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Economic Affairs Interim Committee

59th Montana Legislature

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KEN HANSEN

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PATRICIA MURDO, Lead Staff
BART CAMPBELL, Staff Attorney
DAWN FIELD, Secretary

MINUTES

Occupational & Professional Licensing Boards Study (SJR 35) Subcommittee

May 11, 2006

Room 102, State Capitol
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

COMMITTEE MEMBERS PRESENT

SEN. VICKI COCCHIARELLA, Chair

REP. TOM MCGILLVRAY
REP. MIKE MILBURN

STAFF PRESENT

PATRICIA MURDO, Lead Staff
KIP DAVIS, Acting Secretary

Visitors & Agenda

Agenda, ATTACHMENT #1.
Visitors' list, ATTACHMENT #2.

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the meeting to order at 1:03 p.m. The secretary noted the roll (ATTACHMENT #3). The minutes from the January 19, 2006, meeting of the Subcommittee were approved by unanimous voice vote.

BUDGET ISSUES

Shane Sierer, Associate Fiscal Analyst, Legislative Fiscal Division (LFD), told the Subcommittee he had been asked to provide additional information on recharges. He reviewed

EXHIBIT #1, explaining the differing methods of assessing recharges, both those used in the past and a more accurate time distribution method now being used. He noted the differences between the methodologies. Recharges are accounted through an internal service fund, which is one type of proprietary fund. Proprietary funding includes enterprise funds, which involve entities outside of state government, and internal service funds. Internal service funds are used to finance operations provided by one program or agency to another within state government on a cost-reimbursement basis; the cost reimbursement rates must be approved by the Legislature. The LFD is discussing ways to better educate Legislators concerning internal service rates and proprietary funding to help them make informed decisions concerning the cost reimbursement and allocation plans. Cost reimbursement rates are often the last item on an appropriation subcommittee's agenda and there is usually very little, if any, discussion on the issue--the department asks for a rate increase and it is generally approved. Once a subcommittee has approved a rate increase there is no more discussion--in the Legislature or in the appropriations committee, and the Legislative Analysts feel that perhaps a better job can be done of educating legislators on this topic.

Mr. Sierer explained that the major differences in the recharge amounts between the years 2001 and 2005 resulted because of rental increases for office space, telephone, computer, software and IT costs, and increased personnel costs, mainly relating to attorney costs. Mr. Sierer reviewed EXHIBIT #2, and explained that the majority of the increase in attorney costs involved reclassification of the Department of Labor and Industry (DLI) legal staff and the accompanying pay increases in response to departmental difficulties in retaining legal staff.

Mr. Sierer then addressed the differences between a board and a program, saying that boards are self-guiding and are responsible for exercising licensing and policymaking decisions independently of the department and without department control or approval. Boards have control over who is allowed to practice in that profession and also provide discipline. In the case of programs, the decisions are made by the DLI, with assistance from the legal staff. In the area of costs, because boards meet regularly throughout the year, they have additional expenses for travel and per diem, but otherwise boards and programs incur the same costs. (See EXHIBIT #3.)

SEN. COCCHIARELLA, noting that boards are self-guiding and that programs receive guidance from DLI staff, questioned if programs require more agency staff time. Mr. Sierer replied that he did not have the answer to this question and deferred to **Jill Caldwell, Chief, Business and Occupational Licensing Bureau**, who explained that staff time evens out between the programs and the boards, because the boards deal with major issues and administer exams, which often require considerable staff time, and programs do not.

Rose Hughes, Montana Health Care Association, told the Subcommittee that she has been working with a board that is trying to get specific information regarding the time distribution records, including a breakdown of time spent by board executives or administrators, as they relate to recharges. The information has not been readily available or easy to evaluate.

Lisa Addington, Chief, Health Care Licensing Bureau, DLI, answered that all time distribution data is available on an Access database and can be pulled out by person or by board. If there are more questions involving the data, the Bureau is open to discussion and the information can be put into a different format, if necessary, for ease of evaluation.

John Andrew, Acting Administrator, Business Standards Division, DLI, expressed the desire of the Division to improve communication and education, both within the Division and

with customers, including the boards. If the boards have questions, the Division will address those issues.

PURPOSE OF BOARDS

Pat Murdo, Research Analyst, Legislative Services Division (LSD), reviewed EXHIBIT #4, which details continuing education requirements of licensed professions and occupations in Montana, explaining that continuing education requirements could be part of the Subcommittee's discussion of the purpose of boards and whether a professional should be licensed or not. Not all boards have continuing education requirements and, if one of the purposes of a board is to protect the public health, safety, and welfare, continuing education requirements might advance that purpose.

