

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 5, 1981

SUMMARIES FOR

HOUSE BILL 318 -

Introduced by Rep. Vincent, prohibits a public utility from raising rates for a state department, agency, office or university unit or for a school district, city, town, county or other tax-supported entity while that entity is operating under a previously approved budget. Utility rate increases allowed during a budget period will not become chargeable until the beginning of the next fiscal year. The bill also requires advance notice of utility rate increases.

HOUSE BILL 339 -

Introduced by Rep. Daily and others, allows the state or a municipality to exercise its right of eminent domain to take a workplace, which had employed 250 or more persons during the past five years. The public policy would permit the state or a municipality to decide on the best utilization of a workplace to offset the adverse effects of the closure.

Minor language change needed to conform with other usage:

Page 2, line 1, and page 10, line 11, "closing" should be changed to "closure".

## HOUSE BUSINESS AND INDUSTRY COMMITTEE

Rep. W. Jay Fabrega, Chairman, called this meeting to order at 8:00 a.m., February 5, 1981, in the Old Highway Building Auditorium, Helena. All members of the committee were present except Rep. Darryl Meyer who was excused. Bills to be heard were HBs 318 and 339.

## HOUSE BILL 318 -

REP. JOHN VINCENT, House District #68, Bozeman, sponsor, said HB 318 addresses a very real problem. Whether this bill is the ideal solution to that problem, is questionable, but it would be a positive step in that direction. The problem is that rate increases in all of the utility areas come along at just about any time. Public entities, school districts, county and city governments, and the university system are subject to those utility rate increases just as is any other entity. Those public units of government or education budget on a yearly basis, or in the case of state government, every two years. Their problem is that when a new increase is passed on by the Public Service Commission, they have to meet that obligation within their current budget, and that means they have to take money from somewhere else. That puts a tremendous strain on the system.

All the units of the university system have had to come in this session for very large supplementals to get enough money to get through this year and pay for their utility bills which apply to electricity rates, and to phone rates as well.

HB 318 is intended to require that advance notice of those rate increases be given so that a school district or the city-county government will have the opportunity to budget for that expense. If notice is not forthcoming as required in the bill, then that entity of government would be allowed to pay those charges within the next budget year. In the case of state government, that might involve more than just one year because of two-year budgeting. It allows that entity to plan ahead and adopt the necessary budget for those rate increases rather than having to meet that obligation in the current budget year which is very difficult to do.

He expected it would be argued here that under the present system there are ways to determine far enough in advance whether or not a public entity will be subject to rate increases. There are formulas and inflationary guidelines to use as methods to help determine that. But that is only part of the solution. It is never known how great the increases are going to be. We don't really know what they may or may not do with the price of natural gas. On top of being able to predict what rate increases might be, we have the additional burden that it is a very complex process, very difficult to figure out and so local entities of government especially, may not be aware of all of the intricacies involved in the rate making process and how they might be affected in the near future.

Under HB 318 advance notice would be given by the Public Service Commission (PSC) alerting entities of government that they would be facing an increase and they could budget accordingly.

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He hoped the opposition would not use the argument that if this is adopted, the residential customer will have to pick up the tab. That is not the question here. Under the provisions of this bill the revenue will be forthcoming to the utilities involved, and the utilities would be able to handle that for the necessary period of time. He does not want the residential consumer hurt, and that obligation would not have to be imposed under HB 318. He hopes this bill addresses the problem in a positive way and that it will help local governments improve their budget process without in any way shirking their responsibility to pay the obligation.

MILTON NEGUS, Superintendent of Schools, Bozeman, addressed this issue as a public official who is involved with the present circumstance and as it exists so the committee would get a clearer picture of how it directly affects schools today. Until very recently he would not have been very excited about supporting a bill of this nature. However, in this period of time in which we find ourselves where rate increases are being imposed upon public entities well over 100% within a budget year, it certainly gets attention. In the past rate changes in a period of a year were 5-10% which it was possible to accommodate from contingency funds. But with the kind of increases being experienced now through the action of the PSC, and they do not quarrel whether they are appropriate or not and assume they are correct, they can be as high as 100% or more increase in some rate changes to schools as users.

He cited as an example a rate increase imposed by Mountain Bell August 19 which increased phone charges for School District #7 by \$2,005.39 per month. They had not been advised of such an increase and it had not been budgeted for, and they don't have the funds to pay it. It was an 87% increase that had not been anticipated.

In Billings, District #2, according to Saturday's Gazette, will have a whopping 260% increase in phone charges. This is the time of year that they have to prepare for what might happen next year, and to prepare for what is to be put in their voted levy. It is a guessing game since they never know what they should put in budgets in anticipation of rate increases. This illustrates the point HB 318 attempts to relieve.

Billings district raised its budget from \$125,000 to \$449,000 in anticipation of the increase of 260%. This questions the credibility of schools to even estimate that, and that is why he was talking about an accountability. When questioned about the increase, a Ma Bell representative declined to comment on specifics while the company's rate increase request was pending before the PSC. Montana Power, MBU, the phone company will not advise what rate increases they hope to obtain. The schools have to get it into their special levies, but they are unable to find what their needs are going to be.

They solidly support HB 318 because it will require those utility companies that supply services to public agencies to make advance announcements prior to the date for setting budgets. They need to know in the next two weeks what to anticipate for in the next two years' budget for these utilities. They refuse to advise them, and there is no way they can get an estimate from any of these organizations of what should be put in their budgets. He feels this is no way to deal with the public in terms of accountability.

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They are not debating whether it should be paid, they are just saying it should not be imposed after budgets are set. They are very much in support of the intent of HB 318. It may need some wording changes, but the intent is clear and it is highly critical to any public agency.

