.

REP. MILLS asked what any of the proponents suggest so that even handed treatment may be accomplished between in-state and out-of-state pharmacists. **Mr. Iverson** said that all businesses should be treated equally. The problem is not necessarily with disparity in treatment between the two segments of industry but rather the problem was what the board did in promulgating these rules went well beyond their intent. There was a different understanding of what the committee did on the bill and what the board did.

REP. EWER questioned the effectiveness of this bill being immediate. Promulgated rules could not be effective because the board was told they did not have statutory authority and the committee has heard much subterfuge underlying the larger issue. What are the intentions for rules this time - "Are you going to take your rules and ram them down the public's throat or are you going to open this whole rulemaking process open again and try to repair this issue so this can be cleaned up?" **Mr. Smith** said that he had spoken with the executive director of the board and it was indicated that if the Board got rulemaking authority that they would proceed to implement the rules that they had promulgated last year. It was not his impression that things were being rammed down the throats of the public. The board is in some good faith negotiations. Their concerns are not with the rules but with the statute itself. It is outside the scope of this bill and this hearing. The Board of Pharmacy needs rulemaking authority over this entire profession and every aspect of it within the borders of the state. This is not being done in order to choke out competition and keep other businesses out of the state but to protect the public.

REP. EWER asked if it were fair to say that given that the board is not here today that the committee does not know what the intention of the board is with rules because they are not here to speak for themselves. **Mr. Smith** said this was fair and the board would appear before the committee if requested.

CHAIRMAN SIMON said the subject had come up about a potential other bill to try to clarify this and is there a bill draft request in or another bill? **Mr. Iverson** said there was not a bill in yet but a draft has been prepared. **CHAIRMAN SIMON** then questioned amendments which might have solved the problem but the title problem arose that could preclude that. **Mr. Iverson** said it was being decided but if that were the case the amendments could be brought before the committee.

CHAIRMAN SIMON then said that rather than trying to add some language to this bill it may be necessary to "puff up your title" a bit. He then asked if they would be amenable to amending the title so that the accommodation of the necessary clarification in the statute to give the board direction and grant the rulemaking authority would be in the same bill. **Mr. Iverson** said this would be impossible. He would not oppose amending this bill and expanding the title provided that its prime purpose would be to give the Board of Pharmacy rulemaking authority. **CHAIRMAN SIMON** said the primary intent would be to grant the rulemaking authority but also to clarify what legislative intent was last time and to provide better direction to the board. That is the intention.

Closing by Sponsor:

Sponsor closes.

TAPE 2, SIDE A

EXECUTIVE ACTION ON HB 52

Motion: REP. TUSS moved DO PASS.

Discussion:

REP. PAVLOVICH asked if there were amendments.

REP. TUSS submitted amendments EXHIBIT 2 and stated it was imperative to her that the board continued to be funded for the services they provide. This amendment makes an addition to the title and an insertion into the body of the bill.

Steven Maly, Legislative Analyst said the bill as written unamended would set up an account in which money would flow but the department would not have the authority to spend that money without an appropriation like the amendment states. Or, a line in HB 2 could be used. So the department is assured at the moment they do have that line item for this amount.

REP. TUSS then said the inclusion of section 2 because of HB 2 and offered the amendment as written.

Motion: REP. TUSS MOVED THE AMENDMENT.

Discussion:

REP. ELLINGSON said that in the event that \$15,000 is not collected in any given fiscal year, does this appropriate \$15,000 regardless. REP. TUSS stated it did not.

Mr. Maly said the way the amendment was written, it could change the language in section 2 to appropriate only the amount collected up to the amount of \$15,000.

REP. TUSS indicated that was her intent and she would accept that.

CHAIRMAN SIMON said he believed the language in HB 2 would be sufficient and the whole new section could be dropped. It will be handled in HB 2. He then asked for the amending of the motion to include 1 and 2 and not the new section that would be sufficient.

