



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Economic Affairs Interim Committee
59th Montana Legislature

SENATE MEMBERS

DONALD STEINBEISSER--Vice Chair
JOHN BRUEGGEMAN
VICKI COCCHIARELLA
KEN HANSEN

HOUSE MEMBERS

JIM KEANE--Chair
DAVE GALLIK
TOM MCGILLVRAY
MIKE MILBURN

COMMITTEE STAFF

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

MINUTES

SJR 35 SUBCOMMITTEE MEETING

January 19, 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.**

SUBCOMMITTEE MEMBERS PRESENT

SEN. VICKI COCCHIARELLA, Chair

REP. TOM MCGILLVRAY
REP. MIKE MILBURN

STAFF PRESENT

PATRICIA MURDO, Lead Staff
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the first meeting of the SJR 35 Subcommittee on Licensing Boards to order at 6:30 p.m. SEN. COCCHIARELLA explained the background of the identity theft issue and the purpose of the meeting.

Shane Sierer, Associate Fiscal Analyst, Legislative Fiscal Division (LFD), provided a brief history of licensing boards in the State of Montana. Mr. Sierer reviewed the budget and recharge history of licensing boards (EXHIBIT #1). He emphasized the importance of looking at actual expenditures rather than budgets, which sometimes are quite different from expenditures.

SEN. COCCHIARELLA asked Mr. Sierer to define what a recharge is. Mr. Sierer explained that a recharge is an amount charged by the Department to a specific board or program for a direct service provided to that board or program.

SEN. COCCHIARELLA referred to a handout with a list of definitions for Professional and Occupational Licensing Boards (EXHIBIT #2).

REP. MCGILLVRAY, referring to page 1 of EXHIBIT #1, asked why there has been such a growth in recharges since 2004. Mr. Sierer said there are several indicators as to why the recharges have increased, such as increased salaries and attorney fees charged back to the boards.

Jeff Ruffner, Montana Society of Engineers (MSE), said that in prior years, the cost of attorneys was shared across the various boards and asked if boards are now charged on a per use basis. Mr. Sierer explained how the recharge amount was determined in the past when boards were within the Department of Commerce, as opposed to how the Department of Labor and Industry allocates attorney fees.

Jim Brown, Division Administrator, Department of Labor & Industry (DOLI), said that with the exception of the Board of Medical Examiners and the Board of Nursing, a pool of attorneys are allocated to each board and program based on the board-direct, assigned full-time employee (FTE) and that these boards pay a fee for legal services, whether or not the services are used. In the future, fees for legal services provided to boards will be based on time distribution.

SEN. COCCHIARELLA asked if Mr. Brown charges boards for his services. Mr. Brown said that bureau chiefs and division administrators do not charge for their time and are a part of the management pool, whose services are allocated to the various boards using the same formula for board-direct FTE. **Pat Murdo, Research Analyst, Legislative Services Division (LSD)**, referred the Subcommittee and working group members to a DOLI organizational chart depicting the structure of each board (EXHIBIT #3).

DISCUSSION OF BOARD FUNDING

SEN. COCCHIARELLA asked for an explanation of how House Bill 2 appropriations for boards are used. Mr. Brown explained how the funding appropriated in HB 2 is used by the boards and programs.

REP. MCGILLVRAY said HB 2 pays for certain attorneys and asked if the boards are recharged for those same attorneys. Mr. Brown said boards are not recharged for the attorneys budgeted for in HB 2.

Eve Franklin, Executive Director, Montana Nurses Association, asked, regarding the staff cost for the Board of Nursing, if the cost is allocated in HB 2 or if it comes from a combination of funding sources. Mr. Sierer discussed the exact amounts allocated for the Board of Medical Examiners and the Board of Nursing.

Colleen Murphy, Executive Director, Montana Chapter, National Association of Social

Workers, said the issue of whether boards are self-supporting or not needs to be clarified.

SEN. COCCHIARELLA said another issue is why boards are charged such different fees by the Department and that one purpose of the Subcommittee is to gain an understanding of that. She said that boards are supposed to be self-sustaining but it appears as if that is not always the case.

Mr. Brown said all of the boards and programs in the Business Standards Division are under the state special revenue fund. No tax dollars, no general fund dollars are used to support any of the boards or programs. The fees that are charged by a board for license renewals or new applications are intended to cover the entire cost of operating the board, with recharges being one of a board's expenses.

