

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Ramirez - District 64, Billings
John Cadby - Montana Bankers Assn.
Mike Griffith - Northwestern Bank, Helena
Gene Phillips - Conrad Bank of Kalispell
Mr. Lattin - Vice-pres., Conrad Bank of Kalispell
Cliff Christian - Montana Assn. of Realtors
Rod Wilson - Billings Chamber of Commerce
Rep. Bob Palmer - District 96, Missoula
Ruth Lange - Montana Assn. of Realtors
Bette Hostad - League of Women Voters of Montana
Klaus D. Sitte - Montana Legal Services Assn.
Kitty Bomar - Montana Poverty Council
Eldon L. Piper - Montana Landlards Assn.
Mae Nan Ellingson - Montana Student Lobby
Carol J. Farris - Great Falls renter

CONSIDERATION OF HOUSE BILL 72:

Rep. Ramirez, sponsor of H.B. 72, said that it had to do with trust indentures and foreclosure of trust indentures, and that it calls for a Notice to be posted 20 days before sale. He told the committee that the Yellowstone County sheriff has refused to post the Notices of Sale although they are paid a fee of \$2 for doing this and also get mileage.

DISPOSITION OF HOUSE BILL 72:

Senator Warden moved that H.B. 72 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 74:

Rep. Ramirez, sponsor of this bill, told the committee that it was one of two bills dealing with out-of-state lenders and that Montana banks sell mortgages to out-of-state lenders but service the accounts in Montana and, in this way, obtain more mortgage money to lend in Montana. However, Montana is not very attractive to these out-of-state lenders as they have to qualify in Montana. Therefore, this bill, in an effort to help this situation, has an exception in

it on page 3 for certain things which are listed for which they do not have to qualify in subsection (g). The amendment in this subsection (g) is what the American Bar Assn. has recommended. He said further that savings and loan associations are dealt with in a different title. Rep. Ramirez submitted a letter which shows that Montana is a very undesirable place from which to purchase loans. (See Exhibit 1) He said that this bill would make Montana a much more attractive place in which to purchase loans and this would make more money available.

The first proponent to testify was John Cadby of the Montana Bankers Assn who said that they support H.B. 74.

The next proponent was Mike Griffith of the Northwestern Bank in Helena and chairman of the Montana Bankers Assn. who said that they support the remarks made by Rep. Ramirez. He told the committee that they were having trouble attracting more money for Montana banks and urged passage of this bill.

Gene Phillips of Kalispell, representing the Conrad Bank of Kalispell, who was accompanied by Mr. Lattin, Vice-Pres. of the Conrad Bank, said that they support H.B. 74.

Cliff Christian of the Montana Assn. of Realtors said that they also support H.B. 74.

Rod Wilson, a proponent representing the Billings Chamber of Commerce, said that they also support H.B. 74.

There were no opponents present. Therefore, the Chairman allowed committee members to question the witnesses. They were particularly concerned about whether this bill might open the door to out-of-state lenders moving into Montana. However, they were told that the sponsor and proponents of the bill did not believe so.

DISPOSITION OF HOUSE BILL 74:

Senator Towe moved to amend page 2, line 9, by striking after "associations" the words "purchasing or participating" and inserting "with relation to the purchasing of or participating". The motion carried unanimously. He then moved that H.B. 74 as amended BE CONCURRED IN. The motion also carried unanimously.

Senator Towe then moved to reconsider the previous motion and to further amend page 4, line 8, by inserting following "property" the words "if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security". This motion carried unanimously. He then moved that H.B. 74 as amended BE CONCURRED IN and the motion carried unanimously.

CONSIDERATION OF HOUSE BILL 80:

Rep. Bob Palmer of Missoula, sponsor of this landlord and tenant

bill, told the committee that they had used H.B. 262 from the last legislative session as a basis to try to come up with a bill all landlords and tenants could live with and H.B. 80 is a combination of these efforts. He said that this bill has six main parts and that he believes it is a very balanced bill. They worked on it over a two-year period of time.

Ruth Lange of the Montana Realtors Assn. was the first proponent to testify. She said that they had put a lot of thought and work into it and that they feel it is a very good bill. It passed the Board of Realtors unanimously.

