

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on February 9, 2005
at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 191 - continued;
Confirmation Hearings:
Gordon Higgins, Commissioner of
Political Practices;
Burl French, State Electrical
Board;
Roberta Threet, Board of Nursing
Executive Action: SB 191

Hearing on SB 191 - Continued**Informational Testimony:**

John Morrison, State Auditor, was not able to attend the January 26, 2005, hearing on SB 191, and requested to be heard by the Committee on this day.

Mr. Morrison advised that SB 191 necessitated an amendment to Montana's Constitution because it would change the State Auditor's title to "Insurance Commissioner." He advised the Office regulated insurance and securities, and "State Auditor" was a misnomer. For purposes of government efficiency, the trend nationwide was to incorporate regulation of the banking industry into this Office because many financial institutions were dealing with all three areas; he asked the Committee to take these issues into consideration when selecting a new name. His preference was "Commissioner of Insurance and Securities", or "Commissioner General," as it would not require further constitutional amendments if other duties should be added at a later time, and it did not presume to regulate banking which that industry vehemently opposed.

Questions from the Committee and Responses:

SEN. JIM SHOCKLEY, SD 45, VICTOR, wondered whether the title should be "Commissioner of Regulations," which **Mr. Morrison** did not like, stating this would not be a feasible alternative.

SEN. DAVE LEWIS, SD 42, HELENA, contended "Commissioner General" was too similar to "Attorney General", and would confuse the public.

Mr. Morrison advised most states name the Office "Auditor General", and also elect an "Attorney General," adding "Commissioner General" was merely a suggestion. He added once the name was created, it would take 2007 legislation to amend the statutes. **Mr. Morrison** commented that the bill's sponsor, **SEN. GRIMES**, did not oppose the title "Commissioner General."

{Tape: 1; Side: A; Approx. Time Counter: 10.3}

Gordon Higgins, Commissioner of Political Practices

Mr. Higgins is a Great Falls, Montana, native. He graduated with a Bachelor of Arts degree in Political Science from Carroll College in 1990, and attended the University of Montana's Graduate School in Public Administration. He worked for Jim Edgar, Governor of Illinois, as legislative liaison for the

Department of Natural Resources. He served as a Research Policy Analyst for the Legislative Services Division and was lead staff to session and interim legislative committees in a non-partisan environment. Before his appointment, Mr. Higgins was the Bureau Chief of Field Operations in the Department of Labor and Industry. One of his many duties was to represent the Department during the Legislative Session. Mr. Higgins was appointed Commissioner of Political Practices by Governor Judy Martz in December 2004. Mr. Higgins is married to Denise and has two young children.

Mr. Higgins advised one of his top priorities was the accurate reporting, accountability, and disclosure of campaign contributions and expenditures on behalf of candidates and committees; he felt strongly about the public's right to know, and assured the Committee that he would continue to make the information available in an open and fair manner. He pledged his ongoing commitment to make sure people understood the rules and statutes, and to assist candidates in complying with all campaign laws. While his office was charged with enforcing the rules, it was his philosophy to assist and guide rather than to wait until someone made a mistake.

Mr. Higgins stated his office was in the process of developing a database which would allow for an audit function with regard to campaign reports, and would streamline the process as it was paramount that these reports were accurate. The database was designed in such a way to make it foolproof and user-friendly, resulting in a more efficient way of using the office's resources, and would be available by this fall.

The second big issue for the Office was the number of complaints which had been filed, and the time it took to resolve them. He advised that, currently, twelve campaign finance practice complaints and two ethics complaints were outstanding. **Mr. Higgins** stated that the Office contracted with Agency Legal Services to provide investigatory resources, and had contracted with outside counsel experienced in the Lobbyist Disclosure Act as well as in the Code of Ethics. He envisioned signing another contract with outside counsel to assist with resolving the open cases as he did not have the necessary resources. **Mr. Higgins** felt that delivery of services had become more efficient under his tenure, and planned to have accounting information ready for the anticipated new treasurers of the two parties' Central Committees. In closing, he advised he was in the process of revamping the reporting system for lobbyists, and was looking forward to continuing his work.

{Tape: 1; Side: A; Approx. Time Counter: 26}

SEN. MIKE COONEY, SD 40, HELENA, stated past Commissioners had taken the position that their jobs only involved administering the law; he wondered why they had not taken a more active role in issues such as campaign finance reform or ethics, and asked Mr. Higgins about the role he would take relevant to this issue.

