

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY**

Call to Order: By Chairman J.D. Lynch, on February 11, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: Betty Bruski (D)

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: Senator Lynch told the Committee the vote would remain open for Senator Bruski in the event of a tie vote.

The Committee discussed Senate Bill 223. Senator Lynch pointed to areas of concern by one of the opponents. (Amendments proposed Exhibit #1)

Senator Lynch asked if bill includes farms and ranches.

Discussion was held on the Small Tract Act. Bart Campbell told the Committee the Small Tract Act applies to 20 or 40 acre tracts, therefore most farms and ranches could be affected.

Senator Gage suggested specifically excluding farms and ranches.

Senator Noble told the Committee Senate Bill 223 would allow the bank to force a sheriff's sale on businesses and such sales could be substantially less than the value of the property's value.

Senator Thayer pointed out the bill does not specifically exclude residential property.

Senator Thayer said the Committee heard testimony in which banks gave up their right to sue on deficiency judgment in order to get trust indenture.

Senator Lynch asked if the Galleria case was based on a trust indenture, and if it were, residential property is not excluded.

Senator Thayer questioned whether the bill addresses just commercial property where there is a mortgage, or trust indentures as well.

Senator Kennedy asked if Senate Bill 223 is addressing personal property such as cars.

Chairman Lynch told the Committee copies of the minutes of the Hearing on Senate Bill 223, as well as the proposed amendments, would be provided for further review.

EXECUTIVE ACTION ON SENATE BILL 112

Motion:

Senator Williams moved amendments to Senate Bill 112.

Senator Thayer moved Senate Bill 112 DO PASS as amended.

Senator Kennedy moved to refer Senate Bill 112 to Finance and Claims.

Discussion:

Senator Lynch questioned the Fiscal Note's operating costs. He indicated it appears to be over what should be requested. He told the Committee this bill should be referred to the Finance and Claims Committee.

Amendments, Discussion, and Votes:

Voice Vote on all motions passed UNANIMOUS.

Recommendation and Vote:

Senate Bill 112 DO PASS as amended.

EXECUTIVE ACTION ON SENATE BILL 118

Motion:

Senator Noble moved DO PASS on Senate Bill 118.

Discussion:

Senator Kennedy asked if this was being held due to other legislation. Senator Noble pointed out the other legislation had different language.

Senator Lynch questioned the language in the Title in which it states the repeal of a law prohibiting discrimination.

Senator Noble told the Committee he would investigate other legislation that may address this issue.

Senator Thayer asked if there could be a change in the Title.

Amendments, Discussion, and Votes:

NONE.

Recommendation and Vote:

Senator Noble withdrew his motion.

EXECUTIVE ACTION ON SENATE BILL 131

Motion:

NONE.

Discussion:

Bart Campbell told the Committee there are 18 proposed amendments to Senate Bill 131. The amended bill will be to the Committee this week.

Amendments, Discussion, and Votes:

NONE.

Recommendation and Vote:

Senate Bill 131 may be rescheduled for hearing after the extensive amendments are prepared.

EXECUTIVE ACTION ON SENATE BILL 144

Motion:

Senator Noble moved amendments to Senate Bill 144.
Senator Gage moved Senate Bill 144 DO PASS as amended.

Discussion:

Bart Campbell explained the amendments. He told the Committee the word "certified" would be deleted; and the word "only" would be added after the word "declaration" on Line 24.

Amendments, Discussion, and Votes:

Voice vote on both motions passed UNANIMOUSLY.

Recommendation and Vote:

Senate Bill 144 DO PASS as amended.

EXECUTIVE ACTION ON SENATE BILL 148

Motion:

Senator Noble moved DO PASS on Senate Bill 148. He later withdrew his motion.

Senator Gage moved to amend Senate Bill 148 to include penalties as apply to "dissemination of confidential information with regard to income tax". Senator Gage later withdrew this motion.

Senator Thayer moved the amendments to Senate Bill 148.

Senator Kennedy moved DO PASS as amended on Senate Bill 148.

Discussion:

Bart Campbell told the Committee about the proposed amendment.

Senator Gage pointed out there was no penalty.

