

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN TOM BECK**, on April 8, 1997, at 3:14 p.m., in Room 405.

**ROLL CALL**

**Members Present:**

Sen. Thomas A. "Tom" Beck, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dorothy Eck (D)  
Sen. Sharon Estrada (R)  
Sen. Don Hargrove (R)  
Sen. John "J.D." Lynch (D)  
Sen. Walter L. McNutt (R)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None

**Members Absent:** Sen. Wm. E. "Bill" Glaser (R)

**Staff Present:** Martha Colhoun, Legislative Services Division  
Jodi Jones, Committee Secretary

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

**Committee Business Summary:**

Hearings(s) & Date(s) Posted: HB 500 Posted 4/2/97  
Executive Action: None

**HEARING ON HB 500**

**Sponsor:** REP. BOB KEENAN, HD 75, Big Fork

**Proponents:**

Earl Griffith, Tetra-Tech Inc.  
Tim Engelhardt, Historical Research Associates  
Regina Cromer, Terra West Technology  
Stephen Ries, Ries Surveying  
James Smith, Montana Microbiology Service  
Carl Schweitzer, Montana Contractor Assoc.  
Riley Johnson, National Federation of Independent Business  
David Owen, MT Chamber of Commerce  
Doug Sparrow, City-County Sanitation

**Opponents:**

Richard Crofts, MT University System  
Ron Sexton, Chancellor MSU Billings  
Bob Warwood, Bio Surface Technologies  
Mike Mathew, Yellowstone Co. Commissioner  
Moe Wosepka, Bozeman Area Chamber of Commerce  
Gordon Morris, MT Assoc. of Counties  
Alec Hansen, MT League of Cities and Towns  
Jeremy Fritz, MSU  
Jim Kembel, City of Billings  
Bob Frazier, U of M Campuses  
Bob Brigham, ASUM  
Jerry Thomas, MT Tradeport Authority

Opening Statement by Sponsor:

REP. BOB KEENAN, HD 75, Big Fork, presented HB 500. Page 1 of the bill gives exemptions on lines 11-14. Section 2 does not have an effective date until after the next legislative session or July 1, 1999. Line 20 on page 2 is talking about goods and services that must be offered to the public. When there is an arrangement between two government entities they would not be covered under this bill. This is basically when government entities reach out to the public and offer their services in competition with private enterprises. There is no court redress unless the complaint has been presented to the audit committee for review and the committee has rendered an opinion on the merits of the complaint. One of the most important things about the audit committee is that in order for someone to come to this committee with a complaint they have to go through a filtering system. The Legislative Audit Committee will not schedule any special meetings for this and they may render non-binding opinions under section 3. There will be a report that will come out on or before November 15, 1998 before the next legislative session. This report will go to the next Legislature and they can determine whether government should or should not compete with private enterprise. Section 4 clarifies the definition of research and development and the goal is to ensure that research and development is not interpreted and becomes commercialization. He passed out a letter from Michael Malone (EXHIBIT 1).

Proponents' Testimony:

Earl Griffith, Tetra-Tech Inc., rose in support of HB 500 (EXHIBIT 2).

Tim Englehardt, Historical Research Associates, said he supported HB 500 (EXHIBIT 3).

{Tape: 1; Side: A; Approx. Time Count: 3:29 p.m.; Comments: tape is garbled throughout certain sections of testimony.}

Regina Cromer, Terra West Technology, spoke in favor of HB 500 (EXHIBIT 4).

**Stephen Ries, Ries Surveying,** said he urged passage of HB 500.

**James Smith, Montana Microbiology Service,** passed out testimony in favor of HB 500 (EXHIBIT 5).

**Carl Schweitzer, Montana Contractor Assoc.,** said there are a number of activities that contractors are in direct competition within local units of government and the state. This is a fair bill to look at these business opportunities and look at whether the private sector should be given the opportunity to bid on these jobs.

**Riley Johnson, National Federation of Independent Business,** said he has seen active public participation by the university systems in the polling field and private individuals have lost jobs over this. This bill will resolve issues dealing with competition in the private sector.