Bette Hostad of the Montana League of Women Voters was the next proponent to testify. She read a prepared statement. (See Exhibit 1)

The next proponent was Klaus D. Sitte, a Montana Legal Services Assn. attorney, who said that this is the people's bill because the landlords and tenants who worked on it wanted it to cover everything possible. He further testified that it is really less complicated than our present law and that many landlords may find that they do not have to have written agreements with their tenants any longer. He also said that this will truly encourage landlords to improve housing in Montana.

Kitty Bomar, representing the Montana Poverty Council, was the next proponent. She said that the Montana Poverty Council supports H.B. 80.

Eldon Piper, president of the Montana Landlord Assn., was the next proponent to testify. He said that they had worked with the group in Missoula for the last year and a half to get a good bill and that he thinks this bill is unique because everybody agrees on it.

The next proponent was Mae Nan Ellingson, representing the Montana Student Lobby, who said that, since the bulk of students are tenants, they are very interested in the housing shortage and that this bill sets a minimum standard of conduct for both students as tenants and landlords. She also said that this is a better bill than that in the last session of the legislature and that they feel this bill is needed in Montana.

Carol Farris, a Great Falls renter, testified as a proponent of H.B. 80 also. She said that people are getting exorbitant rents for substandard housing in Great Falls because there is such a housing shortage.

There were no opponents to H.B. 80 present.

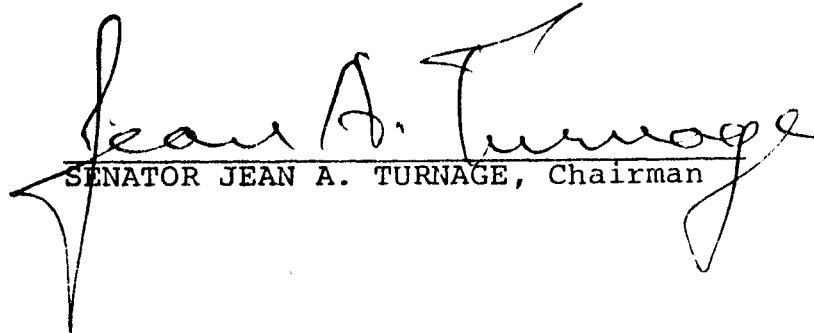
Rep. Palmer closed by saying that this bill is a compromise of both landlords and tenants and clearly defines the rights of both. He said that a Mr. Jackovich of Butte who rents 200 units would have liked to have attended this hearing but could not be here.

The committee discussed the cost of advertising the change in the law in the newspapers, as the bill calls for, because it did not have a fiscal note on it. Rep. Palmer said they would have no objections to whatever the committee did on this. The Chairman told them that the committee would take it under advisement and try to work it out.

At this time, Senator Turnage assigned H.B. 72 to Senator Murray to carry on the floor and H.B. 74 to Senator Towe.

Senator Towe moved to amend H.B. 80 by striking "such summary" and inserting "when this act will take effect and where a summary will be available" and on line 6 to strike "may". The motion carried unanimously. However, it was decided that they would have to work on H.B. 80 another time.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/3/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

Each day attach to minutes.

(HB: 14)
(64.1)

1311

NATIONAL LEAGUE of SAVINGS ASSOCIATIONS 111 EAST WACKER DR./CHICAGO, ILLINOIS 60601

DONALD H. WEEKS
Assistant Counsel

December 10, 1975

Mr. Richard M. Smith
Manager
Metropolitan Service Mortgage Corporation
2 North Broadway
Billings, Montana 59101

Dear Mr. Smith:

Thank you for your letter of November 21, 1975, regarding placement of Montana in Group IV of the "Summary Chart of 'Doing Business'" carried in the May 1974 LEGAL BULLETIN 182. We appreciate the interest which prompted your letter. If it is your suggestion that placement of Montana in Group IV is improper, however, I cannot agree.

Mr. Krieg's letter of May 20, 1974 to your company's Mr. Lindberg is directed to the question "as to whether the purchase of loans secured by mortgages or trust indentures on Montana real property, originated by you in Montana, and sold and assigned by you to out-of-state corporations would result in: (a) the necessity of such out-of-state corporations to qualify to do business within the State of Montana; or (b) any imposition of Montana income tax or other Montana 'doing business' tax upon the interest income received by such out-of-state corporation on the loans assigned to the corporation." Mr. Krieg states the assumptions on which his opinion is posited. I would not agree that his conclusions necessarily are correct unless I had additional specific information regarding the transactions which you consummate with out-of-state associations. I refer you to page 80 of William C. Prather's article, "What Constitutes 'Doing Business'", which was carried in the March 1959 LEGAL BULLETIN, and in particular to "The 15 Rules of the 'Insulation Method'" set out at page 81. I feel that to state confidently that an out-of-state association is not subject to Montana's "doing business" laws, the standards of the "Insulation Method" should be adhered to strictly.

