

March 8, 1977  
11:00 a.m.

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 11:00 a.m.

ROLL CALL: All members were present with Senator Regan arriving at 11:05.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 347: "An Act To Amend the Montana Religious Corporations Sole Act To Remove the Limitation On the Number of Members of A Board of Advisors or Couselors; Amending Section 15-2408, R.C.M. 1947, And Providing An Immediate Effective Date."

Representative JoEllen Estenson of district 32, chief sponsor of this bill, testified that this bill had been introduced for the Roman Catholic Diocese to amend the act to make the number of people on the board of advisors open ended. The reason for the bill would be to allow for broader representation in some cases.

PROPONENTS: Mr. John Frankino, representing the Montana Catholic Conference, testified in favor of the bill, reading from a letter from the cannon lawyer for the diocese. The letter stated that when the corporate laws were revised the limit for the upper number of persons on the boards for non-profit corporations was lifted, but the 1967 Religious Corporations Act set a maximum number of board members. By amending the law on religious corporations to eliminate the upper limit on board members, broader representation could be allowed and the religious corporations law would conform with the non-profit corporations law.

DISPOSITION: Senator Kolstad moved that HB 347 be concurred in. Senator Mehrens seconded the motion. The motion carried unanimously.

CONSIDERATION AND DISPOSITION OF HOUSE JOINT RESOLUTION 55: Representative John Vincent, chief sponsor of the bill, testified that this bill was a committee bill to express confidence in business and the free enterprise system. The resolution outlines the advantages of competition and free enterprise and passed both the House Business and Industry Committee and the House by overwhelming margins.

DISPOSITION: Senator Lowe moved that HJR 55 be concurred in. Senator Devine seconded the motion. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 760: Representative Orval Ellison, chief sponsor of the bill, testified that most of the Senators would be familiar with the scandal in the private cemetery in Livingston. This is not the first problem that has arisen in private cemeteries, however. Five other private cemeteries in the state have had similar problems with the misuse of the vault and markers trust fund. Representative Ellison said that this bill does not purport to correct all of the shortcomings of the cemetery law, but it will set up surety bonds on the owners of the cemeteries.

Representative Ellison referred to page 2, line 10 of the bill which states that if the surety bond is cancelled, all powers, etc., are dispensed until the bond is reinstated. A reporting method is needed to keep track of the owners of the cemeteries, but this bill will solve some of the problems until the cemetery laws are completely rewritten.

QUESTIONS & COMMITTEE DISCUSSION: Senator Lowe asked how much a \$15,000 bond cost. Representative Ellison responded that it would be approximately \$150 per year. He said that he was not sure if the bond had to be renewed each year.

Senator Regan asked if this was the same type of bonding that was removed earlier this session from several other laws. Mr. Roger Tippy answered that he did recall it being removed from the Warm Air Heating codes. Senator Lowe said that surety bonds were simply bonds taken out on a person's honesty, giving some guarantee of that honesty to the people.

Senator Regan asked Mr. Tippy to call a bonding company to find out what type of bonds are required. Representative Ellison commented that he had checked with the Secretary of State and Mr. Leonard Larson said that he saw no reason why the operator of the cemetery could not be bonded in this way. He saw no difficulty in handling this.

Senator Regan said that she would like to find out more about what a surety bond does and would therefore like to defer action on this bill until that information was available.

CONSIDERATION OF HOUSE BILL 764: Representative Jack Ramirez, chief sponsor of the bill, testified that this problem was brought to his attention by the Legislative Council staff from the recoding process and also by the County Treasurer in Yellowstone County. There are presently two sets of sales laws now in effect in Montana, an 1895 law and a 1955 enactment. The differences include: 1) the 1895 law applies to all merchandise while the 1955 law applies only to new merchandise; 2) the 1895 requires a \$5000 bond while the 1955 law required bond double the value of the property to be sold; 3) the 1895 law required that the operator get a license with the County Clerk to hold an auction while the 1955 required the operator to be licensed with the County Treasurer in order to sell goods.

Representative Ramirez stated that he had used the 1895 law and

discarded the 1955 law which was being substantially ignored now anyway.

Representative Ramirez noted that the 1955 law had a provision that the committee might want to consider putting back into the law which required that when ever someone auctioned new merchandise the Department of Revenue must be notified of the sale within ten days before the auction and also after the action concerning the sales. The Department of Revenue has been getting some of these reports, but has done nothing with them.

Other changes include the elimination of the exceptions of types of auctions under the 1955 law. So many exceptions were allowed that it was hard to tell what was covered by the law. Under the 1895 law a maximum of a 1% commission was allowed. The standard commission is 20%. The law was being ignored and has therefore been eliminated in this bill. Finally, the bill would allow the cities to issue licenses and set the conditions for auctions if they so chose.

QUESTIONS AND DISCUSSION: Senator Devine asked how an antique auction would be handled. Representative Ramirez answered that the auctioneer would post \$5000 bond and get a license from the city if one was required, just like all other auctions.