SEN. COCCHIARELLA asked Ms. Murdo to explain the purpose of a board or program and to discuss the definition of public health, safety, and welfare.

TAPE 1 SIDE B

Ms. Murdo reviewed EXHIBIT #5, which lists possible questions concerning the rationale for the existence of a board or program and provides a chart of specific boards and, if applicable, their corresponding statutory purpose with references to keywords concerning the scope of practice. At this time, these keywords are not defined and many states do not define these words because a looser definition is more flexible. EXHIBIT #6 lists the dictionary definitions of "public health", "safety", and "welfare" and includes a draft definition, prepared by Ms. Caldwell, of "protection of public health, safety, and welfare".

Gene Allison, Lead Attorney, Business Standards Division, DLI, remarked that these kinds of definitions are very subjective and therefore are difficult to define.

Mr. Andrew noted that "common good" is another phrase that needs defining.

SEN. COCCHIARELLA asked the Subcommittee and interested persons present for their views on whether or not there should be a standard rationale for the existence of a board or whether a board should exist merely because a profession desires a board.

Ms. Hughes offered her opinion that a board shouldn't exist just because someone wants them to--there should be some public purpose, whether it is "public health, safety, and welfare" or "common good". Otherwise there is no reason for the state to be involved in the regulation of the profession or occupation. Although these terms are difficult to define, perhaps there is case law that can offer a definition--although care should be taken that the definition is not too detailed, because that can raise legal issues.

SEN. COCCHIARELLA, pursuing the topic of overlapping regulation, noted that nursing home administrators have a board while at the same time nursing homes are regulated by the state. She questioned Ms. Hughes about whether the Board of Nursing Home Administrators sets higher standards for administrators than is required by the state for nursing homes, whether that type of dual oversight is necessary, and what is the purpose of a board when the people in that group are already heavily regulated by another entity.

Ms. Hughes answered that the federal government says that if a nursing home wants to participate in Medicare/Medicaid it must have a licensed administrator. The federal government left it to the states to devise a method for licensing administrators. There are different standards

for nursing home facilities regarding care of residents and the professional standards for the administrator. Facility licensure provides more protection for the nursing home residents than the licensing board.

Mona Jamison, Attorney and Lobbyist for the Montana Chapter of the American Physical Therapy Association, told the Subcommittee that although the term “public health, safety, and welfare” may be vague it has been effectively defined by millions of cases throughout the history of Montana and the United States. Although trying to define the term would be difficult, the standard should be there. The group proposing licensure should have to make its case to the appropriate legislative committee. The terms “public health, safety, and welfare” and “common good” are key to justifying the state’s involvement in the lives of its citizens, which is the rationale for licensure of occupations in the first place. The terms are used in both the United States and Montana Constitutions. The goal of professional licensure and occupational boards is to set standards of competency, which are a reflection of education and training. These are necessary to protect public health, safety, and welfare--which is the purpose of licensure. Ms. Jamison suggested keeping the statutory definition vague and putting the burden on the applicants for a board to prove to a legislative committee that some sort of standard is necessary for that profession or occupation.

SEN. COCCHIARELLA referred to the standards of “public health, safety, and welfare” as a rational basis for licensing athletic trainers. She noted that there appears to be an overlap in scope of practice with that of physical therapists, and she questioned how the Legislature should distinguish between groups like this and whether a system of “umbrella boards” would be preferable.

Ms. Jamison replied that the issue is not licensure, it is what the professional is licensed to do. The difficulty in each case is to devise a definition of scope of practice that clearly defines what the profession does without encroaching on what other professional groups do. While there may be some overlap between professions, such as between athletic trainers and physical therapists, the scope of practice of either one does not fully encompass the scope of practice of the other. That is the problem with the “umbrella board” issue--an overbroad board dilutes the professions. It would be very difficult to set up one profession as the paramount ruler of other, related professions and there remains the issue of one type of professional having oversight of another professional with dissimilar training. While an umbrella board could be implemented in certain cases, such as the Board of Alternative Health Care, where there is enough focus and overlap to possibly justify the merger, in general umbrella boards disrespect the professions.