**David Owen, MT Chamber of Commerce,** said this issue of private competition is not new and it is growing. There is a concern, because people are resisting higher taxes and they are forcing government to be more innovative. He said this bill will give them a couple of years to look at this case by case and invite the people who feel there is a conflict and come in and talk about it.

**Doug Sparrow, City-County Sanitation,** handed out testimony in favor of HB 500 (EXHIBIT 6). He said they compete directly with private entities and they pay 12 different taxes but their competitors don't.

*{Tape: 1; Side: A; Approx. Time Count: 3:45 p.m.; Comments: .}*

Opponents' Testimony:

**Richard Crofts, MT University System,** turned in informational material and letters opposing HB 500 (EXHIBIT 7). The difficulty with this legislation is in section 2. This section declares a long list of things to be illegal prior to time this study and forum would take place. He read lines 17-20, page 2, of the bill. He said when they sell sweatshirts at the U of M bookstore they are sold through a private enterprise. They would have to stop the public from coming in and buying U of M sweatshirts under this bill. He said there are a lot of public service organizations which do services for business and organizations. This bill does not deal with ways in which competition between government enterprises and private enterprises might be unfair. It doesn't talk about how that competition should be regulated, and it doesn't address advertising or setting cost. It simply says they have to stop doing all of those things. He said in Helena, the College of Technology, offers computer training to state employees and this would be deleted under this bill. To declare all of these activities illegal and that the university system could no longer be engaged, would have a much more

negative effect on many individuals and small businesses than the number of people who will complain about this competition. He said the university system does a great deal of research and they received a loan from the Legislature to do this. These loans will be paid back through normal university income but they will also contribute any profit that is made by that research and development activity. He said if they are going to study the problem they should be addressing what is inappropriate and unfair competition and how it is going to be measured and stopped. He said they have prepared some amendments to try and make this bill more workable.

**Ron Sexton, Chancellor MSU Billings,** said there are several occasions where the City of Billings and other organizations will come to MSU Billings to seek assistance in dealing with conventions, conferences and other things. He said MSU Billings does polling work and for the past 12 years he has never seen or heard of a complaint about competition. If there were a complaint he said they would have changed how they did their business. He said they worked together with private entities to write the first community policing program in the State of Montana that was funded and put in Billings. He said two years is not long enough for this study commission because often times projects are worked on for 3 to 4 years. He said many services are offered in Billings, but people come to them because they have some unique things to offer that in turn is offered back to the public. He said in the City of Billings there are some 50 organization that deliver post-secondary education. 35 of those are private-for-profit businesses that deliver the exact same program MSU Billings offers. This bill could give them the authority to protest as to whether MSU Billings should be offering those kind of courses.

**Bob Warwood, Bio Surface Technologies,** opposed HB 500 (EXHIBIT 8).

**Mike Mathew, Yellowstone Co. Commissioner,** said the university takes a major role in the Billings Community. Yellowstone Co. said they have used the phone survey bank to help in developing policy. The community takes this major role by the university with open arms and receptiveness not with retaliation.

**Moe Wosepka, Bozeman Area Chamber of Commerce,** said he does not think government should compete with the private sector. He said they do support a review commission to try and identify some of these problems. Section 2 is too broad. MSU would be prevented from offering convention services because the Holiday and Grantree already offer these services. MSU has been a very good neighbor to Bozeman and they provide complementary services. He said the City of Bozeman is soliciting clients for garbage service and this is not even addressed in this bill.

**Gordon Morris, MACo,** said local governments are not considered public so when they contract with the university system they are

not in jeopardy of competing with the private sector to provide that service to a county, city or town.

**Alec Hansen, MT League of Cities and Towns**, said on page 2, line 18, most of the things that cities and towns do is specifically authorized. The committee has to clarify if this applies to services provided by local governments to the public that may or may not be in competition with private businesses. He said they contract with state agencies and a lot of these services are authorized by statute. He said there is a local technical assistance program at MSU that has been very helpful to small cities and towns. He said they also do a lot of work with the Local Government Center at MSU and he is not sure if some of the work this center does with cities and towns is authorized by statute. Local governments should have the right to choose what is best for the taxpayer.

