

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 9, 1979

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 10:00 a.m.

ROLL CALL: All members were present.

HOUSE BILL 24: Representative Danny Oberg, sponsor of HB 24, explained the bill to the Committee. This bill is an act to provide for deposit of money received for the use of the Board of Real Estate whenever other disposition is not provided for.

There were no other proponents or opponents to House Bill 24 present at the hearing.

There was a question and answer period from the Committee after which Chairman Hazelbaker closed the hearing on HB 24.

DISPOSITION OF HOUSE BILL 24: Staff Attorney Bob Pyfer, offered an amendment to HB 24. This amendment is on the Standing Committee Report which is attached.

Senator Dover moved that the proposed amendment to HB 24 be adopted. The Committee voted unanimously to adopt the amendment. Senator Dover moved that House Bill 24 Do Pass As So Amended. The Committee voted unanimously that HOUSE BILL 24 BE CONCURRED IN AS SO AMENDED.

Senator Dover will carry House Bill 24 on the floor.

HOUSE BILL 815: Representative Dennis Nathe, sponsor of HB 815, explained the bill to the Committee. This bill exempts the Public Service Commission, in the performance of its ratemaking functions, from the Montana Environmental Policy Act and therefore from the environmental impact statement requirement.

PROponents OF HOUSE BILL 815: Mr. William Opitz from the Public Service Commission, explained the technical aspects of the bill to the Committee. Mr. Opitz distributed a letter from Mr. Rick Applegate, Director of the Center for the Public Interest, Inc. This letter as well as a letter from the PSC to Chairman Hazelbaker are attached to the minutes.

There were no other proponents or opponents to HB 815 present at the hearing.

There was a question and answer period after which Chairman Hazelbaker closed the hearing on HB 815.

DISPOSITION OF HOUSE BILL 815: Senator Dover suggested an amendment to make the date effective immediately. Attorney Bob Pyfer stated he would write the amendment in proper form.

Senator Dover moved the amendments to HB 815 be adopted. The Committee voted unanimously that the amendments be adopted.

Senator Lowe moved that House Bill 815 Do Pass As Amended. The Committee voted unanimously that HOUSE BILL 815 BE CONCURRED IN AS SO AMENDED.

Senator Lowe will carry House Bill 815 on the floor.

HOUSE BILL 375: Representative Robert Marks explained the bill to the Committee. Representative Seifert, sponsor of HB 375, was unable to be present at the hearing. This bill increases the maximum dollar amount of insurance that a farm mutual insurer may retain as to a policy issued by it and on a single risk from \$25,000 to \$35,000. Any excess over the maximum must be covered by reinsurance.

PROPOSERS OF HOUSE BILL 375: Mr. Terry Meagher, from the Department of Insurance, stated they are in support of HB 375. Mr. Meagher stated this applies only to farm mutuals. The Insurance Department has never had a complaint about a farm mutual Mr. Meagher stated.

There were no other proponents or opponents of House Bill 375 present at the hearing.

There was a question and answer period from the Committee.

Senator Dover questioned whether or not these companies were large enough to handle the higher risks.

Mr. Meagher stated they were large enough to handle these risks.

DISPOSITION OF HOUSE BILL 375: Senator Dover moved that HB 375 Do Pass. The Committee voted unanimously that HOUSE BILL 375 BE CONCURRED IN.

Senator Hazelbaker will carry House Bill 375 on the floor.

DISPOSITION OF HOUSE BILL 21: This bill was heard on March 1. Attorney Bob Pyfer explained the proposed amendments to House Bill 21 to the Committee. Senator Regan moved that the amendments be adopted. The Committee voted unanimously to adopt the amendments to HB 21.

Minutes of Business & Industry Meeting

March 9, 1979

Page 3

Senator Regan moved that House Bill 21 Be Concurred In as so Amended. The Committee voted unanimously that HOUSE BILL 21 BE CONCURRED IN AS SO AMENDED.

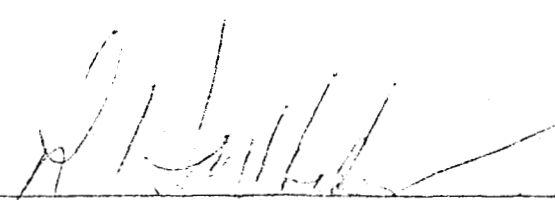
Senator Regan will carry House Bill 21 on the floor.