CHAD SMITH, representing the Montana School Board Association, is in support of HB 318. He thought Mr. Negus had set forth the argument of the school districts for this bill very well. Although the bill relates to governmental agencies, they were especially concerned with its application to school districts. School districts don't have the opportunity as do individuals and private business to make the immediate adjustment in prices for their services to immediately meet their overhead costs. School districts are bound by the annual budgeting process, and for this reason they need advance time in order to determine how much they are going to have to have to run the school for the year.

The forty-day advance notice requirement in advance of the regular school elections as shown on page 2, lines 12-15 would put them back into February, and this is the time of the year that budgets are being drafted and all costs are being estimated. If they had that much lead time, they would be able to include a firm estimate of utility rate increases in the budget.

They strongly support HB 318 and point out that school districts do not have ready reserves set aside to meet these adjustments. The budgets are pressed very closely, and after collective bargaining all the costs are worked into the budget and there isn't any money left when these unexpected costs arise for an overhead expense such as the utility rates. Something else must be sacrificed. This is an emergency they hope to avoid.

JESSE W. LONG, Executary Secretary for the School Administration of Montana, said they are proponents for HB 318. They feel in this day and age of extremely tight school budgets that projection of information concerning utility rate increases is very critical to the budgeting process. Without protection prior to the budgeting process schools end up in a situation of being unable to cope with these increases other than taking them away from instructional programs for students. Contracts for salaries have already been made for the year. They lock in 80% of the budget for school districts, and because of that, any increases in utility rates during the course of the year due to budgeting periods means that students have to suffer. Out of the 20% that is tied up in books, materials the teachers use is where these utility increases must be paid from. They ask for a do pass on HB 318.

TED WHITLING, Communications Division of the Department of Administration, Administrator, is responsible for telephone service in the state government. He agrees that the assistance that would be derived in budgeting through this bill would provide a great deal of help for governmental utilities. His budget for the next two years is before the committee, and they are anticipating increases. Based on the \$30.6 million increases requested, somewhere in the neighborhood of \$414,000 would be needed for the state operations. This is a guess.

He suggested (1) the utility companies be required to notify the effected organizations of this rate increase within ten days after filing. Right now

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they get notification from the PSC after the utility rate has already been put into place, even though there is a delay. He just received a notice of an increase in his phone rate, but as a residential customer it is not too hard to understand, but as a business customer it becomes quite a complicated affair.

(2) This notification would include a cost evaluation of the effect upon the present system if a 100% increase is granted. He thinks that if the utility companies would provide the business user or the government entities a basic idea of what this increase is going to cost them on proposed systems, they rational decisions can be made.

#### OPPONENTS -

JAMES HUGHES, representing Mountain Bell, agreed with Mr. Negus that it is a guessing game, and that is their problem also. The last two rate increases they filed took 2 years for the rate to be established for the first one filed, and it took 18 months from the time of filing to the time it was finally resolved for the second one. There is no way the company knows exactly which of those rates are going to be granted, and certainly not how much of an increase in any of those specific areas until the final order is provided by the PSC.

When they file a rate case, they do offer the fact that they are asking for certain rates and what these rates are being requested to be. The PSC creates a listing of satellite hearings across the state, but one of the problems has been that very few people have showed up at these hearings to find out exactly what is involved.

They provide over 2,000 different items to try to explore and evaluate and provide adequate notice to all the customers which can provide a specific identification on unknown amounts they are as yet to receive. The combination of any of the 2,000 elements might affect a particular customer, and is becoming very overwhelming as far as the kind of notice you can provide in advance. See EXHIBIT A.

An explanation of rate increases, EXHIBIT B, includes a phone number for customers to call to find out the impact of what the rate increase will have on their bill.

They have a basic problem with the approach used in HB 318. The bill is inadequate to address the problem. He encouraged the committee to reject it.

MARK A. CLARK, Montana Power Co., Butte, attorney, opposes HB 318. He would echo what Mr. Hughes said. They recognize there is a problem with the school districts and other entities that are publicly funded regarding rate increases that come along. They are difficult to control because they can't tell school districts exactly what the costs are going to be. These cannot be predicted. They can give notice to the public entities, as they are going to do in the future, of their filing agreement; and that notice is going to include the utility's proposal for getting that rate increase to the people.

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A PSC ruling requires that utilities notify public entities of hearings so they will have an opportunity to participate in the proceedings. The problem is one of paying the bill. He didn't think any utility is going to terminate services to a school district or other public entity because it can't pay the bill until supplemental appropriations are made. It is simply a matter of deferring the bill until they are in a position to pay it. They are like utilities in that they have no ability to automatically adjust prices upward when their costs go up.

He feels this bill does not really get at the problem. This committee should recognize the rules that are now in effect - that the entity will receive notice of the filing of rate increases.

GENE PHILLIPS, Pacific Power and Light, Kalispell, representative, concurs with the comments already made by other opponents. One of their problems is that they have to file an application for a rate increase based on an historical testimony hearing. They will be 18 months behind in charging the increased rate from the base year those increased charges were based on.

It would be impossible to notify the public entities of the rate increase, the percentage involved, so far in advance because they simply do not know. He feels confident with continued increase in inflation, they will be asking for an annual increase based on the previous historical test year and that the rate case will be filed from June to August. But as to percentage increase they will apply for, it is impossible to tell. They don't know what their revenue requirements are going to be, and they don't know at that time how they are going to spread it among the various classes. Even if they did know, they have no control over what the PSC is going to do in respect to spreading their revenue efficiency around from the various plants.

They have no idea what the PSC will do. They recognize the problem and are sympathetic to it; however, the best they can do is to let the public entities know when they submit a request, how much it is for, but it will be several months later before they know how much they are going to request from your particular class.