Dr. George Watson, Member, Board of Psychologists, expressed his agreement with Ms. Jamison’s portrayal of umbrella boards, saying he feels it would be a grave disservice to the public to have people on his board who are not licensed by his board, because the types of education involved are far more extensive than that of other, similar professionals. Psychologists are comfortable with the term “public health, safety, and welfare”, and have no difficulty matching the term with incidences of misbehavior or incompetence. The overall purpose of the board is to protect the public by ensuring that if a service provider portrays that the public will receive a certain service then that is what the public actually receives. Within a profession, licensed professionals have lower malpractice rates. Although there are areas of overlap within a profession the areas are at different levels. Members provide services to people and in situations for which they are qualified and have specific training. For this reason an umbrella board would be less effective in protecting the public, Dr. Watson said.

TAPE 2 SIDE A

SEN. COCCHIARELLA asked Dr. Watson if he was in favor of having public members on his professional board.

Dr. Watson answered that the Board of Psychologists includes two public members and they participate in the examination of candidates for licensure in two of the six examination categories--those of Montana law and ethics. They do not score candidates in the areas involving psychological training and professional competence.

SEN. COCCHIARELLA questioned if a person from another therapy-involved profession, such as social workers or family therapists, could fill the public member spots on the board.

Dr. Watson replied that they certainly could fill the spot of a public member. For judging professional competence of members, he said, there would be a problem if they did not have the necessary education and training.

SEN. COCCHIARELLA expressed her belief that comprehensive boards appear to be the best option and commented that it seems as if the professional groups that fight the most are the most natural allies to come together. It is important to take the Legislature out of these types of turf battles, perhaps with the creation of autonomous boards that have oversight and regulation of their licensees and a working relationship with other professionals in the state who are natural allies to deal with the overlapping scope of practice together.

FORMATION OF NEW BOARDS/PROGRAMS

SEN. COCCHIARELLA called the Subcommittee's attention to EXHIBIT #7, a summary of the history of the sunrise law and its pertinent questions concerning proposed licensure, and provided a background sketch of the reasons for repeal of the law, saying that the Legislature does need a process to determine whether a board should exist or not. Professionals should have the information available up front to decide if the profession should seek the necessary legislation to create a board for licensure. Opinions received from surveys, discussions in Subcommittee, and discussions in the Legislature point to the need for a process providing up-front guidance for members of the public and those professionals seeking licensure. SEN. COCCHIARELLA then asked if the Legislature should consider revisiting the questions applicable to the old sunrise law.

Dr. Watson offered his opinion that there is value in having boards and programs provide answers to these questions and to think about their processes. He said that he was surprised that the sunrise law was viewed as an administrative process rather than as an effective decision-making process.

Don Hargrove, Montana Association of Marriage and Family Therapists, agreed with the idea of moving toward sunrise legislation. Committees, Subcommittees, and the Legislature exist to make subjective judgments on behalf of the citizens of Montana. Committees and Subcommittees have a responsibility to give good direction and good information to the Legislature to aid them in making good decisions. It is important to remember that, no matter what a Committee or Subcommittee may decide, the Legislature may choose to do things differently.

Tracy Williamson, Co-Director, Business League for Massage Therapy & Bodywork (BLMTB), distributed copies of a memo to the Economic Affairs Interim Committee (see EXHIBIT #8) highlighting the concerns of massage therapists in Montana about occupational licensure. She commented that, although the questions accompanying the sunrise provisions

could be useful, care must be taken not to be too restrictive of new professions. Although differing professions may overlap, this actually provides a choice of service provider to consumers. What is effective treatment for one person may not be for another. Consumers would not benefit from limiting new alternative health care professions.

Ms. Jamison said the questions contained in EXHIBIT #7 may be helpful but are overly bureaucratic, too expensive, and create a great deal of busy work. The process became more important than the conclusions. Ms. Jamison broached the idea of mandating that any group seeking licensure include within their bill a statement of intent as to why this group meets the criteria of serving the public health, safety, and welfare. This would force the group seeking licensure to really understand the burdens, expenses, and obligations of being licensed. If a group can answer these questions before a bill draft is written, then the Department can let the group know what lies ahead of them on the path to licensure and a better decision can be made to seek licensure or not.

SEN. COCCHIARELLA questioned if Ms. Jamison believed that existing boards should also be reviewed for the public health, safety, and welfare criteria. Ms. Jamison answered that she feared that the review could become a full-time occupation, would once again prove too long and too costly a process, and would probably not be effective once a board is in existence.

Dr. Watson agreed, saying that the concept is good but the process is far too onerous. Some type of sunrise provision may be necessary for the creation of new boards and could be used occasionally for existing boards.