Senator Goodover asked if the filings with the Department of Revenue had been intended to protect the public from the sale of stolen merchandise. Representative Ramirez answered that it may have been the intent, but that the licenses are not obtained presently and there is no provision in the law for the Department of Revenue to follow up on the filings.

Senator Lowe asked if there was a provision in the law for charity auctions. Representative Ramirez answered that the only requirement would be the posting of the bond and possibly a city license.

Senator Lowe asked what the procedure would be for permanent auctions like Benders in Billings. Representative Ramirez answered that they would post the \$5000 bond and get the license under this new law, but that nothing else had really been changed from the old law.

Senator Devine asked what the procedure would be for a flea market and if the individuals would all have to post the bond. Representative Ramirez answered that there were usually no auctions at these markets, just sales which do not come under this law.

Senator Goodover mentioned that there was also bonding involved in this bill and that perhaps the committee should delay action on this bill also until the information for bonding was brought before the committee. Senator Regan concurred. Senator Lowe commented that bonding was useful in that it does assure that there is some money involved in the operation somewhere. Usually there are not many suits because the person puts in a claim to the auction and to the bonding company and the bonding company takes care of it.

Representative Ramirez stated that this type of bonding is often required to guarantee the public some recourse if the person skips town. This amount might not be sufficient, but it must be remembered that this bonding does not affect personal liability where recovery is not limited to \$5000. The bonding guarantees if the person is irresponsible that the public has some source of money.

Senator Regan stated that she felt the bonding was ineffective because the state had to be sued in order to collect the bond and then the state has to go after the bonding company. Senator Hazelbaker commented that usually the County Attorney will go after the settlement for the person.

Senator Goodover moved that HB 764 be considered with HB 760. Senator Devine seconded the motion. The motion carried unanimously.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 570: Representative Jean McLane, chief sponsor of the bill, introduced Mr. Gerald Neely of the Montana Medical Association to explain the bill.

PROPONENTS: Mr. Neely stated that this bill ties in with a previous bill considered by the committee. Because of the time that it takes to determine the feasibility of self insurance, this bill is important. If a major company pulls out of the state joint underwriting would take over until the self insurance went into effect.

Mr. Neely said that this law is already in effect in nine other states. Every individual injury through medical neglect should have recourse, but as more and more companies move out of the state, self insurance may be the only feasible answer. There are now 10 companies selling liability insurance in the state which has decreased from 68 in 1972.

Mr. Neely stated that self insurance may not be feasible in small population states like Montana unless there is cooperation with the surrounding states. Approximately 3000 members are needed, so the Montana Medical Association is studying the feasibility of such a plan in Montana and is meeting with the border states. The savings would be significant eventually, but the start up costs are high. This legislation would authorize self insurance through the devices present in the Montana codes. A sheet further explaining the bill was passed out to the committee. (Exhibit #1)

QUESTIONS AND DISCUSSION: Senator Regan asked if this concept would take in many professionals from the different professions or if it would allow the formation of self insurance companies for only like professionals. Mr. Neely said that this bill would permit the mingling of the professions like other states do, but the specific intent of the bill is for groups of one profession to form their own captive company.

Senator Regan asked if this bill would allow other states to join in a Montana pool. Mr. Neely answered that that was the intent of the bill so that states with small bases of professionals could pool with other similar states. If the group is too small, one large claim could put the whole company into monetary jeopardy.

Senator Goodover asked if the insurance companies objected to the bill. The response was that they had taken no position.

Senator Lowe asked where the mechanics of this bill would be worked out. Mr. Neely answered that the self insurance companies would be under the Insurance Commissioner and would operate under Title 40 of the Montana codes just like other insurance companies.

Senator Goodover moved that SB570 be concurred in. Senator Devine seconded the motion. The motion carried unanimously.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 430: Representative Les Hirsch of district 52, chief sponsor of the bill, stated that this bill clarifies and revises provisions of the state building codes so that they include the energy conservation code within them. Only a few weeks ago the Department of Administration reviewed the building codes and recommended that the energy code should be included. This bill would give the authority to the Department of Administration to include the energy code within the building codes. The rules have been adopted and published, but have not yet been implemented. The Department of Administration will retain the option to modify and amend these codes to fit Montana.

PROPONENTS: Mr. Sonny Hanson of the Montana Technical Council on Architecture and Engineering testified in favor of the bill stating that this bill gives further authority to SB 401.

OTHER TESTIFIERS: Mr. Glen Drake representing the League of Cities and Towns stated that his group had problems with the language and whether it would prohibit local governments from adopting more stringent codes than that used by the state. Mr. Hanson answered that this bill would not prohibit that. SB 401 would restrict the local authority, but this bill would not.

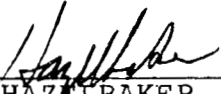
QUESTIONS AND DISCUSSION: Senator Regan asked the proponents if they would mind if the immediate effective date were stricken. Representative Hirsch said that he would not mind.

Senator Regan moved to amend HB 430 by striking the entire section three. Senator Kolstad seconded the motion. The committee voted unanimously and the motion carried.

Senator Lowe asked if the department referred to was the Department of Administration. Mr. Tippy said that it was.