GENE PIGFION, Montana Dakota Utilities, Glendive, said immediately upon filing for a rate increase with the PSC their managers have a list of people in public service and institutions that they contact. They explain to them what the increase is going to be; they tell them why and how it is going to affect their particular school or hospital, etc. This has been working out very well. They have been very pleased to see them come in, and they call to ask if any rate increases are planned. They are not having any problem with this in their area. So they are opposed to HB 318.

DENNIS LOPACH, attorney representing Butte Water Co. serving Butte and Anaconda, and the Mountain Water Co. serving Missoula and Superior. His clients view this problem, essentially, as a matter of working out budgeting methods that will allow the governmental entities to take account as best they can of the projected utility rate increases. There will always be problems with arriving at estimates that are accurate, however, the problem is not great enough, in their opinion, to justify deferring the increase as it affects governmental entities. The problem is basically one of notice, and if the governmental entity feels they are not getting adequate notice, they can petition the PSC to adopt rules that will improve the kind of notice they get.

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If the government bodies represented here are willing to work with the utilities and arrive at an estimate, they would be well received and accepted in coming up with a fairly accurate estimate.

BILL OPITZ, Executive Director of the Public Service Commission, recognizes there is a very real problem here with the school districts, for government agencies to protect utility costs, both state and local. The Commission will make themselves available to the committee. They would like to appoint a sub-committee to study the problem and perhaps arrive at some solutions.

One of the problems with this bill is that the state presently puts together the budget in August for 1982 and 1983. They put their budgets together in 1980 for fiscal years 1982-83. Had the state not been given notice 40 days prior to August, the local city water and sewer would not go into effect until July 1 of 1983, and during that time a municipality would not be raising sufficient revenues.

Commissioner Howard Ellis has suggested some type of indexing approach that the taxing authorities themselves be given the ability to index utility bills so they can raise the additional revenues if an increase were granted.

#### QUESTIONS -

Rep. Fabrega - If the notice is given and the rate increase takes place during the year, then those entities should pay the increase, and if notice is not given, they will be able to wait until the beginning of their next budget year to pay the increase? Rep. Vincent - That is true.

Rep. Andreason - What policies are there now for the PSC to give notice of rate increases? Mr. Clark - The commission adopted rules this past year for what is the Public Utility Rate Policy Act of 1978 which requires the PSC to adopt rules requiring electric utilities to give information to consumers in regard to filing rate increase requests. It is sent to all customers stating that the filing is being made, what the amount of the increase is, and what the utility proposes as far as spreading the increase over a period of time. In addition, before the hearing another notice is given. The PSC holds hearings all over the state and very few people show up. Can you see any solution to the problem of scheduling of budgets to fit unknown rate increases? There is going to be requests for increases made annually.

Rep. Vincent closed saying everyone admits there is a problem, everyone is sympathetic, but no one really thinks there is much that can be done, except voluntarily. He questions whether that is really the case. He would be all for solving this problem voluntarily and cooperatively. Possibly it can be but he would like to see some tangible evidence of that before this legislation is jettisoned. The reasons why the current system is obviously not working need to be addressed. One major point he wished to address.

The utilities have come in here today, especially Mr. Clark and Mr. Phillips saying that in essence the utilities have the same problem that the school districts have as do the county and city governments. They cannot adjust either. They are here at this legislative session trying to improve their position in regard to that. This bill is doing what they are trying to do themselves. They are talking about at least once a year increases.

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They are trying to better their position when it comes to utility rate increases. Consider what would happen, after listening to this language, to not only residential customers but entities of government, too: "A public utility may at any time within two years from the entry of a final order of the Commission setting a rate and charges in a general rate case, may file a complaint based upon known and measurable charges in an item of cost expense. The Commission shall adjust its rates and charges on a uniform basis to reflect such charges based upon its findings contained in the final order previously entered. Hearing upon such complaint is upon notice limited to issues of known and measurable charges and shall be conducted on an expedited basis not to exceed three months from the filing of the complaint or application."

What this means is that after a utility rate has been granted, the utility can come back in at any time and immediately get a hearing and immediately make adjustments to that rate increase that they may have gotten just a few months before, and then apply those rates to residential customers and governmental customers as well, almost instantly. There is no nine months there, there is three months. How can an entity of government adjust to that? It would be requiring more of them than is required now. That is going to be dramatically increasing the burden on the budgetary process of the governmental entities. He has been through this before and knew the idea of class discrimination and passing these charges on to consumers would come up.

He doesn't see it that way - are not talking about asking residential customers to bear this financial burden, but are simply asking that those rates be deferred until the next budgetary process so the public entities can meet their obligations.

He would remind the committee that public utilities are granted a public monopoly, and that is done for a variety of reasons, but he thinks that once that monopoly is granted, they have an obligation to meet the needs of the public. He thinks that because taxpayers pay at home for their private dwelling, and they pay for the public entities as well as taxpayers, then public utilities have the responsibility to try to accommodate the needs of the taxpayers and the public entities of government in resolving a problem like this. He thinks HB 318 is a good start and one way or another we can develop something that addresses the problem.

HOUSE BILL 339 -

REP. FRITZ DAILY, House District #87, Butte, sponsor, introduced HB 339 as a result of the closure of the Anaconda Smelter, and the shutdown of the Milwaukee Railroad. His theory is that companies or corporations like Anaconda Company, Montana Power Company, railroads are granted the power of eminent domain to take over property to expand their operations, and that this should also work in reverse. The state or a municipality should also have the power of eminent domain to take over a work place that has been closed down rather than let it sit there and rot, and that is probably what is going to happen to the Anaconda smelter.