REP. MCGILLVRAY said if the license fees go into HB 2 and then are allocated back out, he would like to know if the boards sustain themselves or not. Mr. Sierer said the boards are 100% self-sustaining and that every dollar used is from the state special revenue fund paid into by the licensees.

TAPE 1 SIDE B

Mr. Brown said the Legislature approves only two items associated with boards and programs: spending authority and FTEs. It is up to the boards and the Division that rely on state special revenue to adopt fees that are commensurate with costs in order to raise the revenues to operate and the approved spending authority should reflect the operational needs of a board or program.

SEN. COCCHIARELLA said she would like to clarify the concerns that have come up about boards being self-sustaining or not. She said it must be determined why the trends have gone the way they have and if there is a legislative cause for the increase in fees.

Angus Maciver, Legislative Audit Division (LAD), who conducted a performance audit of the Professional and Occupational Licensing Boards in 2004, said in terms of what has happened with the reorganization and the recharges, he would suggest that the Subcommittee focus on as a wide range of issues as is possible. The reorganization did result in numerous job reclassifications within the divisions, which was anticipated, but there are many other factors that lead into how much money a board spends, which affects the fee charged to the licensees. The scope and the scale of the regulatory activities of a board is difficult to measure. It is also very difficult to compare different boards because of this. He said that one thing that he heard frequently during the performance audit was that the old method of recharges was not promoting equity between boards and was resulting in cross subsidization between boards. That was found to be true in many cases and is one of the issues being dealt with. Calculating recharges on the basis of a flat rate of the appropriation authority of a particular board was not a good way to do it and likely resulted in fees being charged not being commensurate with costs. There had to be a change in how these recharges were calculated. That process was already beginning to happen when the performance audit began and continues to be an ongoing process. Assessing recharges on the basis of staff time distribution is, on a theoretical level, a far better way to ensure that fees will be commensurate with costs. However, the LAD has not done a detailed analysis of the current method of calculating recharges and what methodology was used to calculate them. The methodology of the Department appears to offer a more

equitable method for calculating the recharges. He said another performance audit would have to be completed in order to determine what the recharges look like now and what methodology was used to calculate them. How those are done now and what factors enter into them, whether it be staff costs or other issues, is something that an audit would determine.

Jeff Ruffner referred to EXHIBIT #1 and said that recharges are rising and asked if the data is based on the aggregate of board information and if each board is self-sustaining and if these trends are acting the same way independently or are some boards self-sustaining and some not, but that the overall trend is going up. Mr. Maciver said all boards have to be self-sustaining under Montana statute and cannot expend monies beyond their appropriation authority. It is true that the costs for different boards are increasing and or decreasing at different rates.

SEN. COCCHIARELLA asked whether the Department moves money around between boards and if there is a contingency fund for that. Mr. Brown said that money is not moved around because that would not be legal. He said that the Department does adjust the spending authority for a board, if needed. A given board, through the fees that it charges its licensees, has an individual account and the Department never moves funds from a given board's account to another board's account. There are instances where, because of unforeseen increases in expenses for a given board, it could be that a board doesn't have sufficient appropriation authority to cover its expenses. Other boards may have appropriation authority that it will not use. A budget change document (BCD) is the method that is used to move appropriation authority from one board or program to another.

Lori Ballinger, private citizen, stated that although she is employed as an attorney for the Department of Labor, she was addressing the Subcommittee as a private citizen. She said she thinks that there is confusion over certain terms used to define requirements for boards and compared Montana law regarding professional and occupational licensing boards with Washington State law to illustrate her point. She said that Washington law requires by statute that a board must be self-sustaining and must be able to demonstrate that the fees charged are used to support only that board's functions. Montana statute requires only that fees are to be set commensurate with costs.

SEN. COCCHIARELLA said she found Mr. Brown's comments regarding shifting spending authority very confusing. She said she didn't see how it could be legal to move spending authority or appropriation authority. Ms. Ballinger said she doesn't deal with budgetary issues. Mr. Brown said he does not believe it to be illegal to move appropriation authority within the same entity from one board or one program to another. Departments do that all the time, if it is the same revenue source, like state special revenue.

13.1 - Mr. Sierer agreed with Mr. Brown's statement and said that if a board has a need for new equipment, for example, and it does not have the spending authority to purchase the needed equipment, the spending authority may be taken from another board that has surplus spending authority. He said this is a normal BCD and all BCDs are reviewed quarterly by the Legislative Fiscal Division, which questions anything unusual. He reiterated his point that spending authority may be moved from one board to another, but money is not. He said the confusion lies between the actual money and the authority to spend the money. A money transfer is never allowed, only spending authority may be transferred.