Mr. Andrew suggested that proponents for a new board provide a business plan before applying for a new board, with necessary components and costs enumerated up front. The old sunrise provisions included an up-front cost of \$6,500 for use in studying the proposal. That cost did provide a reality check for the new boards. The Department is dealing with boards that are struggling because they are not meeting those standards of review. It is difficult to assist a board that doesn't have the resources to provide the information the Department needs.

Ms. Murdo pointed out that a board review process does exist in statute--section 2-8-105 provides that the Governor can recommend to the Legislative Audit Committee that an agency, board, or program be reviewed or terminated, subject to a performance audit.

REP. MILBURN asked Mr. Andrew if the intent should be to make the initial criteria so strict that not every group will want to have an occupational board. Mr. Andrew responded that the intent should not be to make the process easy or difficult, rather it should be to put a reality check in place.

REP. MILBURN, expressing concern over the number of existing boards and programs requiring oversight, questioned whether the program for crane operators could fit into another board or program. Ms. Caldwell explained that the crane operators are part of a program with construction blasters and boiler operators, and the program has one inspector assigned to it, through HB 2, to perform crane inspections and give exams. Although this is not a large program, there is a public safety element to it, with the complaints usually resulting from a death. This licensure program has been in existence for a long time--crane operators have been under mandatory licensure for 30 to 40 years.

TAPE 2 SIDE B

Ms. Hughes said she thinks a review of current boards makes sense as does having criteria to

determine the need for new boards, but there remains the problem of possibly limiting citizen access to the legislative process. In the case of new boards, the previous sunrise provisions required an up-front payment of \$6,500. If there is a public health, safety, and welfare issue surrounding the occupation, such an up-front cost could discourage the professionals from seeking formation of a board to the detriment of the citizens of this state. If members of the public believe an occupation should be regulated would they also be required to pay the up-front costs for study of the issue? The Subcommittee should be wary of anything that stands between the people and their ability to petition their Legislature or puts a price tag between the citizens and the Legislature.

SEN. COCCHIARELLA pointed out that, at this time, there are no specific details regarding up-front fees or anything else, but that an up-front fee of \$6,500 is quite reasonable, considering the costs of a business operation, although it could be a more difficult goal for an occupation involving only a few people. If members of the public have an issue they are concerned with, then up-front costs would not be a factor. The goals are self-regulation, self-determination, and autonomy for occupational boards. A business has expenses and, even if business owners don't like paying the cost, they don't go into business if they don't know what their costs are going to be. Studying the issue up front sheds light on both sides of the issue.

Mr. Hargrove said that the full criteria used in the sunrise legislation of the past is too onerous to use for everything. However, some type of process is both necessary and important. His organization would be willing to undergo a review.

Dr. Watson commented that, as a taxpayer, he feels that whether the purpose of a proposed board or program is already being served by an existing board or program is another important criteria.

SEN. COCCHIARELLA asked the Subcommittee if there was a consensus that there should be, in statute, a process by which the Legislature, as well as the Governor, can institute a review process of the existing boards and programs.

Mr. Hargrove agreed this would be a good idea and suggested it could be mandated in statute that boards and programs would be reviewed every "X" number of years, although how often and by whom is uncertain, because boards and programs often out-grow the original need--yet once in existence they tend to stay.

Lisa Addington, Chief, Bureau of Health Care Licensing, DLI, reminded the Subcommittee of the creation of the Board of Private Alternative Adolescent Residential or Outdoor Programs by HB 628 last session. The bill created the board for the purpose of studying whether or not there was a public benefit to licensing private alternative adolescent residential or outdoor programs and it was anticipated that up to 35 programs would be registered. Duties of the Board included determining whether the Board serves a legitimate public purpose and providing a recommendation to the Legislature by September 15 on whether the board should continue. Legislation of this sort could be another option for reviewing new boards.

Sue Weingartner, Lobbyist, Spring Creek Lodge Academy at Thompson Falls, clarified for the Subcommittee that HB 628 created the Board to register these types of programs, not to regulate them. It is a 5-member board covering 3 types of programs--small, medium, and large, which serve different types of populations and include approximately 1,000 students in Montana. This is a new and growing industry. The first step of the Board was to determine how many programs of this type there are, where they are located, and to get the programs registered. One of the recommendations the Board will present to the Legislature is whether

there is a need for a board to regulate these programs.