Senator Lynch asked what purpose there would be in the bill.

Senator Gage said the information could be helpful to a company wishing to add a station by determining volume to warrant another station.

Senator Gage told the Committee that when the state of Montana mandates certain information from a taxpayer, the state should protect the taxpayer.

Senator Lynch asked if other businesses had to reveal this type of information.

Senator Thayer said proprietary information that is mandated by the state should not be shared with competitors.

Bart Campbell suggested there is probably cause for termination if any employee provided the information; and there is civil recovery for whatever damage is suffered.

Amendments, Discussion, and Votes:

Voice Vote on amendments UNANIMOUS.

Roll Call Vote on DO PASS as amended motion UNANIMOUS.

Recommendation and Vote:

Senate Bill 148 DO PASS as amended.

EXECUTIVE ACTION ON SENATE BILL 220

Motion:

Senator Williams moved amendments to Senate Bill 220.
Senator Noble moved Senate Bill 220 DO PASS as amended.

Discussion:

Bart Campbell explained the amendment on Page 4 line 24.
Delete "railroad employees, including but not"; delete line 1,
Page 5.

Senator Lynch referred to Page 14, Section 17. Mr. Campbell
told the Committee the concern had been with 61-8-401 which also
referred to other sections that had penalties. He pointed out
the definition is the only section brought out.

Amendments, Discussion, and Votes:

Voice Vote on amendments CARRIED UNANIMOUS.

Voice Vote on DO PASS as amended motion CARRIED. Two (2) NO
votes: Senator Lynch and Senator Franklin.

Recommendation and Vote:

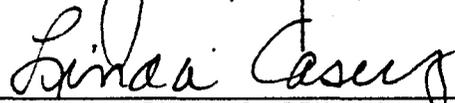
Senate Bill 220 DO PASS as amended.

ADJOURNMENT

Adjournment At: 11:05 a.m.



J.D. LYNCH, Chairman



LINDA CASEY, Secretary

JDL/11c

1
2/11/91

SB 223

Amendments to Senate Bill 223

Amend page 4, Section 1 (3) line 8 after the word "by" strike "clear and convincing" and insert "a PREPONDERANCE OF THE".

Amend page 4, Section 1 (3) line 11 after the word "purposes" delete ".", and add "IN THE FORECLOSURE PROCEEDING. THE SUCCESSFUL BID SHALL BE CONCLUSIVE FOR THE PURPOSES OF VESTING OR CONFIRMING TITLE TO THE REAL PROPERTY PURCHASED AT FORECLOSURE SALE AND ESTABLISHING THE JUDGMENT CREDITOR'S RIGHT TO DOCKET A DEFICIENCY."

And on line 11 strike "A" and insert "ANY CHALLENGE TO THE CONCLUSIVE EFFECT OF THE BID BASED ON A".

And on line 12 strike "presented to" and insert "FILED WITH".

And on line 13 insert before the word "within" "WHICH CONDUCTED THE FORECLOSURE PROCEEDING".

And on line 14 after the "." add "A COPY OF THE SHERIFF'S RETURN SHALL BE SENT TO THE JUDGMENT CREDITOR'S LAST KNOWN ADDRESS. THIS SECTION SHALL NOT BAR THE JUDGMENT DEBTOR'S RIGHT TO SUBSEQUENTLY ASSERT AN AFFIRMATIVE CLAIM OF FRAUD OR COLLUSION THAT IS NOT OTHERWISE BARRED BY THE APPLICABLE LIMITATION PROVISIONS OF LAW.".

Amend page 4, Section 1 (4), line 19 strike "levy on" and insert "REALIZE UPON".

A PREPONDERANCE OF THE

(3) Absent proof by ~~clear and convincing~~ evidence of collusion or fraud in the bidding at the foreclosure sale, the amount of the successful bid must be considered to be the fair market value of the property for all purposes in the foreclosure proceeding. The successful bid shall be conclusive for the purposes of vesting or confirming title to the real property purchased at foreclosure sale and establishing the judgment creditor's right to docket a deficiency. Any challenge to the conclusive effect of the bid based on a claim of collusion or fraud must be ~~presented to~~ filed with the Court which conducted the foreclosure proceeding within 20 days of the filing of the sheriff's return on the foreclosure sale. A copy of the sheriff's return shall be sent to the judgment creditor's last known address. This section shall not bar the judgment debtor's right to subsequently assert an affirmative claim of fraud or collusion that is not otherwise barred by the applicable limitation provisions of law.