Don Hargrove, representing Marriage and Family Therapists, asked regarding personnel

services, how is it determined where bureau chiefs are paid. Mr. Brown said at the Division Administrator level, there are so many boards and programs to oversee that it is not practical to divvy up personal services costs between every board, so the Administrators are paid from an internal service fund that is allocated based on board direct personal services.

Shelley Engler, private citizen and Board of Landscape Architects, asked if Washington boards are required to prove that they are self-sustaining, if those boards have any, or more, authority than Montana boards to actually determine the level of services that are provided to them, and what type of services are required in order to sustain the board. Ms Engler said she thinks a large bureaucracy has been created to support and service boards, when less oversight and governance would be sufficient for many of them. She said she would like information on how differences are accounted for in figuring recharges.

SEN. COCCHIARELLA asked how much authority a board has over what it spends. Mr. Brown said a proposed budget is presented to each board for review and approval.

Mr. Brown said in the early stages of the reorganization, several boards approached him to discuss perceived problems with the old system. All of those boards were of the opinion that the system wasn't fair and equitable and that the larger boards in particular, felt that they were subsidizing smaller boards. It is a priority of DOLI to make certain that a board's fees are commensurate with costs and that boards should not expect to be subsidized by another board.

Casey Blumenthal, Montana Hospital Association (MHA) discussed travel budget issues related to the Board of Nursing. She said in her experience, boards do not have much flexibility in administering their budgets.

SEN. COCCHIARELLA asked others present who serve on boards for their comments regarding a board's authority to spend its funds. **Dr. George Watson, Board of Psychologists**, stated that he had not experienced problems with expenditures but said that the process is slow and cumbersome.

Ms. Engler commented that when the Board of Landscape Architects was financially sound, control of the budget was not an issue. When the Board began experiencing problems, control of the budget was very difficult and sometimes impossible and that the Board's requests to the Department to cut costs were ignored. Eventually, services were suspended. The Board currently receives only minimal services. She suggested that a large bureaucracy has been created which is difficult for a small board to support. The recharges are impossible for the smaller boards to pay.

SEN. COCCHIARELLA said the Board of Landscape Architects could be an example of a board that may be better off operating as a program. She said that is one of the issues that the Subcommittee would take under consideration.

Ms. Murphy asked what the difference is between a program and a board. SEN. COCCHIARELLA explained that a program issues licenses only, does not have a board and that the activities of the program are monitored by the Department. SEN. COCCHIARELLA said that all of Montana's licensing boards and programs were listed in the *Summary of Montana Boards* (EXHIBIT #4).

Mr. Maciver said it is important to remember that in the reorganization, all of the boards and programs were administratively attached to the Department of Labor. **TAPE 2 - SIDE A** He said because there are so many different boards doing so many different things, by attaching them administratively to the Department, the goal was to provide a better and more efficient oversight of these boards. He pointed out that legislators have the authority to decide what should be a board and what should be a program and that programs function very well without the oversight of a board. He said it also must be considered that there are always requests to create a new board and requests from existing boards for increased spending authority, increased regulatory authority, and heightened activities. This increases the work load and increases the licensing fees because the administrative costs to the Department are increased. He suggested taking into consideration economies of scale when considering consolidation of existing boards or the creation of new boards.

PUBLIC COMMENT

Dr. Watson asked for additional discussion on the differences between boards and programs. SEN. COCCHIARELLA said programs are created by the legislators, have statutory criteria that must be met, have simple processes to be administered by the Department, that fees must be paid, and that the fees must be commensurate with costs. Dr. Watson said it is difficult to understand the difference between a board and a program. He said there appears to be a distinction that a program operates by more of a checklist and that a board has more stringent and specific standards. SEN. COCCHIARELLA said it is not that simplistic. Programs have national standards that must be met, and the statute is prescriptive. Dr. Watson disagreed that economies of scale should be used as the only factor in determining whether a board should be a board or a program because other important factors must also be considered.

Mona Jamison, Physical Therapy Association of Montana said boards are an independent entity, with the board members appointed by the Governor. The board is attached to the Department for administrative purposes. It is staffed by the Department but the governing of the licenses is done by the board. A program has the same functions, in terms of licensure, meeting statutory criteria to be licensed, but the oversight is done by the Department.

Ms. Engler asked if the budget setting practice is the same as for boards as it is for programs and if programs are experiencing same difficulties as boards.