Motion: REP. TUSS MADE A MOTION TO AMEND THE MOTION TO INCLUDE THE CHANGES IN SECTION 1, THE TITLE AND THE INSERTION AND THE ELIMINATION OF THE NEW SECTION ON APPROPRIATIONS.

Discussion:

REP. EWER said he supported this amendment because it gets to the intention of this bill which would provide some revenue on a fee

basis for the CEIC. There were concerns that this would be moved to an entirely proprietary fund and that is not appropriate as the department also stated. CEIC is very vital for state and local government and the public sector. It could not be self sufficient. The committee did not see this \$15,000 in the bill. He supported the amendment.

Motion/Vote: REP. TUSS MOVED DO PASS THE AMENDMENT ON HB 52.
Motion carried unanimously.

Motion: REP. EWER MOVED DO PASS AS AMENDED.

Discussion:

REP. ELLIS stated that REP. TUSS said it was the legislature which had inhibited their funding. This is an area of government that either the legislature or the budget office cuts that should not be cut. The department should be allowed to maintain this by charging funds to other units of government. A quarter of this is going to come from business which will alter what the intent is. That is the decision.

REP. COCCHIARELLA said that in the special session this entity came before the legislature and the department was told to find a way to generate some of their own income. Now the department comes before the legislature to generate some of their own income. Here they are with their proposal. The decision must be made to fund this to general fund dollars and support this with operation.

REP. MCKEE said her initial impression of this was she did not feel "wild enthusiasm" for the manner in which it was presented. She felt there was a problem in the new section, line 16 and 17 with the word "may." There are some real discretionary problems.

REP. LARSON said he supports the bill. Generally, he said he opposed proprietary accounts. He likes to see money go to the general fund and issued back out. This is an attempt to use fees to pay for a government service and in the forcing the general funding of this agency. There are no constraints on spending and the taxpayer in turn picks up the tab. He supports the bill.

REP. COCCHIARELLA said the use of "may" should be addressed.

REP. PAVLOVICH questioned the use of "shall" in this area.

Mr. Maly said that if the word "shall" were used then every single person who got the service would be charged. If it says

"may" they can keep tabs on where they are in their collection and can in turn distinguish one group from another.

REP. TUSS suggested that **Mr. Noel** could give the committee some clarification. The committee favored discussion from **Mr. Noel**.

Mr. Noel said the word "may" is very intentional. He sees no point in merely shifting the cost of these things from one government entity to another. It is not the department's intent to charge local government or state government the same amount charged private sector for profit of this information. This discretion is very important for the department. If it said shall there is no discretion whatsoever and everyone would be charged the same amount for the same service. That is a pure cost shift primarily for local government. With respect to the percentage of the budget, he did not have that information. He suspected it was between 5-10% range. CEIC has gone through this on a number of occasions with the legislature. If this information is valuable then people should pay for it. CEIC did not have the ability to charge at a level that would in fact give the department support. In this committee the department was told to explore general fund dependency.

REP. ELLIS questioned the private sector profit.

Mr. Noel said in many cases it would be businesses such as the Montana Power Co., or people who are contracting with local government to do grant proposals. These people are an adjunct of local government and they are that is who the department would not charge. Montana Power, U.S. West and large corporations are requesting many copies of something which would be for business development purposes. The department tried to determine who should be charged for services and who should not be charged. He also said that this information was not available from any other source other than the CEIC. CEIC is the agent of the federal government. The information which is received from the federal government is not in a form which might be usable to anyone. It is on optical disks which is put into a form which is usable.

REP. MARSHALL asked if the services which are received from Montana Power are charged a fee.

Mr. Noel said they were charged a fee as they had the discretion to do so.

CHAIRMAN SIMON said if the department did have the discretion to charge fees, why there is a bill. If the money would be directed to another account why would there be a need for this bill. It appears that the department has the authority to charge fees and those fees could be deposited into a general fund and the legislature is trying to get away from setting up all of these earmarked accounts and now we are going back to them. **Mr. Noel** said the bill does two things. It creates the incentive to do so. This bill also permits the department to use the wage rate of a grade 14 employee as opposed to a grade 10 which is the statutory requirement for any government agency. Without this bill the department would need to amend HB 2 for the \$15,000.