(4) For the purposes of this section, "action" means only the filing of a lawsuit to foreclose a mortgage. Action does not include a nonjudicial action undertaken by a secured creditor that may be otherwise authorized by law to ~~levy-realize~~ upon collateral or other assets that are not encumbered by a mortgage. A separate action filed and maintained against guarantors of obligations secured by a mortgage may be maintained without the filing of an action to foreclose the mortgage.

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/11/91 Senate Bill No. 148 Time 10:00
10:35am

| NAME | YES | NO |
|------------------|-----|----|
| Senator Bruski | | |
| Senator Franklin | X | |
| Senator Gage | X | |
| Senator Hager | X | |
| Senator Noble | X | |
| Senator Thayer | X | |
| Senator Williams | X | |
| Senator Kennedy | X | |
| Senator Lynch | X | |
| | | |
| | | |
| | | |

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: SB 148 as amended
DO PASS

BILLS THAT HAVE BEEN HEARD WITH NO ACTION TAKEN AS OF 2/8/91

DATE HEARD

SB 112-HARP . . .

1/29/91

An act allowing the board of realty regulation to appoint an executive secretary; and providing an effective date.

DO PASS
as amend.
2/11/91

SB 118-NOBLE

1/23/91

An act repealing Montana law prohibiting discrimination in the price of petroleum products.

HOLD

SB 131-FRITZ

1/24/91

An act providing a means for a foreign insurer to become a domestic insurer; providing a means for a domestic insurer to transfer its domicile to another state; and providing for the continuation of a certificate of authority and other approvals pertaining to an insurer transferring its domicile.

HOLD

SB 144-MAZUREK

1/29/91

An act amending the unit ownership act to require the filing of a declaration of unit ownership with a city or town clerk if condominium property is located within a city or town.

DO PASS
as amended.
2/11/91

SB 148-SVRCEK

2/1/91

An act providing for confidentiality of information from a gasoline distributor that is identifiable as pertaining to an individual.

DO PASS
as amended
2/11/91

SB 220-BLAYLOCK

1/4/91

An act to generally revise and clarify the laws relating to railroads; deleting obsolete or archaic requirements for railroads.

DO PASS
as amended
2/11/91

SB 223-HALLIGAN

2/5/91

An act revising the law relating to proceedings in foreclosure actions; amending the law relating to the computation of the amount of a deficiency judgment after an execution sale of property upon foreclosure, etc. etc.

DISCUSSED
2/11/91

SB 249
SB 256-GAGE

2/7/91

An act amending the preferred provider agreements act to require health care insurers to enter into preferred provider agreements with all health care providers willing to provide health care services under a preferred provider agreement.

SB 258

Amendments to Senate Bill No. 220
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 11, 1991

1. Page 4, line 24 through page 5, line 2.
Strike: ", including" on line 24 through "employees" on page 5,
line 2

Amendments to Senate Bill No. 144
first Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 11, 1991

1. Page 1, line 24.
Strike: "certified"
Following: "declaration"
Insert: "only"

Amendments to Senate Bill No. 112
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 11, 1991

1. Title, lines 5 and 6.
Following: "THE" on line 5
Strike: "BOARD" through "REGULATION" on line 6
Insert: "DEPARTMENT OF COMMERCE"
2. Title, line 6.
Following: "TO"
Strike: "APPOINT"
Insert: "HIRE"
Following: "SECRETARY"
Insert: "FOR THE BOARD OF REALTY REGULATION"
3. Page 1, line 11.
Following: "The"
Strike: "board"
Insert: "department of commerce"
4. Page 1, line 12.
Strike: "appoint"
Insert: "hire"
5. Page 1, line 15.
Following: "person"
Strike: "appointed as"
Insert: "hired to be"