{Tape: 1; Side: B}

Mr. Higgins advised it was the Commissioner's role to advocate for good public policy, and to be straight-forward about what it took to implement the law. He was certain that he could do this without advocating for a particular bill or policy decision.

{Tape: 1; Side: B; Approx. Time Counter: 1.4}

SEN. JEFF ESSMANN, SD 28, BILLINGS, referred to the electronic database, and asked about restricted access and prevention of misuse. **Mr. Higgins** stated he was very concerned with maintaining the security and integrity of the system, not only in the sense that lists could be generated from it but also that its accounting functions could be disrupted. He felt that if people could not be sure the system was safe, they would not make use of it, and suggested codifying penalties for misuse.

SEN. ESSMANN suggested Mr. Higgins talk with Yellowstone County Commissioner Bill Kennedy who had dealt with a misuse of property tax records issue, and had subsequently developed an access policy to guard against this type of misuse.

{Tape: 1; Side: B; Approx. Time Counter: 4.5}

CHAIR CAROLYN SQUIRES, SD 48, MISSOULA, asked whether he would retain Steve Brown as legal counsel, which **Mr. Higgins** confirmed.

CHAIR SQUIRES stated she had issues with people running for office without specifying their party affiliation on yard signs, and asked what, if anything, Mr. Higgins could do. **Mr. Higgins** replied, since investigation and resolution would take time, he would favor educating the candidates so that they understand all requirements. **SEN. SQUIRES** wondered whether his office could remind candidates of the basic rules by including a handbook of sorts in their information packets.

{Tape: 1; Side: B; Approx. Time Counter: 9.1}

SEN. VICKI COCCHIARELLA, SD 47, MISSOULA, asked Mr. Higgins to describe his management style. **Mr. Higgins** stated it was one of empowerment; his goal was to ensure that objectives and goals were understood by the people in charge of implementing and

administrating them, and to make the necessary tools and resources available. He stressed that a manager had to trust his employees to do their job, adding he was very fortunate to have inherited a great staff.

SEN. COCCHIARELLA asked whether he had any bias against lobbyists, and how he saw his role as Commissioner with regard to them. **Mr. Higgins** advised he was not biased against lobbyists, and felt they were necessary to the process; he opined the role of the Commissioner was to make sure they understood what they had to do to comply with the law, and expressed his willingness to assist with those issues. He also felt it necessary that the public understand, through the Lobbyist Disclosure Act, what they do.

SEN. COCCHIARELLA referred to the loss of institutional knowledge due to term limits, and asked whether he would be pro-active and educate people about public office, and encourage them to run.

Mr. Higgins stated he would not wait until people came to him with their questions, but would dedicate his time and resources to have informative and educational sessions, so as to cover more territory with fewer events, and maintain a visible presence.

{Tape: 1; Side: B; Approx. Time Counter: 17.1}

CHAIR SQUIRES asked each Committee member to introduce himself/herself to Mr. Burl French, State Electrical Board.

Burl French, State Electrical Board

Mr. French graduated from Spokane Community College in Industrial Electricity in December 1976, and received his Master Electrician's license in 1985. In 1992, he started Northwest Fuel Systems, Inc., which employs 35 people, and is president and primary shareholder of the company. The company performs both maintenance and installation of service stations and carwash facilities. He stated that he was appointed to the State Electrical Board in 2003.

Mr. French advised the objective of the Board, and its primary concern, was public safety. To that end, he strived to uphold the highest standards so as not to jeopardize public safety.

{Tape: 1; Side: B; Approx. Time Counter: 24}

CHAIR SQUIRES asked whether he ever had any problems with the Licensing Board.

{Tape: 2; Side: A}

Mr. French replied the only time he was out of compliance in his twenty years of working as a licensed electrician was in 1982, when he was told that he did not have an electrical contractor's license. He said he was not familiar with all of the requirements at the time but made sure he obtained that license.

SEN. SQUIRES asked how for many years he had his business, surmising it had nothing to do with electrical work. **Mr. French** advised he had owned the business since 1992, and it did employ three other licensed electricians, performing all of the electrical work required in installing service stations. **SEN. SQUIRES** wondered where he received administrative and managerial training. **Mr. French** replied he was the Master Electrician of Record, and attended continuing education courses as required by the State. **SEN. SQUIRES** asked how many hours he had to attend. **Mr. French** advised it was 16 hours every four years, eight of which were on Code; the other eight were comprehensive hours. He stated the 2005 Code was published recently, but to his knowledge, Montana had not yet adopted it.