These comments relate, of course, to the first aspect of Mr. Krieg's statement of the question, i.e., "doing business" requiring qualification. To the extent that Mr. Krieg bases this part of his opinion on provisions of the Montana Business Corporation Act, I disagree.

The provisions of the Montana Business Corporation Act have no application, in my opinion, to the question of what activities may be engaged in by a foreign savings association in Montana without the association thereby subjecting itself to the "doing business" provisions of that state. Montana Business Corporation Act, Section 15-22-136, "Application to existing corporations," provides, in part, "Nothing contained in the Montana Business Corporation Act shall be construed to repeal or amend the present

Mr. Richard M. Smith

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statutes relating to . . . building and savings and loan associations . . . and other corporations for which special regulations different from the general private business corporation laws of this state have existed prior to July 1, 1967."

The Montana statutory provisions applicable, I believe, to this question are found in R.C.M. 1947 Title 7 - "Building and Loan Associations." Section 7-131 sets out requirements applicable to foreign associations. They are rigorous and are justification, in my opinion, for placement of Montana in Group IV on the Summary Chart. Section 7-136 is explicit in its statement of the application of the Montana Building and Loan Association Act to savings associations, including, presumably, foreign associations. Xerox copies of these two sections are attached. Note also that Section 7-159 provides "Insofar as the provisions of this act are inconsistent with the provisions of any other governing building and loan associations the provisions of this act shall control."

The second aspect of Mr. Krieg's opinion is concerned with the out-of-state association being subjected to taxation by the State of Montana. Liability of out-of-state corporations for taxes in states other than those of their incorporation is a question distinct from "doing business" requiring qualification. An out-of-state corporation's liability for income tax does depend on whether or not it is doing business in the state imposing the tax, but "doing business" for tax purposes is not the same as "doing business" for qualification purposes. The opinion dated January 28, 1975 of Mr. McGinnis, the Montana Deput Chief Tax Counsel, states that "at the present time" the state would not attempt to bring such corporations under the corporation income tax. I do not know the specific fact situation submitted to Mr. McGinnis on which he based his opinion. His is a correct conclusion, no doubt, drawn from the facts submitted to him. He states, "All activities relating to the loans secured by Montana real property are carried out by the Metropolitan Service Corporation with only a stated payment being remitted to the out-of-state corporation." Presumably he did not find sufficient contacts or "nexus", based on the facts presented to him to base an assertion of Montana's taxing powers. Obviously, these contacts were minimal. In any case, the Summary Chart is concerned with doing business for qualification purposes and not for tax purposes.

If my conclusions regarding the paramountcy of the Montana Building and Loan Association sections relating to foreign associations are correct, you will understand that placement of Montana in Group IV would seem to be correct. This being so, the insulation formula suggested in Mr. Prather's article should be given careful consideration by any association contemplating the engaging in Montana transactions which might involve it with the "doing business" laws or the tax laws of that state.

It is a pleasure to be of service.

Very truly yours,


Donald H. Weeks

Assistant Counsel

DHW/f

SECTION 1. HOW CAN WE DO BUSINESS?

Do the following savings association activities carried on in another state constitute the "doing of business" in that state?

- (1) The making of loans, including the participation therein.
- (2) The purchase of locally originated loans, or the purchase of participation therein.
- (3) The collection procedure, particularly foreclosure.

The following state groupings are largely the personal conclusions of counsel for the League; however, these associations should clear with their own counsel as to the law in both the local and foreign state. It is cautioned that many of the statutes underlying the conclusions are new and as yet untried in the courts as to their merits, scope or applicability to savings associations.

GROUP I. In these states, it appears that as to out-of-state savings associations the loan or purchase contract may be made either within or without the local state in question, and as to "doing business," all three questions may be answered in the negative.