Amendments to Senate Bill No. 148
First Reading Copy

Requested by Senator Svrcek
For the Committee on Business and Industry

Prepared by Bart Campbell
January 29, 1991

1. Page 2, line 5.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

2. Page 3, line 11.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee
of the department"

SENATE STANDING COMMITTEE REPORT

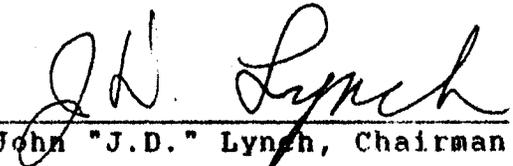
Page 1 of 1
February 11, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 144 (first reading copy -- white), respectfully report that Senate Bill No. 144 be amended and as so amended do pass:

- 1. Page 1, line 24.
- Strike: "certified"
Following: "declaration"
Insert: "only"

Signed: _____


John "J.D." Lynch, Chairman

 2/11/91
Amd. Coord.

SB 2-12
Sec. of Senate

10:35

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 11, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 148 (first reading copy -- white), respectfully report that Senate Bill No. 148 be amended and as so amended do pass:

1. Page 2, line 5.

Following: "department"

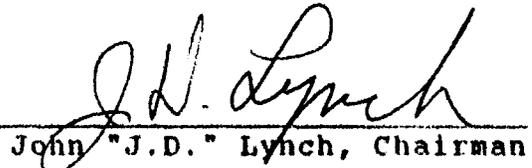
Insert: "or a deputy, assistant, agent, clerk, or other employee of the department"

2. Page 3, line 11.

Following: "department"

Insert: "or a deputy, assistant, agent, clerk, or other employee of the department"

Signed:


John "J.D." Lynch, Chairman

JB 2/11/91
Amd. Coord.

SP 2/12 10:25
Sec. of Senate

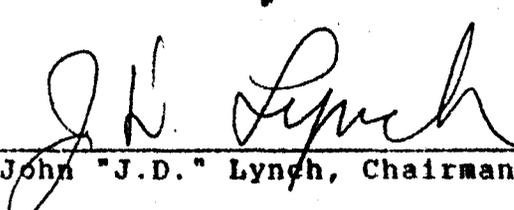
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 11, 1991

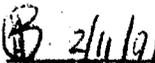
MR. PRESIDENT:

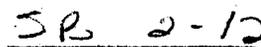
We, your committee on Business and Industry having had under consideration Senate Bill No 112 (first reading copy -- white), respectfully report that Senate Bill No 112 be amended and as so amended do pass:

1. Title, lines 5 and 6.
Following: "THE" on line 5
Strike: "BOARD" through "REGULATION" on line 6
Insert: "DEPARTMENT OF COMMERCE"
2. Title, line 6.
Following: "TO"
Strike: "APPOINT"
Insert: "HIRE"
Following: "SECRETARY"
Insert: "FOR THE BOARD OF REALTY REGULATION"
3. Page 1, line 11.
Following: "The"
Strike: "board"
Insert: "department of commerce"
4. Page 1, line 12.
Strike: "appoint"
Insert: "hire"
5. Page 1, line 15.
Following: "person"
Strike: "appointed as"
Insert: "hired to be"

Signed: 

John "J.D." Lynch, Chairman


Amd. Coord.


Sec. of Senate

10:35

SENATE STANDING COMMITTEE REPORT

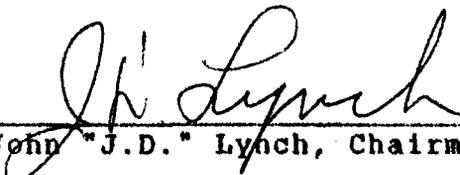
Page 1 of 1
February 11, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 220 (first reading copy -- white), respectfully report that Senate Bill No. 220 be amended and as so amended do pass:

1. Page 4, line 24 through page 5, line 2.
Strike: ", including" on line 24 through "employees" on page 5,
line 2

Signed:


John "J.D." Lynch, Chairman

PLD 2/11/91
Amd. Coord.

SP 2/12 10:35
Sec. of Senate