**Jeremy Fritz, MSU**, said he would like to address where the students are involved in this bill. Students are under the university system which is a state agency. Students do assess a fee on themselves for student activities. This fee is \$35 and that accounts for \$657,000 for their student government. This money is divided among 27 different committees and they are run like businesses. He said for example, their radio station does compete with private enterprise and there are several other groups that compete with the private sector. 1400 students on the campus right now are working with the public on research projects. The regents are already addressing this problem and he urged the committee to oppose this bill.

**Jim Kembal, City of Billings**, rose in opposition of HB 500.

**Bob Frazier, U of M Campuses**, said the U of M logo does not belong to a private business but it is contracted with 170 businesses to sell their logo. He said they could have chosen to manufacture all of their products and sell them from the campus. However, they chose to work with businesses. He said in section 2, if they decided to manufacture a product, and a company challenges it, the university would not be allowed to do any manufacturing even though it is the university's logo. He thought they should be allowed to produce their own product. He said section 4 raises some question as to whether research would be allowed on the campus and with other companies in partnership.

**Bob Brigham, ASUM**, handed out testimony in opposition of HB 500 (EXHIBIT 9).

**Jerry Thomas, Montana Tradeport Authority**, turned in testimony opposing HB 500 (EXHIBIT 10).

{Tape: 1; Side: B; Approx. Time Count: 4:23 p.m.; Comments: .}

Questions From Committee Members and Responses:

**SENATOR J.D. LYNCH** asked if **REP. KEENAN** wanted to exclude the university system and should an amendment be drafted to do this. **REP. KEENAN** said no he did not want to exclude the university system.

**SENATOR LYNCH** asked why the legislative branch was excluded. **REP. KEENAN** said the legislative branch is private and they operate outside the state employee pay plan.

**SENATOR LYNCH** said would this be illegal if people tried to have a wedding reception at certain facilities that are competing. **REP. KEENAN** said no this would not be illegal. This bill sets up a review process where people can take their complaints to the Legislative Audit Committee after the parties get together and try and work out their differences.

**SENATOR LYNCH** said section 2, line 17, says they may not do it now and it is illegal if they do it. **REP. KEENAN** said these are things that are already authorized by law and are in the statutes now.

**SENATOR DON HARGROVE** said there is a problem between section 2 and 3. He said almost any part of government is directed by law. He said for example, public money is often used to buy facilities so the private sector can't compete. He said MSU does a lot of things where they specifically have agreements with the public or private sector to come in and use their facilities. He had a concern about the language in the bill addressing "services offered to the public." He asked if everything in this building was a service offered to the public or are they excluded. **REP. KEENAN** said those are services offered to the public and authorized by law. He said if a company wants to go into a joint venture with the university probably no one will complain? This is based upon complaints coming through the filter making sure these two entities communicate and then come to the Legislative Audit Committee. There is no prohibition in this bill, and there is an extended effective date.

**SENATOR HARGROVE** asked if there is an enforcement penalty. **REP. KEENAN** said that is addressed on line 22, page 2.

**SENATOR DOROTHY ECK** said the Legislative Audit Committee is very busy and she didn't think they had time to mess with this. **REP. KEENAN** said this is addressed in section 3. The Legislative Audit Committee may develop and establish methods to obtain information from both private and governmental sources and they can make some determinations before each meeting. He said they have determined that this will cause an addition of one extra day that the Legislative Audit Committee would meet throughout the biennium.

**SENATOR LYNCH** asked what state agency is competing against the contractors association and how will this bill help them. **Carl**

**Schweitzer** said they are constantly working with the Highway Department to privatize.

**SENATOR LYNCH** asked if the contractor's interpretation that local governments are also included in this law. **Carl Schweitzer** said yes.

**CHAIRMAN TOM BECK** said there was an amendment put in that inserted the "state". Is the intent of that amendment to prohibit state government and exclude local government. **REP. KEENAN** said yes, that is in the title of the bill. This bill should not impact local governments especially if they work with state governments that are not in the public sector.

**CHAIRMAN BECK** asked if the state prison was excluded from this bill. **REP. KEENAN** said in section 1, line 12 they are excluded.

