



*Montana*  
**Department of Labor and Industry**  
Business Standards Division

Governor Brian Schweitzer

August 31, 2005

Representative Jim Keane, Chairman  
Economic Affairs Interim Committee  
2131 Wall Street  
Butte MT 59701-5227

Dear Chairman Keane:

In preparation for the Business and Economic Affairs Interim Committee meeting on September 9, 2005, we have compiled some background information regarding the Board of Landscape Architects issue. We believe the information may be helpful to you as you review the recent events surrounding that board's operation.

Thank you for your interest. If we can provide further information regarding this issue, please do not hesitate to contact our office. Although I will be out of town until September 8, Jill Caldwell, Bureau Chief for the Business and Occupational Licensing Bureau, can be reached at 406-841-2302.

Sincerely,

A handwritten signature in cursive script that reads "James F. Brown / JC".

James F. Brown, Administrator  
Business Standards Division  
Department of Labor and Industry

CC: Senator John Brueggeman  
Senator Vicki Cocchiarella  
Senator Ken Hanson  
Senator Donald Steinbeisser  
Representative Dave Gallik  
Representative Tom McGillvray  
Representative Mike Milburn  
Pat Murdo  
Bart Campbell

Economic Affairs Committee Meeting  
September 9, 2005

## Board of Landscape Architects

### Active Licensees as of August 19, 2005 = 90

Montana addresses = 40

Out of State addresses = 50

### Complaint History:

No complaints were received in 1980-1984, 1986, 1988-2004

1985 – 1 complaint for false advertising – dismissed

1987 – 2 complaints for false advertising – dismissed

2005 - 1 complaint for false advertising – dismissed

### Meetings Summary:

2004 1 face to face 2 conference calls

2005 2 face to face 2 conference calls

### Recharges Paid by LAR

2000 \$11,324 (50.1% of total expenditures)

2001 \$11,393 (47.5% of total expenditures)

2002 \$11,560 (42.9% of total expenditures)

2003 \$12,637 (36.3% of total expenditures)

Began using time distribution to calculate recharge

2004 \$15,071 (27.0% of total expenditures)

2005 \$16,388 (34.0% of total expenditures)

Projected

2006 \$10,000 (full year) The recharges were estimated at a reduced rate when the Board decided to stop giving the exam and agreed to stop meeting, etc.

2007 \$10,000 (full year)

### Minutes from Meetings showing concern over Board supporting itself:

- June 15, 2001
- February 11, 2002
- October 28, 2004

### Minutes showing discussion of combining with another board:

- June 15, 2001
- November 20, 2003
- March 23, 2004
- October 20, 2004 (at Board of Architects meeting)

### Board Actions

- January 4, 2005. Board voted to notice a renewal fee increase of \$500 and license application fee of \$575. The Board voted for other increases at the same time.

These increases would have allowed the Board to finish the fiscal year without a deficit based on 85 of its 109 licensees renewing.

- March 7, 2005. Notice for fee increase published.
- April 7, 2005. Rule hearing for fee increase scheduled.
- April 25, 2005. Board voted to adopt a renewal fee of \$250, and license application fee of \$325. Board was advised by the Division Administrator, Bureau Chief and Division Lead Attorney that this action was not fiscally responsible.
- April 25, 2005. Board voted to not renew CLARB membership so National exam applications may not be accepted.
- April 25, 2005. Board voted not to give its own exam.
- May 2, 2005 – Mailed 109 renewal notices
- Renewal period ended June 30, 2005.
- 89 renewed, 40 are from MT and 49 are from out of state.
- June 30, 2005. The Board finished the fiscal year with a deficit of approximately \$20,300.
- On July 8, 2005, the Department of Administration refused to give the Board a loan because it could not demonstrate that it could repay the loan. After reporting the shortfall to the Legislative Auditor's office, Jim Gillett, auditor, recommended that the Department cease all program operations until the Board of Landscape Architects repays the Department and demonstrates that it can generate sufficient revenues to cover current and future expenses.
- On July 11, the Department decided to temporarily suspend services to the Board.
- On July 11, the Department called each Board member. Voice mails explaining the situation were left for four of the five members. One member answered the telephone call was given the information.
- On July 11, the Department sent a letter to each Board member and the LAR licensees informing them of the Department's decision to temporarily suspend services to the Board.