PUBLIC COMMENT ON ANY ISSUE BEFORE THE SUBCOMMITTEE

Mr. Andrew addressed his comments to Ms. Hughes' concerns over up-front funding, saying that he had not suggested that there must be an up-front fee--only that there had been in the past and that seems to be a reasonable part of a business plan. He pointed out that when a board finds itself underfunded, through a change in the number of fee payers or for another reason, then the Agency itself is also underfunded, since board funding is what operates the Agency as well. Whether or not there is sufficient funding through the fee process is another factor that should be considered up front before a board is formed because, as matters stand, the Agency does not have any stop-gap funding if enough funds are not available from the boards to perform necessary work. This is probably why recharges have become such an issue. The Agency will have to have more money from the Legislature if the boards are not properly funded.

Ms. Addington commented that fee increases do not necessarily bring in more money--the Board of Nursing Home Administrators recently increased many of its fees and wound up losing 38 licensees because of the increases. Some licensees may not continue if fees are increased.

Ms. Hughes replied that the fee increases are not the problem--nursing home administrators must have a license and will pay whatever they have to pay, and the fees are not so high as to preclude someone from following that career path. The issue is that when fees go up people want to know why. When the board asked the Department for details involving the recharges they were told the information was not available. The boards need more detailed information more often.

SEN. COCCHIARELLA questioned Ms. Hughes about whether the requirement was for licensure or for a board. Ms. Hughes responded that, by federal law, nursing home administrators must have a license and there must be state-set standards and a method for licensure, but a board is not required.

SEN. COCCHIARELLA asked if developing a licensing program, rather than having a board, had been discussed, and suggested that the end result of the Subcommittee's work would also provide a board or a program with a process of self-inspection concerning what the true needs of the profession are, what the board or program should be, and what is most appropriate for both the professionals and the public.

Ms. Hughes emphasized that, if a disciplinary process is involved, professionals will want their professional conduct and competence judged by their professional peers, which means members of the board. A program cannot provide this assurance.

Mr. Hargrove suggested that looking at umbrella boards could be another aspect of the fees and funding issue. The primary, and perhaps only, reason for the existence of umbrella boards is the efficiency and economy they offer to the Department. It seems appropriate that a review of existing boards, with an eye toward establishing umbrella boards, would begin at the Department level and would then be brought before the Subcommittee.

SEN. COCCHIARELLA agreed that such a review is a good idea, but stated her opinion that it is not the responsibility of the Department--it is the responsibility of the Legislature.

Ms. Caldwell noted that dual licensure may need studying. She gave the example of the Board

of Realty Regulation, which includes several categories of licensure, and noted that a professional can hold licenses in more than one area, such as both a broker license and a time share license. Health care would be an area that could contain several overlaps or the possibility of dual licensure.

Shelly Engler, Board of Landscape Architects, updated the Subcommittee on the status of her board, saying that the Board of Landscape Architects was suspended in July 2005, and has been inoperable for 10 months, although the Department has been functioning minimally on its behalf. Discussions concerning a proposed merger have been held with the Board of Architects. The architects originally approved a motion to add two landscape architects to their board, although the motion later was revised to add just a single landscape architect to the board. The proposal is to pursue legislation to combine the two boards into a single, 6-person board. The merger will allow landscape architects to function within a joint board and maintain their own fee levels, since finances will be kept separate. It is uncertain what will occur if the merger falls through. Ms. Engler agreed with Mr. Andrew about the importance of a proposed board having a business plan, saying this discussion was extremely pertinent to the case of landscape architects. There doesn't seem to be a process for boards to set services commensurate with income, only that fees be commensurate with costs.

Mr. Andrew commented that under the Executive Branch's planning process the Department could work with the boards to determine if there is a possible solution.

TAPE 3 SIDE A

SEN. COCCHIARELLA asked Ms. Murdo to address issues between and among boards and programs regarding inconsistencies.

Ms. Murdo told the Subcommittee that the some of the inconsistencies include: the number of board members--boards vary in composition from three to nine or more members and there is currently no rationale for how many members are necessary; the commensurate-with-costs issue; and the quasi-judicial aspect. Some boards are specifically, in statute, deemed quasi-judicial, which is unnecessary because the Department has the authority to issue subpoenas, which extends to the boards. The quasi-judicial aspect of a board also results in turnover with every new governor elected, which is not true of boards that do not have the quasi-judicial aspect listed in statute. There is no standard rationale for which boards are quasi-judicial and which are not.