Mr. Brown said that programs, like boards, must have fees commensurate with costs. The new method developed for allocating recharges to boards also applies to programs and the distribution formula for programs is the same as it is for boards.

Mr. Brown explained that additional problems have been experienced when several trades are combined into one program. He relayed an example of several occupations (the Boiler, Blasters, and Crane Operators) that were combined into one program, saying that in an audit, it was discovered that one trade (the Crane Operators) was not paying its fair share of costs.

SEN. COCCHIARELLA asked Mr. Brown to explain the FTE and pay plan changes that resulted after the departmental reorganization. She said there have been reports by licensees of poor response to complaints they have regarding the licensing process. Mr. Brown said he didn't have an exact number of how many additional FTE the Department has employed since the reorganization but said there are additional FTE in the two licensing bureaus. He said it is the

Department's intent to improve accountability, supervision, efficiency, and effectiveness. He also explained how the broadband pay plan was implemented.

SEN. COCCHIARELLA asked if the level of attorney involvement with boards is greater now than in the past. **Lisa Addington, Health Care Licensing Bureau Chief, DOLI**, said that under the reorganization, attorney costs to boards have increased because not only are there more attorneys, but they are more involved with the boards on the day-to-day business activities of the boards and programs. Mr. Sierer explained how the number of attorneys employed has increased under the DOLI and how their services are charged. He said one of the main reasons for the increases in the board budgets is directly attributable to increased attorney costs. Ms. Addington said the reorganization has afforded the Department the ability to better track complaints. Complaints are increasing due to the awareness of the public that they now can file complaints and the complaint form is easily accessible on the website. Ms. Addington said she could do an extract from the Oracle database just on complaints, if the Committee wished her to do so. Ms. Addington said this information, and more, will be released just prior to the 2007 Legislative Session. SEN. COCCHIARELLA said she would prefer that the Subcommittee have the information sooner than that and asked Ms. Addington to have it available prior to the next Subcommittee meeting. Ms. Addington said the information would be made available, as per SEN. COCCHIARELLA's request.

Ms. Ballinger said, in regard to how long it takes the Department to respond to complaints, that most boards meet only quarterly and that is a big factor in the response time. The boards could meet more frequently but that more meetings would increase costs even more.

27.9 -- SEN. COCCHIARELLA said the Subcommittee must define what the purpose is of having a board. She said she would like to have it clearly defined in the Montana Code Annotated.

29.7 REP. MILBURN said he would like to identify if some of the occupations now being governed by a board truly need board governance or licensure because there are costs associated with being licensed.

Senator Lane Larson, SD 22, Billings, said as a licensed electrician, he knows how boards work and related problems he and other licensed electricians have encountered regarding the electrical board. He said there are many complaints filed with the Department of Labor regarding this board. He said he has also been licensed by the State of Wyoming, where he served on the electrician's board, and that the licensing system in that state is much easier to navigate. He gave a brief comparison of the differences in how boards operate in Wyoming and Montana, particularly regarding how complaints from licensees are addressed by boards. He said that boards are necessary but that he would like to see less department oversight and more board autonomy.

Ms. Ballinger said she had provided written comments to Ms. Murdo (EXHIBIT # 5) and asked the Subcommittee members to review them at their leisure.

SEN. COCCHIARELLA asked each working group member to identify why his or her board is necessary and how it provides a service for the good of Montana and perhaps reasons why a board shouldn't exist.

Ms. Jamison said that the level of autonomy is the main difference between a board and a program. She also explained how the 1972 Constitution limit the number of state agencies, which is why boards are attached for administrative purposes to agencies

TAPE 2 - SIDE B

Ms. Murphy referred to the report prepared by Ms. Murdo (*Board ABC's* - EXHIBIT #6) and said it has a great deal of background information on boards and that many questions discussed at the meeting were addressed in the report.

Todd Boucher, DOLI, asked to clarify the complaint process for Sen. Larson. He said the Department doesn't prescreen complaints and that they are given directly to boards for review. He said complaints to programs are handled by the Department.

Sen. Larson said complaints are screened by a screening committee before being heard by the full board and that he has a problem with that practice.

SEN. COCCHIARELLA said the next Subcommittee meeting will likely be attached to the February 10, 2006, meeting of the Economic Affairs Committee, as well as the May and July meeting dates of the EAIC. She said one desired goal is to establish criteria or a framework for decision making on whether licensure is needed, and if so, should it be done under a program or board.

SEN. COCCHIARELLA adjourned the Subcommittee at 8:36 p.m.

CI0429 6038dfxa.