Caldwell, Jill

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**From:** Warren, Bernadine  
**Sent:** Friday, July 08, 2005 1:01 PM  
**To:** Schwinden, Dore; Brown, Jim (DLI)  
**Cc:** Caldwell, Jill; Peterson, Tammy (DLI)  
**Subject:** Board of Landscape Architects

The Board of Landscape Architects fund is currently approximately \$20,300 overspent. According to BSD, FY 2006 license revenues will not be sufficient to cover the current negative balance, plus FY 2006 expenditures, resulting in the negative balance increasing over the next year. The following are the impacting statutes, as well as the results on the department.

Section 17-2-107(7), MCA, states that a fund may not have a negative cash balance at fiscal year end. 17-2-107(8), MCA, allows the Department of Administration to authorize a loan from funds other than the general fund. However, the DLI must demonstrate that the total loan balance does not exceed receivables from federal, private, or other sources, and the loan must be repaid within one year.

Section 2-15-121, MCA, requires that boards exercise their judicial, legislative and policymaking functions independent of the department. However, each board must submit budgetary requests through the department. The department carries the responsibility to direct and supervise all budgetary, accounting, reporting and administrative functions of the board. The department is also responsible for collecting all revenues for the board. The department may not divert revenues for purposes other than those provided for in statute. The department provides personnel to the board as necessary.

Section 37-1-101(6), MCA requires the department to assess the costs of the department to the boards on an equitable basis as determined by the department.

Section 37-1-121, MCA, grants authority to the commissioner of labor for hiring board personnel, approving all contracts and expenditures. Under this statute, boards may not hire their own personnel, nor may boards expend funds or enter into contracts without the commissioner's approval.

Section 37-1-131, MCA, states that each board attached to the DLI is responsible only for setting and enforcing the standards and rules governing the licensing, certification, registration and conduct of the members of the particular profession or occupation within the jurisdiction of the board, sitting in judgment at hearings, suspending, revoking or denying licensure, and paying its share of department costs. Any other board actions exceed statutory authority.

Section 37-1-134, MCA, requires all boards to set fees commensurate with costs.

In this case, the Department of Administration **will not** authorize a loan because we cannot demonstrate that the loan will be repaid within one year. Additionally, we cannot demonstrate that the total loan balance (\$20,300) does not exceed receivables. In fact, we know that our receivables (license fees due in FY 2006) are less than our negative fund amount. We also know that the negative balance will increase if operating expenditures continue on into FY 2006.

Both the Department of Administration Administrative Financial Services Division and the Legislative Auditors have been informed of this situation. I have not been in contact with the Governor's Office. Jim Gillett, auditor, recommends that the department cease all program operations until the Board of Landscape Architects repays the department the negative cash amount (we have paid bills using money that does not belong to Landscape Architects) and demonstrates that it can generate sufficient revenues to cover current and future expenses. The department will be written up in the financial compliance audit for violation of 17-2-107, MCA. The Board may be written up for violation of 37-1-134, MCA.

The department must assess the costs of the department to the board (including the BSD recharge) as long as the department is providing any services to the Board. Only if the Landscape Architect program is shut down may the department cease assessing charges to the fund.

Sorry for the long email. Please let me know if you need anything further from me. Thanks, Bernie.

## The Plan for the Board of Landscape Architects

Because of suspension of Department services, the Board will not be assessed any costs or charges until May 2006. At that time, renewal notices will be mailed as is custom to all those with current, active licenses. This temporary suspension of services will result in no base expenditures. The operating budget for this board will need to be reestablished in the next budget planning process.