CHAIRMAN SIMON stated that the department already had the ability to collect money. **Mr. Noel** said there was no incentive to so.

REP. SLITER questioned whether the department was required to keep this office open by the federal government. **Mr. Noel** said that if the office closed the federal government would then be required to designate another office to be the recipient of census data. This is not an unfunded federal mandate. This information is absolutely critical. There is not a single federal funding program that can provide this census data.

Motion/Vote: **REP. TUSS** MOVED DO PASS AS AMENDED ON HB 52. Motion fails with 10-8 with **REPS. PAVLOVICH, COCCHIARELLA, ELLINGSON, ELLIS, EWER, LARSON, OHS AND TUSS** voting yes.

Motion/Vote: **REP. PAVLOVICH** MOVED TO TABLE HB 52 BILL. Motion carries 10-8 with **REPS. PAVLOVICH, COCCHIARELLA, ELLINGSON, ELLIS, EWER, LARSON, OHS AND TUSS** voting no.

ADJOURNMENT

Adjournment: 10:15 AM



BRUCE T. SIMON, Chair



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 1-4-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE OF REPRESENTATIVES
BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 1-4-95 BILL NO. HB52 NUMBER _____

MOTION: TO TABLE

NAME	AYE	NO
Rep. Bruce Simon, Chairman		X
Rep. Norm Mills, Vice Chair, Maj.		X
Rep. Bob Pavlovich, Vice Chair, Min.	X	
Rep. Joe Barnett		X
Rep. Vicki Cocchiarella	X	
Rep. Charles Devaney		X
Rep. Jon Ellingson	X	
Rep. Alvin Ellis, Jr.	X	
Rep. David Ewer	X	
Rep. Rose Forbes		X
Rep. Jack Herron		X
Rep. Bob Keenan		X
Rep. Don Larson	X	
Rep. Rod Marshall		X
Rep. Jeanette McKee		X
Rep. Karl Ohs	X	
Rep. Paul Sliter		X
Rep. Carley Tuss	X	



MONTANA STATE PHARMACEUTICAL ASSOCIATION

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January 4, 1995

Testimony of The Montana State Pharmaceutical Association:

House Bill 53

by Jim Smith

Mr. Chairman and members of the House Business Committee: Good morning. My name is Jim Smith, and I am the Executive Director of the Montana State Pharmaceutical Association. Our Association consists of 346 Pharmacists licensed by the State of Montana, and 130 Pharmacies licensed by the State of Montana. By and large, these are family owned, small town main street businesses located in nearly every Montana community.

They stay in business by being good neighbors, by taking care of their patients, by staying open nights and weekends, by having an emergency number, by delivering prescriptions, by being conscientious health care providers, and by complying with all relevant laws and regulations that govern their profession.

The Board of Pharmacy is the entity responsible for the regulation of the profession of pharmacy in order to protect the Montana public.

The Board of Pharmacy has important statutory and administrative authority over the practice of pharmacy in Montana, and that is as it should be. The Board of Pharmacy, however, does not at this time have authority to adopt administrative rules governing out-of-state mail service pharmacies. House Bill 53 corrects this.

House Bill 53 gives the Board of Pharmacy the authority to adopt administrative rules regarding the provisions of the entire chapter, including out-of-state mail service pharmacies.

I have attached the relevant pages from the Montana Codes Annotated to my testimony. Within Title 37 MCA, Chapter 7 is devoted to Pharmacy. Within Chapter 7 there are seven Parts, each governing some aspect of the profession.

The next page is a copy of Part 2, regarding the Board of Pharmacy. If you look at 37-7-201 (2)(a), you'll see the Board is to "regulate the practice of pharmacy in this state subject to this chapter." If you read down to sub (i), however, you'll see that the Board is to "adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter."