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HB 339 will allow the state or the municipality in which the property lies to use the workplace for whatever purpose they so desire. At one time there was a fellow who had anticipated using the Anaconda smelter to dispose of municipal waste. He felt that he could have converted that smelter with a minimal investment and it could have been used for that purpose, but Anaconda would not donate that facility.

This bill would also allow the municipality or the state to take over all the real and personal property in the facility they would need to operate the plant. Article 2, section 29 of the Montana Constitution requires that private property shall not be taken for public use without just compensation. This is a major problem with HB 339. Anaconda Company or Atlantic Richfield have stated over and over that the smelter isn't worth anything. If it isn't worth anything, why can't it just be taken over.

Rep. Daily went over the bill section by section, explaining it in detail to the committee. This bill would be effective on passage and approval.

DONALD JUDGE, Montana AFL-CIO, said one of the most commonly heard words during the campaign in the November election was "jobs". This bill is in a small sense taking a small step toward protecting the workers in those jobs. We urged HB 339 be amended in the areas addressed in EXHIBIT A.

They would be happy to assist this committee in working over this bill and urged it be given a Do Pass recommendation.

REP. RICHARD MANNING, House District #35, Great Falls, supports this legislation because in the Great Falls area many people have suffered due to a lack of jobs. The real impact is going to hit this coming summer and fall. Something should be done to protect the people in the Black Eagle area from being left with an eyesore that may just sit there and decay, and which could be used for some good manufacturing purpose in the future. He supports HB 339.

#### OPPONENTS -

FORREST BOLES, President of the Montana Chamber of Commerce, Helena, said HB 339 did scare him, and he has some concerns about it. He can understand the concerns that the sponsors of the bill had with regard to the Anaconda closure and the effects it had on Great Falls, Butte, and Anaconda. But, like so many pieces of legislation, it is directed at a specific problem, and then those remedies are spread throughout the economic system in the state and have a negative effect across the state. There are small businesses that qualify as small businesses that have 250 people working for them that would be affected by this bill.

This is a considerable departure from the normal use of eminent domain in municipalities acquiring property. There would be a legal, if not constitutional, challenge that would be made to that kind of activity.

Another question is in regard to the tax base. Obviously, a closed plant does generate some kind of tax revenue. If it were publicly owned, it would not. He questioned the term permanently closed. It is possible that the housing market may improve and the Evans Products Co. in Missoula could be reopened.

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A good many of those people still are working and the impact isn't as bad as anticipated. The foundry was acquired by private enterprises that have an idea about continuing its operation and he is aware of their dedication and concern. A favorable arrangement has been made with ARCO.

The concern for economic development and concern for jobs and opportunities for Montanans is very definitely here in the Legislature. One of the problems is that Montana has had over the years is that it has an image of being anti-business and that is a fact, that is the impression that is given. This piece of legislation would further put forth that image of being anti-business. There are a good many pieces of good legislation in this session that will help the economic growth of this state and he would encourage the committee not to pass something like this that could destroy that positive step.

#### QUESTIONS -

Rep. Robbins - How do you value a property like this when it is built for one specific purpose? Mr. Sullivan - There is a kind of technical appraiser who is an industrial appraiser who works in this field. It is a special purpose industry. Would be entitled to bring in those appraisers for setting a value on the plant.

Rep. Schultz - Would revenue bonds be sold before buying? Rep. Daily - They would have to be sold for what the actual cost would be for that plant. Then they would own the plant - would have to pay for it some way.

Rep. Vincent - Is it as simple as this. If this doesn't pass, the people in Anaconda don't have to take advantage of it, but it would be available to them. Otherwise that facility might just stand there and never be used.  
Rep. Daily - Exactly.

Rep. Robbins - What about the tax base? They would certainly not want to pay those taxes. Rep. Daily - They are paying some taxes on those buildings, property taxes. His personal opinion is that the Atlantic Richfield Company is a totally irresponsible company, and feel no responsibility to anyone. They would probably just as soon go in and knock it down and not pay any taxes.

Rep. Fabrega - If you anticipate the issuance of revenue bonds to pay for the property, are you familiar with the fact that unless the revenue bonds have some possibility of being repaid, there is no market for them? The other option is pledging the good faith on the taxable ability of the state or community.  
Rep. Daily - Has full faith in taxing powers.

Rep. Ellison - When a property is no longer in use, does the company have the same tax base as when it was operating? Rep. Daily - No. Not to his knowledge.

Rep. Daily closed saying when he received the fiscal note it was for \$118 million - guess it is the only bill that would have more impact than the appropriation bill! This bill would apply to the Outlaw Inn in Kalispell. He guessed he would want it included. What do you do with the building. It employs 250 people, and this bill would apply to a small business such as this.

What is a permanent closure? The people in Anaconda, Butte, Great Falls would love to know what a permanent closure is. Anaconda has said it has just

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suspended operations. They have done that for whatever reason, probably to keep the water rights and whatever else is associated with that facility. They have stated over and over again that they are not going to reopen. He doesn't know what they are going to do with it.

The anti-business climate we have in Montana may be true, but when you have to deal with companies like Atlantic Richfield, it changes any conservative opinion you may have. This company is totally irresponsible. They have no care for this country, this state, for our own community, they are totally irresponsible.

He offered amendments intended to include workplaces such as the Burkley Pit, mines and railroads.

He introduced HB 339 on his own and did not ask anyone to come to testify as a proponent. Maybe there is more to this bill that he doesn't see since there are not a lot of opponents.

Rep. Fabrega - That concludes the hearing on HB 339. If the members will go back to Room 129, we need to hold executive action on some bills.

#### EXECUTIVE SESSION -

HOUSE BILL 262 - Rep. Ellerd moved HOUSE BILL 262 DO NOT PASS. Rep. Robbins made a substitute motion that HOUSE BILL 262 DO PASS. The following discussion ensued.