Senator Devine moved that HB 430 be concurred in as amended. Senator Mehrens seconded the motion. The motion carried unanimously.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:45 a.m.

  
FRANK HAZELBAKER, CHAIRMAN

DATE 3-8-77

| NAME               | REPRESENTING           | BILL # | (check one) |        |
|--------------------|------------------------|--------|-------------|--------|
|                    |                        |        | SUPPORT     | OPPOS. |
| Bernard J. Neely   | Montana Medical Assoc. | 570    | ✓           |        |
| Rep. John Vincent  | District 78 Bozeman    | HR 55  | ✓           |        |
| Ellen Peterson     | Rep. Dist. 32 Helena   | HB 347 |             |        |
| Rep. D. D. Ellison | Rep. Dist. 73          | 760    |             |        |
| Jack Ramsey        | Rep. Dt 64             | 764    |             |        |
| Ellen Drake        | Secy of the V. Assoc.  | 430    |             |        |
| Len Haisak         | Rep. Dist. 52          | 430    |             |        |
| HS Hansen          | Mont. Technical Coll.  | 430    | ✓           |        |
| John McLane        | Rep - HD 72            | 570    | ✓           |        |
| John W. Lowe       | visitor                |        |             |        |

Business & Industry COMMITTEE

Date 5/8

[illegible]



# STANDING COMMITTEE REPORT

March 8

19 77

MR. President

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE JOINT RESOLUTION Bill No. 55

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 55

BE CONCURRED IN  
PASS

# STANDING COMMITTEE REPORT

March 3

19 77

President

MR. ....

BUSINESS AND INDUSTRY

We, your committee on .....

HOUSE

Bill No. 347

having had under consideration .....

HOUSE

Bill No. 347

Respectfully report as follows: That .....

BE CONCURRED IN  
BY PASSE

FRANK HAZELBAKER

Chairman.

# STANDING COMMITTEE REPORT

March 8

1977

MR. President

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE

Bill No. 430

Respectfully report as follows: That HOUSE Bill No. 430,  
third reading, be amended as follows:

1. Amend page 3, section 3, lines 19 and 20.  
Following: line 18  
Strike: section 3 in its entirety

AND AS SO AMENDED, BE CONCURRED IN  
DEBATE

# STANDING COMMITTEE REPORT

March 8

19 77

MR. President

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 570

Respectfully report as follows: That HOUSE Bill No. 570

BE CONCURRED IN  
DO PASS

HOUSE BILL NO. 570 (McLane, Ramirez, Porter, et.al.)

"AN ACT TO AUTHORIZE THE ESTABLISHMENT OF MUTUAL, STOCK, OR RECIPROCAL INSURANCE COMPANIES TO PROVIDE INSURANCE COVERAGE FOR PROFESSIONAL LIABILITY CLAIMS RESULTING FROM THE RENDERING OF OR FAILURE TO RENDER PROFESSIONAL SERVICES BY HEALTH CARE PROVIDERS OR OTHER PROFESSIONALS OF THE UNITED STATES"

Summary of Legislation: Authorizes the establishment of a variety of self-insurance mechanisms by defined professionals on a multi-state basis, subject to the control of the insurance commissioner and the provisions of Montana insurance law.

Activity in Other States: During 1975-6, 9 other states enacted into law legislation authorizing self-insurance: Arizona, Florida, Iowa, Maryland, Missouri, North Dakota, South Dakota, Tennessee, & Washington.

Principle Involved: Every citizen who has been injured through the negligence of a professional should be entitled to recover adequate compensation; adequate insurance coverage should be available to all professionals who are exposed to liability from suit.

Effect on State Government: No appropriation of money is involved. There would be, to the extent that a profession organized a self-insurance program, a minimal increase in the administrative duties of the office of the insurance commissioner, similar in effect to the organization of any new insurance operation currently allowed by law.

Discussion: Right now, Montana physicians--and soon other professions--are facing severe problems in obtaining adequate medical liability insurance. There are two basic horns to the dilemma: 1) the vanishing availability of medical liability insurance; and 2) the skyrocketing cost of such insurance when it was available.

There are now less than 10 insurance companies left in the US willing to provide this insurance, out of 68 as recently as 1972. The few licensed companies offering it today are adopting increasingly restrictive underwriting policies. Costs have been skyrocketing. Montana: \*\*was higher than each of the surrounding states and was exceeded by only 16 states in 1972 \*\*Increased between 165.5% and 430.8% from 1974 to 1976, depending upon the specialty of the physician.

The self-insurance market is a feasible alternative to private insurance in the voluntary market & it may be that a multi-state self-insurance mechanism would be economically and actuarially necessary. One of three forms would be used: a reciprocal insurer (insurance resulting from an interexchange among persons known as subscribers, of reciprocal agreements of indemnity, the interchange being effectuated thru an attorney in fact common to all such persons); a stock insurer (an incorporated insurer with capital divided into shares and owned by its stockholders); or a mutual insurer (an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders). The Montana Medical Association has been in contact with the contiguous states and with an actuarial firm with this possibility in mind.