



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

August 1, 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
REP. MIKE MILBURN

SUBCOMMITTEE MEMBERS EXCUSED

REP. TOM MCGILLVRAY

STAFF PRESENT

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

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The SJR 35 Subcommittee:

- approved the May 11, 2006, minutes, as written

TAPE 1 - SIDE A

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the meeting to order at 4:02 p.m. The secretary noted the roll. REP. MILBURN moved to accept the minutes from the May 11, 2006, meeting. The motion passed on a unanimous voice vote.

SEN. COCCHIARELLA noted that the proposed legislation can continue to be revised but that it must be finalized at the September 11, 2006, meeting of the full Economic Affairs Committee.

REVIEW OF DRAFT LEGISLATION: LC7799 -- SUNRISE, LC9831 -- GENERALLY REVISE BOARDS, & LC9832 -- PERIODIC REVIEW OF BOARDS

Pat Murdo, Research Analyst, Legislative Services Division (LSD), referred to LC7799 -- the sunrise provisions (EXHIBIT #1) and to a July 31, 2006, email sent to Lisa Addington and Jill Caldwell, Department of Labor and Industry (DOLI) explaining the three bill drafts (EXHIBIT #2). MS. MURDO reviewed the revised language (in **bold**) language in LC7799.

Dr. George Watson, Vice Chair Board of Psychologists, directed his comment to Page 6, Section 5(4) regarding consolidation, and said that the intent made sense to him. He suggested that there be a process to determine if consolidation is actually needed, including discussion between the two boards being consolidated.

Michael Bergkamp, Alternative Health Care Board, agreed with Dr. Watson's concerns regarding the consolidation process. He said that setting the cut-off number at 200 seemed arbitrary. He pointed out that some boards have already been consolidated and still fall under the 200 member target. The language seems to direct DOLI to begin consolidation proceedings when the 200 threshold is hit regardless of other factors.

SEN. COCCHIARELLA asked for suggestions on how the wording could be tweaked. **Don Hargrove, Marriage and Family Therapists**, said that he was not sure that the language locks a board into anything and that the Department will have some flexibility on deciding consolidation issues.

Bart Campbell, Staff Attorney, LSD, said that the bill simply directs DOLI to begin consolidation discussions at a certain point. Recommendations made by DOLI will then be reviewed by an interim committee. The interim committee will make the final decision through

legislative action.

Dr. Watson said that he was glad to hear that consolidation would not be mandated by DOLI but still supported changing the language to reflect that. Mr. Campbell suggested changing the language to "a legislative interim committee **may** direct the department to begin consolidation discussions". He said that makes it clear that it is not a mandatory but still leaves the steps in place for consolidation. Dr. Watson said that he was comfortable with that language.

SEN. COCCHIARELLA asked if the number threshold should be changed. Dr. Watson said that he was comfortable with the number of 200.

Shelley Engler, Landscape Architect, asked if the number of 200 was chosen because that number is a threshold for cost effectiveness. SEN. COCCHIARELLA said that the needs of different boards vary so greatly that it would be difficult to make that sort of a determination.

Jill Caldwell, Business and Occupational Licensing, DOLI, agreed that costs really do depend on each board's needs and its duties.

MS. MURDO said that the number of 200 is arbitrary and noted that there are currently only four boards with membership under 200. Ms. Murdo distributed a list of boards and their membership numbers (EXHIBIT #3).

Mr. Bergkamp said that small boards can pay their way and that different criteria, other than just a number, must be used in deciding whether or not consolidation is necessary.

SEN. COCCHIARELLA pointed out that all boards must pay their way. She also said that the rest of the language in Section 4 ensures that other criteria are used to determine a consolidation recommendation.

Mr. Bergkamp said that he was unclear about the intent of 4(b) in Section 5 and asked if the language meant that a small board being consolidated would have to be consolidated with another board with membership fewer than 200. Ms. Murdo said that the intent was that consolidation would be with a board that has supervisory authority but would not have to be a

board with less than 200 licensees.

REP. MILBURN suggested changing the language in Section 5(4) to "If the legislative interim committee determines...may direct the department to review consolidation considerations with a board that has one or more of the following criteria". Mr. Bergkamp said that language change would resolve his concerns.

Mr. Campbell suggested changing the language in Section 5(5) to mirror Section 5(4): "The legislative committee shall review any recommendations or the recommendations of the department, if any.....". This would allow for the fact that no recommendations may be made.