It was mentioned that unless this is passed, there will be another round of legal problems. Rep. Andreason thinks the bill is too broad. Rep. Bergene said people who hammered out this integrity act felt they had something.

Rep. Fabrega - According to Senator Smith, it was the intent that any property owned by an electric supplier - headquarters, substation, etc. - those things that would be considered basic to their operation, they should not have to buy the power for. They could run a line to serve themselves even if their buildings were in the territory of another supplier. A subdivision is created by a company to provide housing for their employees, but it isn't their intent to keep the houses. It is an isolated situation, but it is their intent to develop and sell that business at another time. It could exclude company owned housing.

Rep. Ellison - The concept is just what the title says. Any time the Co-ops started to get a territory that was developing a little bit and got to be profitable, they came in and said they wanted to have that. The intent was to do away with these continual court cases over what who is to get. According to Senator Smith the word 'premises' appears throughout the title, but not in this section. It is whether we want this to be enforced in the future or not. The cases now pending in court will be decided in court. If the utilities win this case in court, it will encourage other utilities to institute the same kind of practices, and it boils down to whether you think it is fair or not. Premises means a building, residence, structure as described in 69-5-110.

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Rep. Robbins - Hope not to get into a series of these problems again and can see where we are going. All these coal mines that are operating - it is going to be a running battle again. He sees no reason why the power company should go in there with their own lines.

Rep. O'Hara - Thinks it is an encroachment on private property. They own the property. Rep. Robbins - They own the property right now, but as soon as they get a house on it, they want to sell it. They have no desire to do that any more.

Rep. Harper - Once the lines are in place, you don't take them out.

Rep. Ellison - Both the co-ops and utilities are against that. Once lines are in place, it is a waste and duplication of service. Have to decide before they put it in.

Rep. Jacobsen - It was pointed out that Senator Smith was the chief sponsor, but this is not quite true. Smith's bill was killed. Montana Power wrote the amendment that Senator Smith carried through the house. It was kind of a compromise so that the REAs wouldn't reconsider the whole thing.

Rep. Robbins - Unless they are actually employed by the company, if they own their own home, they would get the 25% rate. Rep. Fabrega - If they are individually metered, they no longer come under the concept of premises.

Rep. O'Hara - It's important that if MPC hadn't developed, the co-ops would stay the same. They are the ones that put in the money necessary to put it there. Even if it is sold off in the future, he thinks they have a right to do that.

Rep. Pavlovich - The power was there. The co-ops came in there in 1937. The reason the co-ops were started is that MPC wouldn't go out to anywhere unless they could sell to a group of buildings. If it were up to MPC, there wouldn't be much development. Co-ops had to be guaranteed they could serve farmers and other businesses. In order to keep co-ops viable, they have to pick up these communities.

Rep. Ellison - The powerline that supplied Colstrip went six miles from his house, but he went without electricity for 20 years.

Rep. Robbins - Service to consumers is talked about in 69-5-105. Rep. Jensen - This bill is addressing that very problem; we have to center our attention on "was this development by Montana Power essential to Colstrip?" He thinks they are entitled to furnish them with power and later on it is good for them to sell. Is it necessary to the development of Colstrip?

Rep. Harper - There is a loss of power from transmission. We are talking about not allowing a person right across the street with no line loss to serve. In the case of some REAs, we are talking about line loss from transmission from Wyoming.

Rep. Fabrega - MPC has created the need because of development of Colstrip. If that same growth was the cause of coal mining, the REA was there first and should provide electricity if it were for the mines.

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Rep. Ellison - Are you aware the co-ops are going to own part of the output from Colstrip, as are a lot of companies who are involved in this?

Rep. Ellerd - This is a pride situation. He doesn't think it is a dollar issue as much as it is a principle.

Rep. Schultz - Supports Montana Power for building their own homes. In the days when Montana Power went two miles from homes, they couldn't get any power to their homes.

Rep. Metcalf - He is concerned with looking down the line to future developments across Montana where rural electric co-ops were serving them well when MPC wouldn't service those areas. Without some protection for REAs, the big companies are going to come in and build houses, and if given the authority, they will service those areas and take away from the services of REAs. We need to protect the territorial integrity of the REAs.

Rep. Robbins - Sees no real big problem with that if they are used for only their own plants. Homes are not a part of the plant.

Rep. Ellison made a motion to reconsider previous action and to just keep HB 339 in committee. Motion carried 9-8.

Rep. Vincent moved that HOUSE BILL 262 BE TABLED. This motion carried 16-2. Reps. Ellerd and Pavlovich voted No.

HOUSE BILL 360 - Rep. Metcalf moved HOUSE BILL 360 DO PASS. Rep. Harper moved to amend page 3, following line 19, lines 20 and 21 be reinserted. Motion was unanimously adopted.

Rep. Harper further moved to amend on page 1, line 6 following "beer" insert "table". Motion unanimously approved.

Rep. Metcalf reworded his motion to HOUSE BILL 360 DO PASS AS AMENDED. Motion carried 15-3 with Reps. Ellerd, Harper and Pavlovich voting No.

HOUSE BILL 321 - Rep. Wallin moved HOUSE BILL 321 DO PASS. He further moved to amend on page 7, lines 13-24, all language on those lines to be stricken. Motion was unanimously adopted. As a cleanup amendment, page 7 (a) was stricken following "6". After a lengthy discussion and explanation of the various parts of HB 321, Rep. Wallin reworded his motion that HOUSE BILL 321 DO PASS AS AMENDED, and the motion was unanimously adopted.

Meeting adjourned at 11:50 a.m.