DISPOSITION OF HOUSE JOINT RESOLUTION 49: This joint resolution was heard on March 6. Senator Regan submitted a proposed amendment to HJR 49. Senator Regan moved the proposed amendment to HJR 49 be adopted. The Committee voted unanimously to adopt the proposed amendment to HJR 49.

Senator Regan moved that HJR 49 Be Concurred In as so Amended. The Committee voted unanimously that HOUSE JOINT RESOLUTION 49 BE CONCURRED IN AS SO AMENDED.

Senator Regan will carry House Joint Resolution 49 on the floor.

ADJOURN: There being no further business, the meeting was adjourned at 10:40 a.m.



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Senator Frank Hazelbaker, Chairman









NAME: DONALD T. SCHROER DATE: MAR 8, 79

ADDRESS: GREAT FALLS, MT

PHONE: 761-8300

REPRESENTING WHOM? TREASURY STATE CORPORATE CENTRAL CREDIT UNION

APPEARING ON WHICH PROPOSAL: HB 730

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Jessy M. Kirkland DATE: 2 March 1979

ADDRESS: 2842 Festival Road Helena

PHONE: 227-5901

REPRESENTING WHOM? Montana Credit Unions League

APPEARING ON WHICH PROPOSAL: HR 730

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James Madison DATE: March 8, 1977

ADDRESS: Mitchell Building

PHONE: 449-2465

REPRESENTING WHOM? Department of Revenue

APPEARING ON WHICH PROPOSAL: HB No 486

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: \_\_\_\_\_  
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Submitted by  
Tom K...  
3/8/79

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Revenue department statistics on sales of cigarettes to Indians:

<u>Proprietor</u>	<u>Location</u>	<u>Total Cartons Sold</u>	<u>Total Tax Loss</u>
Conf. Salish & Kootenai	Arlee	120,422	\$140,171.23
Camos Hot Springs	Hot Springs	6,240	7,263.33
Standing Arrow	Elmo	4,440	5,168.16
Sun Lodge	Lodge Grass	2,580	3,003.12
Evans Chevron	Browning	4,535	5,278.74
J & H Service	Arlee	7,230	8,415.78
Firestone Service	Arlee	1,200	1,396.80
Arden Morales	Popular	1,368	1,615.63
Mission Smoke Shop	St. Ignatius	21,801	25,367.47
Amelia Summers	Poplar	26,065	30,339.62
H & S Smoke Shop	Poplar	36,988	43,054.03
Res. Smoke Signal	Browning	57,922	67,420.86
Donny Dupries	Ronan	83,564	97,268.49
Total Sales in Cartons and Tax Loss in 1978:		374,376	\$435,763.29

(Figures from the Montana Department of Revenue)

My name is Tom Maddox, for 16 years executive director for the Montana Tobacco and Candy Distributors, with offices in Helena.

I concur with the proponent position.

The Montana tobacco wholesalers went along with the state of Montana department of revenue in seeking interstate bills to require Indians to pay the cigarette taxes in the various states of the northwest. We agreed to the passage of the present law passed in 1974 in Montana. Then we corresponded with, and went to confer with wholesalers and officials of Washington state, Oregon and Idaho. All favored this approach. However, none succeeded in passing the Montana proposal to tax Indians. Then the United States Supreme Court held that the states do not have jurisdiction to tax Indians. Chief Justice William Rehnquist wrote the opinion. It was reported at length April 28, 1976 in the New York Times. This case is Moe versus the Salish and Kootenai tribes of Montana (No. 74-1656). This was a landmark for a series of victories won by Indians against states' jurisdictions.

Beginning in 1972 Montana Indians purchased cigarettes and are continuing to buy cigarettes without tax from other states. The Montana law has penalized Montanans--our businessmen. The result has been a loss in state revenues from income taxes. Overall, millions of dollars have flowed out of Montana. The figure was \$465,000. for just the past year.

The intent of House Bill 486 is to provide the Montana revenue department with information on all cigarette sales volume going to the Indians. This will provide a base for continuing study. Hopefully, congress will resolve the issue which is far broader than cigarettes, involving tax on income earned on reservations, and potentially tax on liquor, gasoline and other such sales.