Ms. Murdo pointed out that both LC7799 and LC9832 contain periodic board or program review provisions and said that she didn't think that review provisions needed to appear in both bill drafts. She noted that LC9832 focuses more on the financial solvency of a board or program, whereas LC7799 language places more emphasis on the public benefit and public health, welfare, and safety. Ms. Murdo read from both bill drafts to illustrate the differences in language. She said that the language could be left in both bill drafts but predicted that it would cause confusion.

Dr. Watson said that he understood the review language in LC9832 would apply only to existing boards and programs. He said that after listening to Ms. Murdo's explanation, it sounded as if it may apply to new boards and programs also. MS. MURDO said that was not the intent and that the language was directed more towards existing boards and programs. SEN. COCCHIARELLA suggested combining LC09832 with LC7799.

The Subcommittee discussed several different provisions of LC9832 and which should be imported to LC7799. SEN. COCCHIARELLA said that she supported keeping the fiscal solvency language in Section 2 and the termination language in Section 3. Ms. Murdo explained each section, as written in LC9832.

Regarding termination provisions, **Lisa Addington, Bureau Chief, Healthcare Licensing, DOLI**, said that in her experience, it is the Legislature that has always created the termination language.

Casey Blumenthal, Montana Hospital Association (MHA), asked, regarding LC9831 (EXHIBIT #5), Section 15(9)(e), if there is a way to determine the impact that language would have. SEN. COCCHIARELLA said no. Ms. Blumenthal asked if there would be another way to deal with that, so that it wouldn't impact the licensing of other boards. Ms. Addington said that she shared Ms. Blumenthal's concern about using one board's money for another board and predicted that boards would object to this language. SEN. COCCHIARELLA said that she was unsure that using this language would be legal. Mr. Campbell said it could be designated as an administrative cost and spread among the boards. Ms. Murdo said the issue of what to do if a board can't cover its fees has been a central argument throughout this process. In the past, boards have subsidized one another and this would be a one-time, above board subsidization. Ms. Murdo said that Idaho deals with this issue by making costs commensurate with fees, rather than fees commensurate with costs. SEN. COCCHIARELLA asked Ms. Murdo to present the information she received from Idaho's licensing bureau.

TAPE - 1 - SIDE B

Ms. Murdo presented information provided by Jolene Reick, a landscape architect from Billings, outlining how Idaho handles smaller boards, specifically landscape architects (EXHIBIT #6). She explained that 25 boards individually contract annually with Idaho's Bureau of Occupational Licensing. Ms. Murdo discussed how the contracts are negotiated, including indirect expenses and said that this is one way of dealing with the fees and administrative attachment issues. She said that this type of system is not significantly different from what Montana has but would require yearly contracts to be done through a negotiations process.

Kent Watson, Landscape Architects, read 67-2604 of the Idaho code which makes up the contract language. He said that the basis for the contract is clearly laid out in the statute, that the contract is quite simple, and that the Landscape Architects think it would be worth investigating.

Mr. Campbell said that the Idaho language creates a lot of board autonomy and said that there could be some Constitutional issues regarding rulemaking authority. Mr. Campbell said that ultimately, all boards have to answer to someone and said that the Legislature must limit rulemaking authority it grants to agencies or the rulemaking authority is subject to challenge.

Mr. Watson said that he does not want to be in violation of constitutional requirements but felt that this would merely be a service agreement for operation of a board and its licensees. Mr. Campbell said that it would be important to make it clear that even if, as a service contract, that there may be other aspects having to do with who answers to whom.

SEN. COCCHIARELLA said that an advantage would be that boards would have annual conversations with the licensing bureau and this might keep boards better informed on what their status is.

Ms. Addington said that the Board of Nursing is also looking at the Idaho model and that a contract has been signed with a facilitator to work out details. She asked if the Idaho boards submit their budgets annually through a legislative process.

Dr. Watson asked, regarding LC9831 (Page 13, Section 15(5) -- dealing with department duties to investigate illegal or unethical conduct -- if that is different than current law. Ms. Murdo said that the language is current law.

SEN. COCCHIARELLA said that she would like to create a mechanism to provide for legislator training on the review process. She raised the current difficulty involving the state pension plans as an example and said that when the system for interim review of all retirement bills was created, the process began to be sidestepped and that is what has caused the crisis for the Public Employees Retirement System and Teachers Retirement System.