{Tape: 2; Side: A; Approx. Time Counter: 4.3}

SEN. LEWIS recounted concerns from electricians in his district with regard to the incident **CHAIR SQUIRES** had referred to, and referred to a Letter of Censure from the Board which had been placed in his State file in the 1990's; he asked him to speak to those issues. **Mr. French** did not recall a Letter of Censure, and stated it was not in the file provided to him by the Board.

SEN. LEWIS referred to the minutes of a 1992 meeting, where it stated that a Mr. Liebrandt made the motion to place a Letter of Censure in Mr. French's file; he asked whether Mr. French had any recollection of this, which **Mr. French** did not.

CHAIR SQUIRES suggested checking with the Board for an answer.

{Tape: 2; Side: A; Approx. Time Counter: 6.7}

SEN. COCCHIARELLA advised she served on the Business, Labor, and Economic Development Committee which dealt with activities of boards, such as rules and regulations, and how boards adopted rules. She commented that sometimes boards manifest their independence by making arbitrary decisions, and asked how he saw his role on the Board aside from the public safety issue. **Mr. French** stated he had attended five Board meetings so far, and the Board's decisions were based on public safety. Serving the public as a member of the Board, he firmly believed his decisions should be based on what was ethically right; he stressed he would

not shy away from controversy as long as he felt he made the right decision from an ethical and safety point of view.

SEN. COCCHIARELLA asked whether he felt it was his responsibility to protect the electrical industry. **Mr. French** replied he would not make decisions based on favoritism.

SEN. COCCHIARELLA wondered if he was a union member, which **Mr. French** denied. **SEN. COCCHIARELLA** asked whether he was biased against unions. **Mr. French** stated he was not. **SEN. COCCHIARELLA** inquired whether he had ever lobbied against or been in disputes with union electricians, which **Mr. French** denied.

SEN. COCCHIARELLA asked whether he would advocate for the creation of more electricians' jobs. **Mr. French** advised that the current Board's make-up was favorable to this issue.

SEN. COCCHIARELLA stated there was a rumor that he had been opposed to a public comment period in his tenure, and asked him to respond to the charge as well as explain his position on keeping it a public process. **Mr. French** advised the incident occurred when he was elected Committee Chairman; he was told by the Board's legal counsel that he did not have to accept public comment, but decided not to heed the advice and did allow public comment. **SEN. COCCHIARELLA** inquired about his thoughts on the issue. **Mr. French** replied it was similar to this hearing; it was the Chairman's discretion to control and regulate a lengthy public comment period, depending on his goals for a particular meeting. He added that, in his opinion, he had handled the aforementioned incident very well.

{Tape: 2; Side: A; Approx. Time Counter: 15.6}

SEN. COONEY referred to letters and comments he had received, which suggested that Mr. French and his daughter, Kala, were being singled out in what amounted to a "political witch hunt," and asked for his thoughts. **Mr. French** believed that neither personal nor political issues were involved; he did believe they were special interest issues. He was sure both he and his daughter were highly qualified for their respective jobs.

SEN. COONEY asked why he believed this had become controversial. **Mr. French** stated it was his personal opinion that the special interest group was attempting to place two members on the Board by eliminating his appointment and by making the upcoming appointment in July.

{Tape: 2; Side: A; Approx. Time Counter: 18.1}

SEN. COCCHIARELLA hypothesized he would keep his appointment and a special interest person would be appointed in July; she was curious how he would work with that person. **Mr. French** assured her that his decisions as a Board member would always be based on what was right, with public safety in mind.

{Tape: 2; Side: A; Approx. Time Counter: 19.6}

SEN. RICK LAIBLE, SD 44, VICTOR, asked about the Board's make-up and its number of members. **Mr. French** advised it was comprised of two members from the general public, and three licensed electricians. **SEN. LAIBLE** asked whether the Board's function was to approve license applications submitted to them, and oversee Master Electricians. **Mr. French** explained one of the functions was to approve licenses, whether they were reciprocal licenses from other states, or first-time licenses. **SEN. LAIBLE** wondered how young people would enter the trade, and whether the Board could limit their number. **Mr. French** advised there were several avenues a person could pursue: one was to sign up through an apprenticeship program; once all of the criteria had been met, and before the application to take the test would be granted, the Board would make sure that the applicant had indeed met all of the requirements.

SEN. LAIBLE surmised he would handle complaints dealing with license and documentation issues, and asked if he would make rulings on whether people were qualified to be electricians. **Mr. French** stated this was correct, adding the judicial committee within the Board would deal with complaints and the levying of fines, but the whole Board would ultimately make the decision.