Business did not create this problem. Government did.

If enacted, we do not expect immediate conversion of all sales to Montana. However, as the educational process spreads, we do hope to restore some of this business for Montanans.

We ask that you give HB 486 a do pass recommendation. Thank you.

Questions and answers on HB 486

- Q. Will HB486 if enacted correct the situation immediately?
- A. This bill would not become effective until July 1, 1979. Thereafter, it will take some time for Montana Indians to change their buying practices from out of state sources. Today, Montana Indians receive untaxed cigarettes, delivered at their doorsteps.
- Q. Why would Montana Indians wish to switch to buying from Montanans?
- A. Mainly for their own convenience. They now buy in substantial volume because of advantage in freight costs. However, they would not have freight costs if they could pick up cigarettes at wholesale houses.
- Q. Would Montanans deliver untaxed cigarettes to buyers on military, VA or Indian reservations?
- No.
- A. Section 16-11-131 (MCA) would still prohibit licensed wholesalers from transporting untaxed cigarettes in their trucks. The intent of HB 486 is to except federal reservation people from this section.
- Q. Why does not the state of Montana arrest persons possessing untaxed cigarettes when they drive off federal reservations?
- A. Technically, this is possible. In practice--and there have been attempts, this has not worked. The Revenue Department has in the past advised us that their legal counsel and courts informed us that this is not feasible. Specific search warrants must be in hand, and this is not workable.
- Q. Just how do federal reservations obtain untaxed cigarettes?
- A. They are beyond reach because they are in interstate commerce. State laws can not put any undue burden on interstate commerce. Deliveries are made by trucks in interstate commerce. (Even now it is believed there are abuses--with individuals using their private vehicles to transport cigarettes from trucking docks to their places of sales.
- Q. Why are vendors not included in HB 486?
- A. Vending machines are anonymous in nature. They are not readily identified as to source of ownership. Vending machines are not included because of a need for control by the revenue department. Conversely, wholesalers and across the counter retailers are readily identifiable as to their eligibility to sell taxed or untaxed cigarettes. Any untaxed cigarettes in any vending machines would continue to be unlawful.

Q. Are there any opponents to HB486?

A. The Montana Revenue Department spokesmen have supported this bill, in 1977. The industry in Montana — the state licensees — are pledged to do their best to make it work. This year Jim Madison of the department opposes the bill.

Q. How did this problem begin and why are the Indians so successful?

A. The high state tax provides the Indians with the ability to sell cigarettes at \$1.20 less a carton or more than sales by all who are under Montana law. Actually, Indians do not have to reduce costs by the entire \$1.20, and thus they are making more money on cigarettes than licensed Montana retailers make.

Q. Why doesn't HB486 include other tobacco products?

A. The same problem does not exist with cigars. Cigar sales are on the decline by about 4 per cent a year. For snuff, snoose, pipe and chewing tobacco, the Indians realize there is not the volume, nor the profit for them. It goes back to the high state tax and high cigarette volume which combine as the motivating factors.

Q. How will we know how many cigarettes are sold without tax to the state?

A. Now, and under HB486, Montana wholesalers must make strict accounting of all cigarettes received from manufacturers, and how many they stamp the tax insignia on. These figures are continually audited by our Revenue Department. HB486 becomes self enforcing, because the wholesalers' best interests are served by strictly accounting for any cigarettes sold without state tax.

Q. Is this a problem in other states?

A. No other state has a law to prohibit their wholesalers from selling without state tax to qualified federal reservation buyers.

Q. How will the revenue department keep track of untaxed sales?

A. The state will provide a form of its own design. This will have to be returned, as any tax return, as a sworn statement, subject to penalties.

Q. Do Indians pay any state tax?

A. Not on income earned on their reservations. The United States Supreme Court has so acted in most tax areas. The Department of Revenue will attest to this.

Q. Is there any solution in sight?

A. Not at this time. Many efforts have been made, and some efforts are continuing.

NAME Tom Muldox House Bill No. 486  
ADDRESS P. O. Box 123, Helena MT 59601 DATE 8 March 1979  
WHOM DO YOU REPRESENT Montana Association of Tobacco and Candy Distributors  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Montana business, which now is adversely affected by the strange quirk in Montana law, recommend<sup>s</sup> that House Bill 486 DO PASS.