  
\_\_\_\_\_  
REP. W. J. FABREGA, Chairman

  
\_\_\_\_\_  
Josephine Lahti, Secretary



AMENDMENTS FOR HB 318

1. Page 2, line 13.

Following: "notice"

Insert: "by the public utility"

2. Page 2, line 17.

Following: "notice"

Insert: "by the public utility"

3. Page 2, line 19 through page 3, line 14.

Following: ".17-7-121." on line 19, strike the remainder of that line and the entirety of lines 20 on page 2 through line 14 on page 3

4. Page 3, following line 14.

Insert: "(b) Payment of any portion of a utility rate charge representing an unnoticed increase of rates may be postponed by a public entity referred to in subsection (3) (a) until budget period, when accrued interest at the rate of 10 percent per year will be due on the postponed payment."

TESTIMONY OF JAMES HUGHES FOR MOUNTAIN BELL

IN OPPOSITION TO HOUSE BILL 318

\* \* \* \* \*

This bill in its application suspends an effective rate increase as to governmental units during a budget or fiscal period unless "notice is given in advance".

Necessarily the Montana PSC would have determined that the governmental units were not paying their fair share of the costs for services received from a public utility, yet the PSC would be prohibited from applying uniformly to all ratepayers, including governmental units, the rates it had determined to be fair and equitable. This necessarily would result in unconstitutional and illegal discrimination between classes of customers since there is no reason why governmental units should be treated any differently from other ratepayers for the purposes of paying the costs and expenses of utility service.

As a practical matter there is a possibility that the Montana Public Service Commission would suspend all rates as to all users in order to avoid discrimination as to classes thus denying a utility rates which had been found to be fair and equitable thus resulting in confiscation as to the utility.

Another problem with the bill is that it does not make it clear what the "notice" must constitute. Is it sufficient that the governmental units know that there is a pending rate case and that the public utility is asking for a specified increase as to specified services? If this is true then governmental units have in the past received adequate notice.

Thus, the bill would in effect work a confiscation or deny to a utility on a temporary basis a fair rate of return on its investment in plant and facilities and in the long run shift the costs which should have been borne by governmental units to other ratepayers in an unreasonable and arbitrary manner.

Cost of services is also a factor. The Public Service Commission of Montana has repeatedly stated that those who use utility service should pay for it and that the cost should not be shifted to other users. If the Public Service Commission grants a rate increase as to a type of utility service this is an indication that the rate for that service is too low and that the new rates ought to be immediately implemented. If there is a suspension of implementation as to one group of ratepayers (governmental units) that ratepayer obviously is continuing to shift its costs either to other ratepayers or to the utility or to both. This raises constitutional questions with respect to the validity of the bill.

There are many practical problems with the bill. For example, how does the Public Service Commission or the utility itself separate out or treat individually its various governmental customers. The bill does not prescribe what notice is to be given or how it is to be given.

As a practical matter the solution to the problem which this bill seeks to address is notice to governmental entities which is already being providing and can be further refined and also an awareness on the part of governmental entities and their business managers that they must follow the proceedings before the Public Service Commission;

must obtain copies of rate requests (which can be furnished by the utility); and must adequately address their budgetary problems in advance in light of public utility rate proceedings which are a matter of public record.





Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59601  
406/442-1708

Room 100 "Steamboat Block"  
616 Helena Ave.

*Donald Judge*

I am here today for the Montana State AFL-CIO to speak in support of the intent of House Bill 339. We have all seen at first hand the terrible and destructive results of plant closure in the recent shut-down of the Anaconda Company's smelting and refining operations in Montana. Some of the effects can be measured in dollars and cents; the loss of wages to families, the loss of business on Main Street, the loss of tax dollars to the city, county and state.

The destruction in peoples' lives cannot be measured in cold facts and figures. Most of these people are members of families who have lived in Anaconda for generations. They have built a community, built schools and churches, established life-long friendships, and their roots go deep in Montana soil. Many will be forced to move, to sell their homes at a great loss, to leave Montana, to begin the difficult task of finding a new job and establishing themselves in a new community.

We agree that the state or affected community should have some kind of authority to allieviate the suffering involved in plant closures.

We are, however, concerned about the provisions of this bill to allow the state or community to excercize the power of eminent domain to take certain workplaces. AS David Lewis, State Budget Director, points out in the bill's fiscal note, the bill does not indicate how the business would be run once it was aquired. He states that there may be practical and legal problems with a governmental body running a business. We agree with this assesment, and we would like to offer some amendments which would help make



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the bill more practical.

We ask for consideration of the following amendments:

1. To allow the state or community to turn the workplace over to the workers, subject to certain conditions. A 1979 National AFL-CIO resolution addresses the problems of plant closure, and " advocates programs to support troubled businesses, including incentives to promote employee ownership."

2. To allow the state or community to sell the workplace to another company which could demonstrate its ability to run the workplace and provide a similar number of jobs.

3. To allow the state or community to form a private non-profit corporation to run the workplace.

4. To give legal authority to the state or community to run the workplace in the event that none of the other options are feasible.

If Montana had had this kind of law in the past, it is possible that the state could have kept the Milwaukee Railroad running and the Evans plant in Missoula open.

We would also caution that the state or community should not be forced to acquire a workplace which is essentially a white elephant, when such an acquisition would not benefit the people of the state, but simply serve as a company relief measure.

All Montanans must work together to help the people and the communities which suffer from a plant closure. House Bill 339, in a more workable form, could greatly assist in that endeavor.



**Mountain Bell**

January 15, 1981

Dear Mountain Bell Business Customer:

As we advised customers in their January bills, Mountain Bell has asked the Public Service Commission for approval to raise most telephone rates in Montana. The increase, I believe, is absolutely necessary to offset the higher costs of doing business and to assure that we can give you, our customers, the telephone service you want and expect in the future.