SEN. LAIBLE asked whether it made any difference whether an application was from a union or non-union member, or whether he would look at the qualifications only. **Mr. French** stressed he would only consider the applicant's qualifications.

{Tape: 2; Side: A; Approx. Time Counter: 25}

SEN. JOE BALLYEAT, SD 34, BOZEMAN, stated that the five Board members were appointed by the Governor and had to be residents of the State; two members represented the public, two should be licensed electricians, and one should be a Master Licensed Electrical Contractor; he asked **Mr. French** whether he was filling the latter position. **Mr. French** advised there were two Master Electricians on the Board.

SEN. BALLYEAT stated he received a great number of letters regarding this appointment; the ones favoring **Mr. French** were from people who had known or worked with him over the years, and

the ones that opposed his nomination were identical mass e-mails from a union web site. **SEN. BALLYEAT** gathered that unions were attempting to gain more influence by placing someone favorable to their cause on the Board, and asked how many of the electrician members on the Board were union. **Mr. French** believed there was one union member on the Board.

SEN. BALLYEAT acknowledged his attempt at being diplomatic by referring to "special interest" groups, and asked whether he felt this opposition was personal or based on a power struggle within the Board. **Mr. French** was convinced it was not a personal issue. He surmised **SEN. BALLYEAT** knew full well what was going on as he had made mention of the blanket e-mails.

SEN. ESSMANN advised that Mr. French's file did not contain any documentation for the period from 1985 to 1999 and wondered whether some portion was missed when it was copied. He was concerned because the letter of censure would have fallen into this timeframe.

{Tape: 2; Side: B}

Mr. French stated that to his knowledge, this was the complete file; his explanation for the gap was that there had been no correspondence between himself and the Board, and insisted if such a letter had been placed in his file, it would be there, adding he had seen files which contained the person's license only. He suggested the Committee should contact the Board to make sure there was no such letter.

SEN. ESSMANN inquired whether the Board was a volunteer Board, and he had served without compensation, which **Mr. French** confirmed.

SEN. ESSMANN wondered how many hours a month he dedicated to his work on the Board. **Mr. French** advised it averaged two days per quarter, and, counting this day, it would be three.

SEN. ESSMANN asked about the length of the term. **Mr. French** stated it was a five-year term.

CHAIR SQUIRES asked whether there was any travel allowance. **Mr. French** advised there was reimbursement for mileage, and room and board.

SEN. JOSEPH TROPILA, SD 13, GREAT FALLS, wanted to know whether he had to take an oath of office, and whether he followed that oath. **Mr. French** confirmed both questions.

{Tape: 2; Side: B; Approx. Time Counter: 4.5}

Roberta Threet, Board of Nursing

Ms. Threet earned her Intermediate Medical Technician license in 1989 through the Board of Medical Examiners, and an LPN degree in 1990 from the Helena College of Technology. She gained experience working as an EMT in the Hamilton and Helena areas. She is currently an office nurse in a Helena OB/GYN office.

Ms. Threet advised that she missed two Board meetings as her appointment came just prior to the first meeting, and she was unable to find a replacement at her job on such short notice. She missed the second meeting because another nurse in her office had just lost her baby, and she needed to fill in. She added she had served on the Board for one year.

CHAIR SQUIRES asked about her area of expertise. **Ms. Threet** advised it was OB/GYN, and that she worked in a doctor's office.

CHAIR SQUIRES asked whether she had any experience with hospital work. **Ms. Threet** replied that she had worked for one year as an obstetrical technician at St. Peter's Hospital.

CHAIR SQUIRES referred to pending legislation which would require EMT's to take responsibility in Emergency Rooms, and asked, if she was put in that position, which scope of practice she would employ. **Ms. Threet** replied, if she was hired as a nurse, she would work as a nurse and follow the nursing rules. **CHAIR SQUIRES** asked whether she would be biased because she held an EMT license, which **Ms. Threet** denied.

SEN. SQUIRES inquired whether she served on the Board when the EMT issue came up, and which side she had supported. **Ms. Threet** advised that her only connection to this issue was a suggestion she had made, which dealt with renaming EMT's in order to standardize both title and function.

CHAIR SQUIRES asked whether the Board covered Registered Nurses (RN's) and Licensed Practical Nurses (LPN's), which **Ms. Threet** confirmed. **CHAIR SQUIRES** wondered why she had given consideration to the EMT issue at this point. **Ms. Threet** stated that she wanted to make the Board aware that not standardizing the name could lead to problems in the delegation of duties.