It corrects a wrong which the legislature certainly did not intend.

HB 486 allows Montana residents licensed by the state of Montana to provide cigarettes to retail store buyers on federal reservations, who already are qualified legally to buy cigarettes without state tax. They now purchase nearly a half million dollars worth of cigarettes a year outside of Montana, with out-of-state wholesalers shipping them into Montana legally. This costs the Montana businesses under Montana license to collect taxes, and costs the state and all taxpayers the revenue from personal and business tax on income of this business were allowed for Montanans.

The Montana revenue department would have more controls and statistics on such cigarettes than it now has, because HB 486 provides for the department's licensed wholesalers to report all such transactions.

History and other details are provided to the committee secretary, with copies available for every member of the committee.

*Signature of  
Dept. after appropriate*

Questions and answers on HB 486

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HB 486

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We ask that you give HB 486 a do pass recommendation. Thank you.

NAME: Tom Maddox DATE: 8 March 1979

ADDRESS: P.O. Box 123, Helena MT 59601

PHONE: 442-1582

REPRESENTING WHOM? Montana Association of Tobacco  
and Candy Distributors

APPEARING ON WHICH PROPOSAL: H.B. 486

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Submitted written testimony to  
Committee Secretary

NAME Les Loble II Bill No. H.B. 325  
ADDRESS 716 Power DATE 3-8-79  
WHOM DO YOU REPRESENT General Tre. of the Mr. Power, Inc  
SUPPORT  OPPOSE  AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME: Gene Phillips DATE: 3/8/79

ADDRESS: Kalispell

PHONE: 755-6644

REPRESENTING WHOM? Northwestern Telephone Systems

APPEARING ON WHICH PROPOSAL: HB 325

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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NAME: JAMES R. HUGHES DATE: 3-8-79

ADDRESS: 560 N. PARK - HELENA

PHONE: 449 3385

REPRESENTING WHOM? MOUNTAIN BELL

APPEARING ON WHICH PROPOSAL: HB 325

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# STANDING COMMITTEE REPORT

..... March 3, ..... 19 79 .....

MR. President: .....

We, your committee on ..... Business and Industry .....

having had under consideration ..... House ..... Bill No. 733 .....

Manuel (Kolstad)

Respectfully report as follows: That ..... House ..... Bill No. 730 .....

BE CONCERNED IN

BECAUSE

*OK*

SENATE COMMITTEE BUSINESS & INDUSTRY

Date March 8, 1979 Bill No. HB 486 Time 11:15

NAME	YES	NO
Pat M. Goodover, Vice Chairman	✓	
Chet Blaylock	✓	
Harold Dover	✓	
Tom Hager	✓	
Allen Kolstad	✓	
Bill Lowe	✓	
John Mehrens	✓	
Bob Peterson	✓	
Pat Regan		✓
Frank Hazelbaker, Chairman	✓	

Margie Nichols  
Secretary

J. Hazelbaker  
Chairman

Motion: HB 486 Do Pass as amended  
(concurrent 9-1)

(include enough information on motion--put with yellow copy of committee report.)



# STANDING COMMITTEE REPORT

..... March 8, ..... 19 79 .....

MR. President:.....

We, your committee on ..... Business and Industry .....

having had under consideration ..... House ..... Bill No. 486 .....

Moore (Goodover)

Respectfully report as follows: That ..... House ..... Bill No. 486 .....

third reading bill, be amended as follows:

1. Page 4, line 1.  
Following: "misdemeanor"  
Strike: "FELONY"  
Insert: "misdemeanor"

And, as so amended

BE CONCURRED IN

~~UNANIMOUSLY~~

*Ch.*

# STANDING COMMITTEE REPORT

March 2, 19 79

MR. President:

We, your committee on Business and Industry

having had under consideration House Bill No. 334

Hirsch (Blaylock)

Respectfully report as follows: That House Bill No. 334

BE CONCURRED IN

MESSAGE *Bl.*

STANDING COMMITTEE REPORT

March 8, 1979

MR. President:

We, your committee on Business and Industry

having had under consideration House Bill No. 325

Moore (Hager)

Respectfully report as follows: That House Bill No. 325

BE CONCURRED IN

COPIES: J.A.

[Handwritten signature]

Chairman