Nobody thinks a price increase is good news, but we do not apologize for our rate request. We have worked hard to overcome rising expenses through stringent cost controls, use of new technology and increased productivity. These and other actions have helped us maintain service in the face of double-digit inflation, but they are not enough.

We are proud of the fact that compared with the costs of other goods and services, telephone service is a real bargain. Overall, telephone rates in Montana have gone up only 21 percent since 1970, while the cost of nearly everything we use to provide telephone service has more than doubled and so has the cost of most other goods and services.

Our proposed rates are subject to PSC approval and information about specific changes is on file with the commission. Commission hearings on the proposal, tentatively set to begin June 2, will be announced in the news media. Customers may comment on the proposed rate changes by writing the Montana Public Service Commission, 1227 11th Avenue, Helena, or the Montana Consumer Counsel, 34 W. 6th, Helena.

While the proposed increase averages about 25 percent overall, rates for specific services may increase more or less than that. This information outlines proposed changes. Customers with questions about how the proposal could affect their bill, can call our toll-free business information line 1-449-4323 (in Helena call 449-4323).

Sincerely,

A handwritten signature in cursive script, appearing to read "R. A. Remington".

R. A. Remington  
Vice President and Montana  
General Manager

# Rate proposals affecting most business customers

## Basic monthly telephone service

Basic monthly rates for business customers would increase and charges would be separated into a line access charge and a telephone set charge. The \$1 monthly set charge would apply if the customer uses a Mountain Bell telephone. Rates for one-, two-, four- and eight-party service would increase.

The chart below shows present and proposed business rates in various service categories. (The communities are representative and customers can determine the proposed increase for their community by calling their Mountain Bell business office.)

Rate Group	One-Party		Two-Party		Four-Party		Eight-Party	
	Present	Proposed*	Present	Proposed*	Present	Proposed*	Present	Proposed*
1 (Lavina)	\$10.90	\$11.99	\$8.72	\$13.43	\$7.63	11.87	\$5.81	\$8.77
2 (Cascade)	12.19	13.41	9.75	14.83	8.53	13.10	6.50	9.65
3 (Baker)	13.48	14.83	10.78	16.25	9.44	14.33	7.18	10.53
4 (Hardin)	14.77	16.25	11.82	17.66	10.34	15.56	7.87	11.41
5 (Havre)	16.06	17.67	12.85	19.05	11.24	16.80	8.56	12.29
6 —	17.35	19.09	13.88	20.46	12.15	18.03	9.25	13.17
7 (Butte)	18.64	20.50	14.91	21.87	13.05	19.26	9.94	14.05
8 (Gt. Falls)	19.93	21.92	15.94	23.28	13.95	20.49	10.62	14.93
9 (Billings)	21.22	23.34	16.98	24.70	14.85	21.72	11.31	15.81

\*Includes \$1.00 Basic Telephone Set Charge

Companion line or rotary rates have been increased from 110 percent of the one-party business rate to 125 percent to more nearly cover the cost of providing the service.

## Long-distance

Although long-distance revenues would not increase under the company's proposal, the long-distance schedule would be changed to make it easier to understand and use.

All calls would take basic Direct Dialed rate for distance and length of call. Additional service charges would be added to cover cost of operator assisted calls.

### Proposed Rate Table

Mileage	From	To	Direct Dial Station to Station	Credit Card Station to Station	Operator assisted station to station, collect, third number billing	Operator assisted person to person
			First minute			
			Each additional minute			
	0—	10 miles	.12			
	11—	16 miles	.16			
	17—	22 miles	.20			
	23—	30 miles	.26			
	31—	40 miles	.32			
	41—	55 miles	.35			
	56—	70 miles	.38			
	71—	124 miles	.41			
	125—	196 miles	.44			
	197—	292 miles	.46			
	293 and over		.48			
				Add 30 cents per call	Add 75 cents per call	Add \$2.35 per call

Time of day discounts for evening, night and weekend calls would remain the same. Discount rates would apply to basic mileage/minute portion of all calls, but not to operator assisted charges.

# Rate proposals affecting selected business customers

## Extensions

These rates are already separated for line access and telephone set charges. Proposed rates would lower the line charge and increase the set charge to more nearly cover the cost of each service.

	Present		Proposed	
	Set	Line	Set	Line
Rotary dial telephone	\$ .70	\$1.30	\$1.00	\$ .30
Touch-Tone®	1.10	1.30	2.15	.30
Trimline® rotary	2.00	1.30	3.00	.30
Trimline Touch-Tone	2.50	1.30	4.00	.30

## Service charges

Service charges for connecting or moving a phone would increase. Charges apply only to the service provided and are designed to more nearly cover the cost of providing the service. Here's an example of these business charges for non-key telephones.

New service:	Present	Proposed
Service ordering	\$13.00	\$55.00
Premises visit	3.50	5.00
Central office line	13.00	22.25
Inside wiring	10.50	16.00
Jack	5.20	5.50
Station handling	3.00	2.85
<b>TOTAL</b>	<b>\$48.20</b>	<b>\$106.60</b>

## Maintenance of service charge

Mountain Bell is also proposing a rate structure change and price increase for the service charge on visits to the customer's premises when the trouble is in customer provided equipment. The proposed charges are designed to cover the cost of taking the repair call and making the visit.