{Tape: 2; Side: B; Approx. Time Counter: 16.3}

CHAIR SQUIRES surmised she did not have a conflict with having both an LPN and EMT license when dispatched in an ambulance. **Ms. Threet** stated she did not; she would be able to do all that was required of an EMT. The same applied to a hospital setting, where she could perform most duties except for dispensing medication. **CHAIR SQUIRES** inquired whether she would push her new role as member of the Board of Nursing in that setting. **Ms. Threet** advised she would act as an EMT.

{Tape: 2; Side: B; Approx. Time Counter: 18.2}

SEN. COCCHIARELLA referred to Ms. Threet's statement that she would like to eliminate "turf battles" by defining the role of LPN's, and asked how she would approach this as a Board member. **Ms. Threet** stated this would be difficult as, traditionally, duties overlap; respiratory technicians want to be the ones to intubate, but so do nurses, and EMT's. She stressed that healthcare was a team approach, and not a turf battle, adding that the Board of Nursing was developing a scope of duties for the various classes.

SEN. COCCHIARELLA stated that LPN's were being replaced by EMT's in Missoula, and asked whether it was her job to advocate for LPN's on the Board. **Ms. Threet** stated it was her job to protect the citizens of Montana. She did not know how EMT's would function in a hospital since their scope of duties was pre-hospital care.

SEN. COCCHIARELLA asked whether she perceived a conflict of interest, being an LPN and an EMT, and serving on the Board with her husband serving on the Board of Medical Examiners. **Ms. Threet** stated she did not see a conflict. **SEN. COCCHIARELLA** wondered if accusations could be made in that regard. **Ms. Threet** allowed that some people could perceive a conflict of interest.

{Tape: 2; Side: B; Approx. Time Counter: 24}

SEN. ESSMANN asked whether Certified Nurse Practitioners were under the Board's jurisdiction, which **Ms. Threet** confirmed. **SEN. ESSMANN** wondered about the interaction between them and EMT's in a rural office setting. **Ms. Threet** explained that the EMT's role did not stop abruptly at the hospital door; they would still perform some duties, including the report on the patient's condition.

{Tape: 2; Side: B; Approx. Time Counter: 26.4}

SEN. LAIBLE asked about the ranking of healthcare providers, and wondered who paid them. **Ms. Threet** advised that nurses were paid by the facility which employs them; most EMT's did volunteer work and their training was limited to a 10-hour course.

{Tape: 3; Side: A}

SEN. LAIBLE requested that she explain the discussion about who should provide what care. **Ms. Threet** replied the problem seemed to be the fact that she held dual licensure. **SEN. LAIBLE** asked whether she saw this as a conflict. **Ms. Threet** advised that she only worked as an LPN; except for a brief period as EMT at St. Peter's Hospital, she had not worked in that capacity.

SEN. COCCHIARELLA commented that Ms. Threet had a tough job ahead of her, trying to define the scope of LPN's, as there was a certain pecking order amid the different categories of nurses.

{Tape: 3; Side: A; Approx. Time Counter: 5.8}

EXECUTIVE ACTION ON SB 191

Motion: **SEN. ESSMANN** moved to RECONSIDER ACTION on SB 191.

Discussion:

Dave Bohyer, Legislative Services Division, reminded the Committee that they had voted to change the Auditor's title to "Commissioner of Insurance and Securities."

CHAIR SQUIRES advised that the State Auditor did not like this title, and preferred "Commissioner General."

SEN. COCCHIARELLA opposed the motion as did **SEN. COONEY** and **SEN. ELLINGSON** whose proxies she had, saying they did not favor "Commissioner General," but wanted to leave it as passed.

SEN. STEVE GALLUS, SD 37, BUTTE, stated he would vote for the motion, and then vote to table.

SEN. ESSMANN wanted to reconsider the Committee's action as he was not sure the title should be changed until the main issue was settled.

SEN. SQUIRES recalled the bill was presented when Mr. Morrison was unable to attend, and the Committee took action before the Sponsor and the State Auditor had a chance to discuss the bill.

Based on Mr. Morrison's testimony, she suggested to let the House State Administration make the decision on the title.

SEN. COCCHIARELLA commented that the action could be reconsidered, but no new action should be taken until the Committee had more time to weigh the titles suggested today.

SEN. TROPILA stated the title should be descriptive so people would know exactly whom to call if they had problems pertaining to the Office; he added "Commissioner of Insurance and Securities" was self-explaining.

Without objection, **SEN. ESSMANN** withdrew his motion.

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

MARION MOOD, Transcriber

CS/cj/mm

Additional Exhibits:

EXHIBIT ([sts32aad0.PDF](#))