The Department expects 95% of the current 90 licensees to renew, generating approximately \$21,375 at the present renewal rate of \$250. The figure is approximate because for those renewing on-line, the Department actually collects less than the full renewal fee due to processing and convenience fees.

At the same time, the Department will assess 1/6 of the FY 2006 recharge, which will be \$1,666.67. The Department will also charge the Board for any operating costs incurred during that two-month period. Based on historical use, these costs are expected to be \$884.78.

Cash deficit as of July 11, 2005 =	(\$14, 852.36)
Refunds given to those not able to take the December LAR exam =	(\$ 1,000.00)
Expected Renewal Revenue in May 2006	\$21,375.00
Expected Expenses- last two months of 2006	(\$2,551.45)
Ending Cash balance FYE 2006	\$2,971.19

In FY 2007, the Department would provide services to the Board in July, and then suspend services again until May, 2007. Again, the Board would not be assessed any costs or charges from August 2006 until May 2007. As with FY 2006, renewal notices would be mailed as is custom to all those with current, active licenses.

Again, the Department will project a renewal rate of 95%, generating approximately \$20,250 at the current fee of \$250. The figure is approximate because for those renewing on-line, the Department actually collects less than the full renewal fee due to processing and convenience fees.

At the same time, the Department will project a recharge of 1/4 of the FY 2007 recharge which will be \$2,500. The Department will also charge the Board for any operating costs incurred during that three month period. Based on historical use, these costs are expected to be \$1,327.17.

Cash of July 1, 2006	\$ 2,971.19
Expected Renewal Revenue in May 2007	\$20,250.00
Expected Expenses- last two months of 2007	(\$ 3,827.17)
Ending Cash balance FYE 2007	\$19,394.02

This plan allows the licensing operations for the Board to continue until the end of the current biennium; however, the Board cannot be sustained with the current licensure renewal fee and this limited number of licensees. The long-term solution to the problem should be addressed in the next legislative session.

## LANDSCAPE ARCHITECT STATUTES

**37-66-301. License required.** In order to safeguard human health and property and to promote the public welfare, a person in either a public or private capacity practicing or offering to practice landscape architecture is required to submit evidence that the person is qualified to practice and is licensed under the provisions of this chapter.

**37-66-302. Illegal use of title.** No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

**37-66-104. Acts declared unlawful.** It shall be unlawful for any person to:

- (1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;
- (2) present as his own the license of another;
- (3) give false or forged evidence to the board or any member thereof in obtaining a license;
- (4) falsely impersonate any other practitioner of like or different name;
- (5) otherwise violate any of the provisions of this chapter.

**37-66-105. Exemptions.** (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

**(2) *None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.***

**(3) *This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.***

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

**(5) *None of the provisions of this chapter shall require the hiring of a landscape architect.***



# Montana

## Department of Labor and Industry

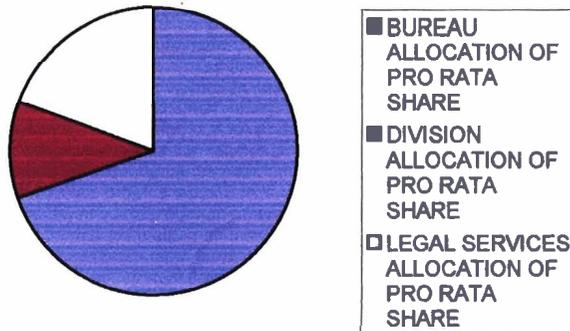
### Business Standards Division

Governor Brian Schweitzer

### How Business Standards Division Licensing Recharges Are Calculated

Recharges (or the pro rata share) are charges assessed to the boards associated with the costs incurred by the Department to administer the programs. Section 37-1-101(6), MCA requires the Department to “assess the costs of the Department to the Boards on an equitable basis as determined by the Department.” Section 37-1-131(4), MCA requires the Boards to “pay to the Department its pro rata share of the assessed costs of the Department under 37-1-101(6).” The recharge is actually the sum of three separate budgets. These entities are the respective Bureau (Business & Occupational Licensing or Health Care Licensing), the Business Standards Division and the Legal Unit. Their costs are assessed and then combined to total one amount labeled recharge on each board’s financial documents.