**CHAIRMAN BECK** said if the state does all of the microbiology testing by law, would this bill enable some of this work to be done privately. **REP. KEENAN** said no, this bill would give them a forum to bring their complaints to so the Legislature can look at that in the 1999 biennium.

**SENATOR ECK** said on page 2, line 18, do they want to have political sub-division in there? **REP. KEENAN** said yes because the law covers those relationships.

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**SENATOR ECK** said they have to specify what a city can and cannot do because they have much more power than a county. **REP. KEENAN** said political sub-divisions are authorized by law to function and do their service.

**SENATOR FRED VAN VALKENBURG** asked if on page 2, line 11, why did the state parks etc. get exempted from this entire process. **REP. KEENAN** said this is to allow Fish and Game to maintain their parks without someone coming in and saying they are not specifically authorized by law.

**SENATOR VAN VALKENBURG** asked what the difference was between the Fish and Game and the university system. **REP. KEENAN** said there is nothing. **George Ochenski, Historical Research**, said Fish and Game operates all of the state parks, historical sights, etc. and they do not want people saying they cannot operate a park because somebody else operates a KOA.

**SENATOR VAN VALKENBURG** asked if this becomes law and these governmental entities cannot provide the services, are the cost of those services going to go up. He asked if the taxpayer would pay more for services than they are presently paying. **REP. KEENAN** said prices will not go up unless there is a monopoly out there.

**SENATOR VAN VALKENBURG** said there are instances now where there are more than one entity available for services. But for whatever reason the university or other entities of government have decided that some jobs can be done more economically, by doing them internally. **REP. KEENAN** stated that was true but they are using the taxpayers money to equip themselves.

**SENATOR SHARON ESTRADA** asked what the vote was on the House side. **REP. KEENAN** said it was around 67 to 32.

**SENATOR ESTRADA** asked on page 2, line 18, the part dealing with political sub-divisions and how local governments are involved in this bill. **Mike Mathew** said counties are political sub-divisions of the state and as long as that language stays in there it would apply to counties. This part needs to be clarified. **Alec Hansen** said cities and towns are political sub-divisions of the State of Montana.

**SENATOR HARGROVE** asked for two or three examples of who this bill would affect. **REP. KEENAN** said he didn't have any specific answers except for the microbiological lab. This bill is a concern for the taxpayers and that is why they are here supporting it.

**SENATOR MIKE SPRAGUE** asked if the intent of this bill was to be so broad. **George Ochenski** said the best thing they could do was put in a review panel to hear complaints from citizens that felt they were being unfairly competed with by government entities.

**SENATOR SPRAGUE** said he introduced SB 78 that would look at ways of privatizing certain functions of the government. He said there were 13 government entities they were going to study. Is this bill doing the same thing as SB 78? **George Ochenski** said this bill is not privatizing internal functions of government, but dealing with external government competition. Government entities are going outside of themselves to compete with the public.

**SENATOR SPRAGUE** said when he was a college student the radio station at the university couldn't go outside to solicit for ads etc. He said now the radio station at the university can do that and isn't there a problem with that. **Jeremy Fritz** said their radio station runs off of student fees and since they are students they are underneath the university system and they apply under this bill. He said no taxpayers dollars are going to this.

**SENATOR SPRAGUE** asked **Jeremy Fritz** when he graduates from MSU, he will be in the private enterprise and what were his goals after graduation. **Jeremy Fritz** said his goal is to be a farmer or rancher in the Kalispell area and hold a seat in the Legislature.

Closing by Sponsor:

**REP. KEENAN** read a letter from Kerwin Environmental Consultants and he said in one instance their firm was offering a one day

training course for the private industry at \$125 per person. The state agency in direct competition offered the same course for \$25. The state agency can offer this price because they are supported by tax dollars. He said this is just one example of where this person may come to the Legislative Audit Committee with these complaints.

ADJOURNMENT

Adjournment: 5:00 p.m.

  
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SEN. THOMAS A. "TOM" BECK, Chairman

  
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JODI JONES, Secretary

TB/jj