SEN. COCCHIARELLA offered, as food for thought for the Subcommittee, the idea that the issue of dual licensing could be a driver for combining boards. Another, related area that needs to be looked at is which department is given authority over a board--for example, the Board of Outfitters actually functions under the Department of Fish, Wildlife, and Parks but is under the regulatory umbrella of the Department of Labor. Similarly, during the last legislative session there was discussion over whether alternative schools should be under the regulation of the Office of Public Instruction or the Department of Public Health and Human Services. If umbrella boards are developed, which department is the more logical regulatory agency? The Subcommittee will have one more meeting to go over potential legislation, which will be somewhat based on the sunrise provisions, to come up with an up-front proposal for the formation of new boards while at the same time not cutting off a Legislator's right to present a bill, create a board, or respond to the public's need for regulation of an industry.

Ms. Murdo told the Subcommittee that the next full Economic Affairs Committee meeting is July 14, and any proposed committee legislation should be presented at that meeting so any

changes can be incorporated and the proposed bill redrafted for the Sept. 11-12, 2006, meeting.

PUBLIC COMMENT ON ANY ISSUE BEFORE THE SUBCOMMITTEE

Ed Silverstein, Georgetown Lake, spoke to the Subcommittee of the need for a Board of Contractors, citing his frustrating experiences while trying to build a dream home. Among these were a contractor's intentionally low-balled bid that has resulted in tens of thousands of dollars for unjustified overages, embezzlement of subcontractor payments, incompetent workmanship, and dangerous conditions within the home. Noting that this particular contractor has had similar issues with many other people, Mr. Silverstein said this would not have happened in a state that has regulatory authority over contractors, which Montana currently does not have. This lack of regulation has resulted in an epidemic of incompetence and fraud which has ruined the lives of many citizens and victimized the legitimate contractors in the state who cannot compete with the frauds. This results in significant costs to the state not only in that it discourages people from doing business here, but also results in court costs connected to lawsuits. In addition, unscrupulous contractors often do not pay workers' compensation taxes. For these reasons, Montana needs a licensing board for general contractors, which should have the resources and authority to set minimum qualifications and ensure the contractor maintains all proper insurances. The licensing board could compile an information database that lists complaints by the consumer and, most importantly, could have the ability to revoke the license of incompetent or dishonest contractors and prevent them from doing further business in the state. Until such a board is in place, it is not safe to do any kind of construction here in Montana.

SEN. COCCHIARELLA said that she had worked with a constituent on this issue in the past but was unable to get anywhere and was unsure if the solutions were in the area of general licensing for a contractor or strengthening the laws that go after the unscrupulous. Mr. Silverstein said he has tried to contact the police, but they have not returned his calls, nor has he received any action from various state agencies he has called. He said that he has not filed a lawsuit because currently three other people are suing this contractor and the contractor is expected to file for bankruptcy.

Dr. Watson, speaking as a taxpayer, expressed incredulity at the state's lack of a regulatory board for contractors.

SEN. COCCHIARELLA raised a concern about board minutes' accuracy and whether minutes reflect the true intent of a board meeting. She commented that the Legislature has experienced huge cost savings, and greater accuracy, by using high tech methods for recording committee minutes. Meetings are taped, minutes are summarized, and the tape is archived, referenced, and may be accessed over the website. SEN. COCCHIARELLA questioned whether the Department has looked into the new technology.

Ms. Addington answered that there is recording equipment in all three of the Department's meeting rooms, so the board meetings are being recorded but the Department's legal staff has not weighed in on whether the audio tapes are enough to satisfy the statutory requirement.

Mr. Allison commented that the statute (2-3-212, MCA) requires that minutes be kept, not that the minutes be audio recorded. Once the minutes are approved by the board, the tapes are erased. These are summary minutes.

Ms. Murdo pointed out that section 2-6-110, MCA, authorizes taped recordings of minutes and there could be a question of whether or not the tapes can be erased. Mr. Allison answered that his department had worked with the Department of Administration to develop the records

keeping policy and both Departments follow the same procedure.

Keith Allen, Member, International Brotherhood of Electrical Workers Local 233, expressed a concern over this issue, saying that he had difficulty getting a copy of the tape recordings of minutes from meetings of the electrical board. He could get only written minutes, which often seem to miss the gist of the meeting. He was told the tapes are destroyed. In the past, the board administrator would take the minutes and, because the administrator was involved day-to-day with electrical issues, those minutes accurately reflected the meeting. Currently, someone from the complaint unit takes the minutes.

Mr. Allison responded that the minutes sought by Mr. Allen were from a closed meeting, which are never available.

SEN. COCCHIARELLA informed the Subcommittee that a notice would be sent out about the agenda of the next full Committee meeting on July 14, and adjourned the Subcommittee at 3:42 p.m.

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