Alaska	New Mexico (participations)	Texas
Kansas	North Dakota	Wyoming
The above statement appears to be true for out-of-state <i>federal associations</i> in:		
Arizona	Iowa	New Jersey
	Minnesota	South Carolina
	Nevada	South Dakota

The above statement appears to be true for out-of-state savings associations in Group I states by virtue of a reciprocity provision in: Massachusetts; New York.

GROUP II. In these states, while the making of loans by an out-of-state savings association may be considered the "doing of business," questions two and three may be answered favorably: The purchase of locally originated loans by an out-of-state savings association and the collection procedure are permissible and appear not to be considered the "doing of business." Original makers and intervening parties must have qualified fully, however.

Alabama	Louisiana	Ohio (participations)
Arkansas	Maryland	Oklahoma
California	Michigan	Oregon
Colorado	Mississippi	Pennsylvania (participations)
District of Columbia	Missouri	South Carolina
Florida	Nebraska	Tennessee
Georgia	Nevada	Utah
Hawaii (participations)	New Jersey	Virginia
Idaho	North Carolina	Washington
Illinois		West Virginia
Indiana		

The above statement appears to be true for out-of-state savings associations in Group II states by virtue of a reciprocity provision in: Massachusetts; New York.

GROUP III. Out-of-state savings associations either may make or purchase mortgage loans, or do both, in the local state provided they obtain qualification or a limited qualification to do business. Such "qualification," however, appears to be relatively simple and inexpensive, and local taxes appear to be reasonable:

Arizona	Hawaii (entireties)	New Mexico (entireties)
Connecticut	Kentucky	Ohio (entireties)
Delaware	Maine	
	New Hampshire	

GROUP IV. Here, attempts by out-of-state savings associations (federal associations excepted where indicated by asterisk) or their agents to make, purchase, service, collect or foreclose mortgages or interests therein within the local state may run into trouble. In many cases, qualification appears to be the only answer, and although there are numerous variations, it can be said that in these states the making or purchase of loans or any qualification appears difficult, uncertain, expensive or impossible. Here, the "insurance formula" described on pages 81-83 of the March 1959 LEGAL BULLETIN ordinarily can provide an answer.

Iowa*	Minnesota*	Rhode Island
Massachusetts (absent reciprocity)	Montana	South Dakota*
	New York (absent reciprocity)	Vermont
	Pennsylvania (entireties)	Wisconsin

March 3, 1977

Ex. 1
(H.D. 80)

The League of Women Voters supports House Bill 80. The League of Women Voters supports this bill under its National Human Resource position of action to achieve equal rights for all in the housing area. This Bill clearly and fairly defines both the rights and the responsibilities of landlord and tenant in such sections as 20 and 22, 26 and 33, and section 41, 1 and 2. The Bill provides a means of publicizing the changes under section 46; and the League of Women Voters supports equal access to the law.

The League of Women Voters has always supported changes that make the law more easily understood and for this reason also we can support the Bill. As the code it is repealing is dated 1947, we are hopeful this needed legislation will pass in this session.

Thank you
LEAGUE OF WOMEN VOTERS OF MONTANA
Bette Hostad 458-9588

SENATE

JUDICIARY COMMITTEE

B. BILL 7274 + 80

VISITORS' REGISTER

DATE 3-3-77

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT OPPOSE

Dette Luvstad

LAW

80

✓

Klaus D. Sitte

Montana Legal Services Assn.

80

✓

Kathy Bomar

Montana poverty

80

✓

Edon L. Piper

Mont. Landlords Assn.

80

✓

Brett Shaper

KNS Nuggett

Ruth Lange

Montana Association of Realtors

80

✓

Cliff Christian

MT ASSN of REALTORS

80

✓

Rod Wilson

BILLINGS CHAMBER OF COMMERCE

74

✓

Greta Dillon

Montana Kaimin

80

Mae Ann Ellingson

Montana Student Body

80

✓

M. L. GRIFFITH

NORTHWESTERN Bk. Hous.

74

✓

John Gaddy

First Bankers Assn

H 74

✓

L. L. L.

Conrad Nat'l Bk

H 74

✓

Gene Phillips

Conrad Nat. Bank.

HB 74

✓

* Carol J. Farris

renter

HB 80

✓

* Sharon M. O.

Landlord

HB 90

✓

Frances Johnson

Renter

"

✓

* Lillian J. Jany

Great Falls, Mont.

80

✓

* Mary V. De

Great Falls MT

80

✓

* Donelli Morris

Great Falls MT

80

✓