The position of the Montana State Pharmaceutical Association is that the Board of Pharmacy must have rulemaking authority over the entire Chapter 7 in order to fulfill its responsibility to the Montana public.

House Bill 53 gives the Board of Pharmacy this authority, and our Association supports the bill. It is one of three priority bills we will support in the 54th Montana Legislature.

In 1993 the Legislature passed Senate Bill 218, which established that it is the policy of the State of Montana to regulate the out-of-state mail service pharmacies that are doing business in this jurisdiction. Senate Bill 218, however, did not include the provision giving rulemaking authority to the Board of Pharmacy. House Bill 53 does just this. Nothing less. Nothing more.

We urge you to support this bill and to give it a 'Do Pass' during your Executive Action on HB 53.

I'll be happy to answer any questions you may have. Thanks for the opportunity to present this testimony to you this morning.

CHAPTER 7 PHARMACY

Part 1 — General

- 37-7-101. Definitions.
- 37-7-102. Practice subject to regulation.
- 37-7-103. Exemptions.
- 37-7-104. Qualifications of employee hired to assist-board.

Part 2 — Board of Pharmacy

- 37-7-201. Organization — powers and duties.
- 37-7-202. Salaries and expenses of board members.
- 37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors.
- 37-7-204. Posting of prescription drug prices — adoption of list by rule.

Part 3 — Licensing

- 37-7-301. Sale of drugs or medicines unlawful except as provided.
- 37-7-302. Examination — qualifications — fees — reciprocity.
- 37-7-303. Annual renewal fee.
- 37-7-304. Continuing education required.
- 37-7-305. Continuing education rules.
- 37-7-306 reserved.
- 37-7-307. Utilization plan — contents — responsibility of pharmacist.
- 37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing.
- 37-7-309. Utilization plan approval fee — renewal of approval — renewal fee.
- 37-7-310 reserved.
- 37-7-311. Revocation of license issued to pharmacist or intern.
- 37-7-312 through 37-7-320 reserved.
- 37-7-321. Certified pharmacy license — suspension or revocation.
- 37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising.
- 37-7-323. Penalty — enforcement.
- 37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Review—Counseling

- 37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.
- 37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
- 37-7-403. Repealed.
- 37-7-404. Repealed.
- 37-7-405. Repealed.
- 37-7-406. Standards for prospective drug utilization review and patient counseling.
- 37-7-407. Penalty.

Part 5 — Drug Product Selection

- 37-7-501. Short title.
- 37-7-502. Definitions.
- 37-7-503. Rulemaking.
- 37-7-504. General prohibition of drug substitution.
- 37-7-505. Product selection permitted — limitation.
- 37-7-506. Notice to purchaser.
- 37-7-507. Savings passed on.

Part 6 — Wholesale Drug Distributors—Licensing

- 37-7-601. Scope and purpose.
- 37-7-602. Definitions.
- 37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty.
- 37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance.
- 37-7-605. Out-of-state wholesale drug distributor licensing requirements.
- 37-7-606. Issuance of licenses.
- 37-7-607. Qualifications for licensure — denial of license application — notice and hearing.
- 37-7-608. License discipline — grounds for revocation, suspension, or refusal to renew license — penalty — notice and hearing.
- 37-7-609. Board access to wholesale drug records.
- 37-7-610. Rulemaking authority.

Part 7 — Out-of-State Mail Service Pharmacies

- 37-7-701. Legislative declaration.
- 37-7-702. Out-of-state mail service pharmacy defined.
- 37-7-703. License requirements.
- 37-7-704. Inspections.
- 37-7-705. Product selection of prescribed drugs — notification.
- 37-7-706. Patient communication — telephone service.
- 37-7-707 through 37-7-709 reserved.
- 37-7-710. Discipline of registered pharmacists.
- 37-7-711. Penalty.

Parts 8 through 10 reserved

Part 11 — Peer Review

- 37-7-1101. Nonliability for peer review.