Elements of a Board's Recharge  
(Pro Rata Share)

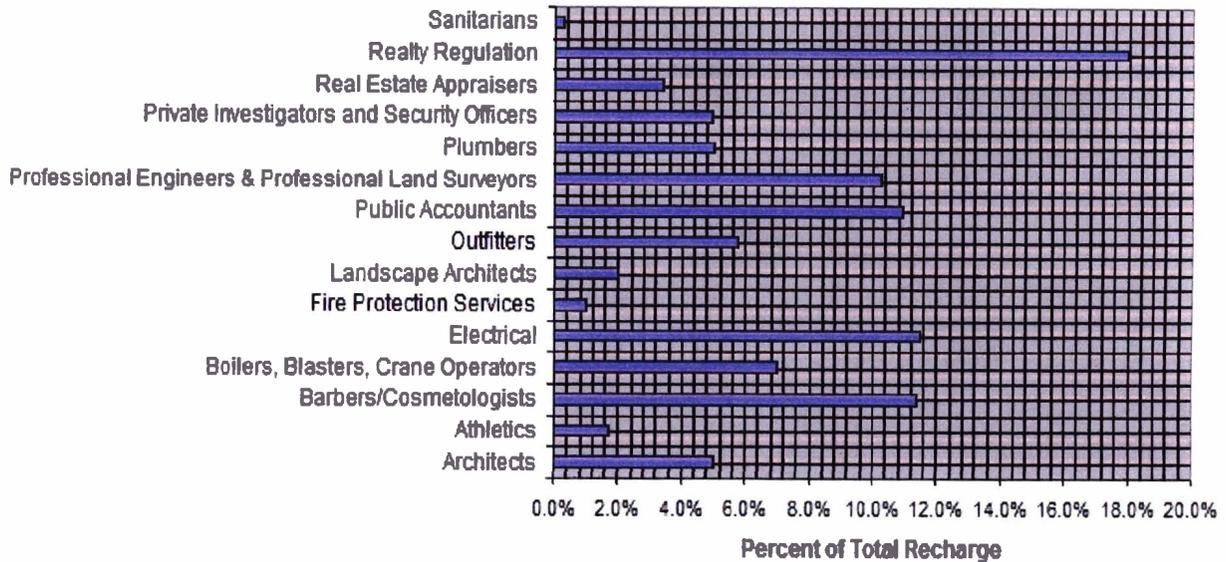


First, the Bureau calculates a recharge based on the board or program’s share of the Bureau’s general expenses. This sum encompasses the personal services and operating expenses of the employees that provide essential clerical, administrative and professional support to a number of boards and programs. These are the application specialists, the compliance/tech writer specialists, investigators, the Bureau Chief and Administrative Officer or Unit Supervisor. These assessed charges are based on time distribution. Employees track the time they spend performing administrative, clerical or professional duties for each board on a daily basis. This report is then compiled and used to assess an equitable charge based on the portion of time the employee has worked in a given year for each board for all Bureau staff.