Ms. Murdo said that LC9831 would be discussed with a companion sheet prepared by DOLI (EXHIBIT #8). She said that LC9831 incorporates priority 14 from DOLI. She explained the provisions of LC9831.

Regarding Section 1(1)(b), SEN. COCCHIARELLA said that once every other year would be sufficient for a joint meeting. Dr. Watson concurred. Ms. Engler said board meetings could be coordinated in order to keep costs down and suggested using the wording, "meet at least every other year".

Mr. Watson said that he thought Section 1(2) was too prescriptive and that the language should

be more general. SEN. COCCHIARELLA said that she understood his concern but did not want to change the wording.

Kent Watson said that a decision will have to be made on whether engineers will be classified as a design board or a technical board.

Ms. Engler asked if the language would preclude boards and DOLI from working together.

Ms. Murdo explained Section 2 of LC9831.

SEN. COCCHIARELLA asked Ms. Engler to update the Subcommittee on the status of the negotiations between the Board of Architects (BOA) and the Board of Landscape Architects (BLA). Ms. Engler reported that she attended a BOA meeting in July and presented the Subcommittee's draft legislation. The Board of Architects was amenable to the name change and would prefer that only one board member be added, so the new board would be a five member board. Ms. Engler briefly discussed several other points of interest from the meeting and said that generally, the BLA is supportive of moving forward with the process.

TAPE 2 - SIDE A

The Subcommittee discussed language elements of LC9831 (EXHIBIT #5):

- Mr. Watson asked that the language in subsections (2)(a) and (2)(d) be changed in order to keep requirements more uniform and to provide a professional basis for the person serving on the board;
- Section 5 (2)(c), Ms. Murdo suggested adding "or landscape architecture" after "...practice of architecture", in order to make sure that the public appointee is not related to either profession;
- general discussion of the importance of public members serving on boards and other board membership requirements;
- establishing generic guidelines for creating combined boards, such as for the number of people who will serve on a board, adequate representation for each interest, and the number of public members; and
- the issue of combined board costs being kept separate and how to accomplish that.

Ms. Murdo explained the provisions contained in Sections 6 - 15.

The Subcommittee discussed Section 15(9) regarding how to deal with a board that is not operating in a cost effective manner. After discussion, it was decided that subsection (9)(d) would be eliminated and that work would continue the remaining subsection.

Ms. Murdo reviewed Section 16 and said that she wasn't convinced it was needed.

Ms. Murdo reviewed Section 17, noting that it deals with mainly with the changes for the Board of Architecture and the Board of Landscape Architects.

Ms. Murdo reviewed Sections 18 and 19, noting that Section 19 is mainly a clarification measure.

Regarding Section 21 -- repealers, Ms. Murdo asked if the Subcommittee wanted to repeal the athletic agents. SEN. COCCHIARELLA said the Economic Affairs Committee would vote on that issue.

Dr. Watson asked to discuss Section 1 -- joint meetings, and said that in his opinion, joint meetings every four years would be adequate. Lisa Addington said that currently this is done on an as-needed basis. SEN. COCCHIARELLA said that she is concerned that this won't happen if it is not in statute. Mr. Hargrove commented that he felt that adding this requirement to statute would just add unnecessary expense and increase the bureaucracy. SEN. COCCHIARELLA said that adding broad language to address this would not hurt the bill. After additional discussion, SEN. COCCHIARELLA said that work would continue on the language.

TAPE 2 - SIDE B

Mr. Watson commented that the important issue of the relationship between boards and DOLI staff needs to be addressed. He discussed a situation in which staff went against a resolution passed by a board and said that he would like that type of action to be prevented in the future.

SEN. COCCHIARELLA agreed that that has been an issue in the past but that DOLI, under new leadership, is committed to addressing this and will work to resolve conflicts. She said that DOLI understands that communication is the key.

Ms. Murdo announced that the Economic Affairs Committee would meet on September 11 and 12. She briefly discussed the tentative agenda, noting that SJR 35 Subcommittee is scheduled to appear before the full Committee at 10:15 a.m. on Monday, September 11.

SEN. COCCHIARELLA said that the Subcommittee will report to the full Economic Affairs Interim Committee and that the full committee would vote on the proposed bill drafts.

SEN. COCCHIARELLA thanked the work group for its participation and input and Ms. Murdo for her research and hard work.

ADJOURNMENT

With no further business before the Subcommittee, SEN. COCCHIARELLA adjourned the meeting at 6:18 p.m.

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