Chapter Cross-References

- Professional service corporations, Title 35, prohibited, 37-10-103.
- 4. Dangerous drugs, Title 45, ch. 9.
- General provisions relating to health care practitioners, Title 37, ch. 2. Controlled substances, Title 50, ch. 32.

Use of diagnostic drugs by optometrist not prohibited, 37-10-103.

Part 1 General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

- (1) "Board" means the board of pharmacy provided for in 2-15-1843.
- (2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.
- (3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.
- (4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:
 - (a) the socioeconomic and legal aspects of health care;

Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981; amd. Sec. 1, Ch. 134, L. 1991.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const. and keep records, 37-1-101.
Open meetings, Title 2, ch. 3, part 2. Duties of boards, 37-1-131.
Meeting defined, 2-3-202. Disrupting meeting as disorderly conduct, 45-8-101.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1506; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesaler dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Cross-References
Duties of Attorney General, 2-15-501.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relative to state matters, 7-4-2716.

37-7-204. Posting of prescription drug prices — adoption of list by rule. If the board of pharmacy finds after a public hearing that the interests of consumers will be furthered by its action, the board shall annually adopt by rule a list of 20 prescription drugs frequently prescribed for outpatient dispensing in Montana. A licensed pharmacy, other than in a hospital or nursing home, that sells prescription drugs shall monthly post its prices for the drugs on the list adopted by the board. The list must show the drugs by brand name and retail price and by generic name and retail price.

History: En. Sec. 1, Ch. 307, L. 1993.

ant; and to ... and board ... supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of actual experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. Ch. 22, L. 1979.

Cross-References
Duties of Department, 37-1-101.

Part 2

Board of Pharmacy

Board established, 2-15-1843.
Duties of Department, director, and boards, Title 37, ch. 1, part 1.
Quasi-judicial boards, 2-15-124.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

- (a) regulate the practice of pharmacy in this state subject to this chapter;
- (b) determine the minimum equipment necessary in and for a pharmacy;
- (c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;
- (d) regulate the quality of drugs and medicines dispensed in this state, including the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;
- (e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

- (f) regulate the practice of interns under national standards;
- (g) make rules for the conduct of its business;
- (h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

- (a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;
- (b) license pharmacies and certain stores under this chapter;
- (c) license wholesale drug distributors;
- (d) issue certificates of "certified pharmacy" under this chapter; and
- (e) establish and collect license fees.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 75, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628,

EXHIBIT 2
DATE 1-4-95
HB 52

Amendments to House Bill No. 52
First Reading Copy

Requested by Rep. Carley Tuss
For the Committee on Business and Labor

Prepared by Stephen Maly
January 3, 1995

1. Title, line 9.

Following: "CENSUS;"

Insert: "APPROPRIATING FUNDS FROM THE SPECIAL REVENUE ACCOUNT AND
TRANSFERRING SURPLUS FUNDS TO THE GENERAL FUND;"

2. Page 1, after line 23.

Insert: "(3) Any funds deposited in the special revenue account
in excess of \$15,000 in fiscal year 1996 and in excess of
\$15,000 plus an amount commensurate with inflation as
easured by the consumer price index in each fiscal year
following 1996 must be transferred to the general fund.

NEW SECTION. Section 2. Appropriation. There is appropriated
to the census and economic information special revenue
account \$15,000 in fiscal year 1996 and an additional
\$15,000 plus an amount commensurate with inflation as
measured by the consumer price index in fiscal year 1997."

Renumber: subsequent sections

Amendments to House Bill No. 52
First Reading Copy

Requested by Rep. Carley Tuss
For the Committee on Business and Labor

Prepared by Stephen Maly
January 4, 1995

1. Page 1, after line 23.

Insert: "(3) Any funds deposited in the special revenue account in excess of \$15,000 in fiscal year 1996 and in excess of \$15,000 plus an amount commensurate with inflation as measured by the consumer price index in each fiscal year following 1996 must be transferred to the general fund.

Renumber: subsequent sections

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