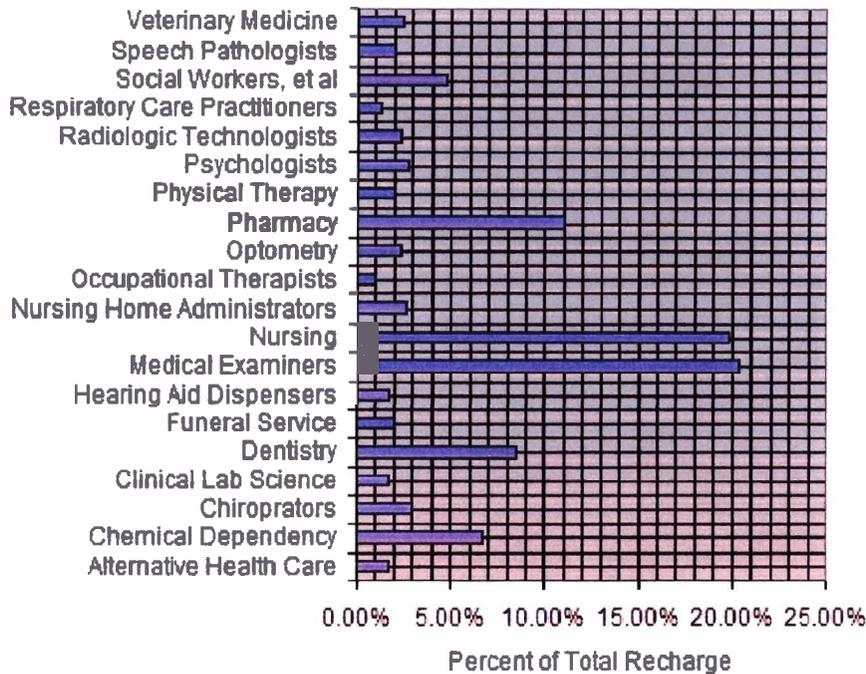
The Bureau recharge for FY 06 is as follows:	BOLB - \$ 904,668
	HCLB - \$1,014,225
The Bureau recharge for FY 07 is as follows:	BOLB - \$ 953,750
	HCLB - \$1,077,725



### % Total Recharge Paid by Board or Program (BOLB)



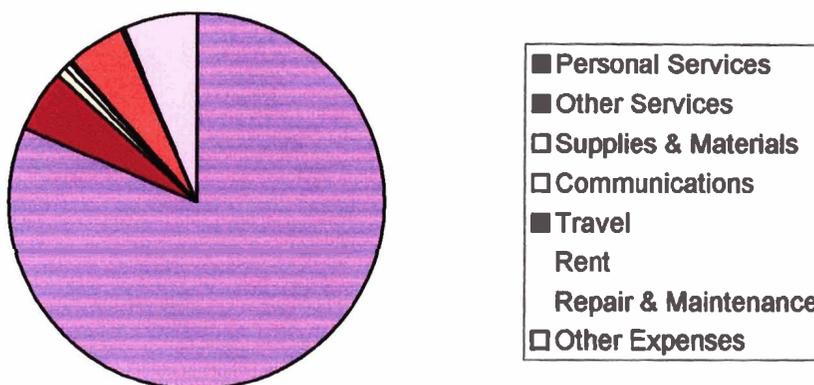
### % Total Recharge Paid by Board or Program (HCLB)



The Division's recharge is allocated to each Bureau within the Division. The Division has four Bureaus: Business and Occupational Licensing (BOLB), Health Care Licensing (HCLB), Building Codes, and Weights and Measures. Each shares in the total cost. The charge includes personal services for the Division Administrator, the Division's Administrative Officer and the Information Technology Staff. The charge also includes the bureau's share of the operating expenses of the Division. The portion allocated to each bureau is charged to boards using time distribution for all Bureau staff.



## Legal Unit Budget



Costs for legal services for the licensing bureaus are also a percentage of the total based upon FTE. The exception for legal services is that the Board of Medical Examiners pays a portion of an FTE using HB 2 funds, and the Board of Nursing pays for an entire FTE using HB 2 funds.

Additionally, each board and program in the Bureaus pays an Indirect charge that is a percentage of total personal services minus board member (\$50/day) per diem costs. The assigned percentage for fiscal year 06-07 is 6.79%. The charge covers the Bureau's use of resources from the Commissioner's Office, the Centralized Services Division, which includes services such as payroll, accounting and budgeting, and the Human Resources Bureau.

## Number of Licensees Compared to Allocation of Recharge

■ % Total Recharge  
■ Number Licensees