	Present	Proposed
Business non-data	\$15.00	\$54.15
Business data	15.00	73.35

## Other monthly line and trunk charges

Rate Group	Message Rate (A) One-Party		Flat Rate PBX Trunk		Semi-Public Coin Line		Message Rate (B) PBX Trunk	
	Present	Proposed*	Present	Proposed	Present	Proposed	Present	Proposed
1			17.44	24.86	7.09	11.66	6.54	13.59
2			19.50	27.68	7.92	12.98	7.31	15.13
3			21.57	30.50	8.76	14.30	8.09	16.66
4			23.63	33.31	9.60	15.62	8.86	18.20
5	11.24	16.80	25.70	36.13	10.44	16.94	9.64	19.75
6	12.15	18.03	27.76	38.94	11.28	18.26	10.41	21.29
7	13.05	19.26	29.82	41.76	12.12	19.58	11.18	22.83
8	13.95	20.49	31.89	44.58	12.95	20.90	11.96	24.36
9	14.85	21.72	33.95	47.39	13.79	22.22	12.73	25.90

\*Includes \$1.00 Basic Telephone Set Charge

(A) Rates for local messages after the 60-call monthly allowance would increase from 7 cents to 8 cents for each call.

(B) Message rate would increase from 7 cents to 8 cents for each local call.

## Custom calling services

Business rates for each of these services — call forwarding, call waiting, three-way calling and speed calling — would increase by as much as \$2.00 per month.

## WATS

Wide Area Telecommunications Service monthly rates would be restructured. Full-time service with unlimited usage (\$710 a month) would be replaced by "full business day" service allowing 175 hours of usage for \$710 per month plus \$3.50 for each additional hour.

Measured service, with the 15-hour allowance for \$276 a month and \$16.50 per additional hour, would change to 10 hours for \$184 per month plus \$17.20 for each additional hour.

One-time installation charges would increase to \$80 for each access line.

## Private line and special channel services

Special channel services for transmitting data, voice, music, facsimile and signals within or between telephone exchanges would be repriced to cover the cost of providing the service. Customers using this type of service include telephone answering services, burglar alarm companies, customer transmitting computer and certain other data, background music vendors, customers with telephone prefixes from a foreign exchange, and customers with extension phones in separate premises. Increases in monthly rates for these services average about 15 percent. One-time charges for installing or changing service would increase as much as 320 percent.

## Centrex

Monthly rates for Centrex intercommunication station lines would increase about 41 percent for the average customer under our proposal. Centrex exchange access rates would increase about 56 percent.

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# Rate proposals affecting selected business customers

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## Directory Assistance charging

The company proposes to charge customers for excessive use of local and in-state Directory Assistance (DA). The plan would charge customers 20 cents for each DA call after the first five calls each month. (Only about five percent of our customers make more than five calls a month.)

Here are some of the details concerning the proposal.

- A maximum of two numbers could be requested on each call.
- DA calls from hospital and hotel/motel rooms and from coin telephones would be exempt from the charge.
- Disabled customers who can't use the directory could get a special credit card to allow unlimited use of DA from any telephone.
- Customers with PBX's would get a five-call allowance for each PBX trunk.
- Centrex customers would get five free calls for every six telephone lines on the system.

## Coin telephone

The company would increase the charge for local coin telephone calls from 10 cents to 20 cents. Local calls made on a collect, bill third number or credit card basis would cost 50 cents to cover the additional expense of operator assistance and billing.

Also proposed is a reduction in the commission paid to owners or tenants of property where a public telephone is located. The lower commission rate — 10 percent rather than 15 percent — would be offset by the increase in the local coin rate.

## Semi-public coin telephones

In addition to the proposed increase in the monthly rate (see other line charges chart, page 3), the commission now paid to semi-public coin customers would be eliminated.

## Mobile telephone

Monthly mobile phone service rates are separated into three elements — land radio service, exchange access and mobile set charges. Rates for land radio service and mobile sets would increase by about 28 percent. Exchange access rates would be increased by about 40 percent. Installation of mobile service would also be subject to appropriate business service ordering and line connection charges.

## TELPAK

TELPAK rates would increase about 28 percent.

## Specially classified services

Special rates for schools and fraternal organizations would be replaced by regular monthly business charges. Rates for these customers could go up as much as \$12.44 a month in larger communities.

The increases noted for the following telecommunications systems are illustrative of how proposed rates might impact an average customer's bill. These percentages do not reflect the impact of separate component pricing. Of course, the impact on a customer's total bill will also be determined by charges for long-distance, exchange access lines and other services provided by Mountain Bell.

**No increases in Tier A rates are proposed for current customers with Two-tier payment agreements. Increases are proposed in Tier A rates for customers who would acquire the service after the effective date of approved changes.**

## Custom Dial PBX

Tier B rates would increase 191 to 203 percent, depending on the specific PBX.

## Series Dial PBX

Rates for Series Dial PBX would increase 74 to 94 percent, depending on the Series package the customer has.

## Dimension® PBX

A 14 to 40 percent increase in Tier A rates is proposed for new customers. Tier B rates would increase by an average of 84 to 96 percent. Dimension rates under the companion month-to-month payment plan would increase 13 to 48 percent for the average customer.

## Horizon® Systems

Tier B rates would increase an average of 9 percent and no increase is proposed for the month-to-month payment plan.

## Com Key

A 29 to 44 percent increase in Tier A rates is proposed for new customers. Changes in Tier B rates will range from a 3 percent reduction to an 83 percent increase, depending on the type of system the customer has. Month-to-month payments would increase by 3 to 67 percent, depending on the Com Key system.

## Flexible key telephone systems

The proposal would increase rates for flexible key telephone service by 11 percent for the average customer. Rates for flexible multi-line service would increase about 32 percent for the average customer.

## Secretarial bureau service

Rates for telephone answering service switchboards and related equipment would increase approximately 46 percent under the proposal. Additionally, increases in one-time charges for installation or changes of this equipment would increase an average of 50 percent.

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HOUSE BUSINESS AND INDUSTRY COMMITTEE

A hearing was held in Room 129, at 7:30 p.m., February 5, 1981, to hear further information on HB 409 from the sponsor, proponents and opponents. Members of the committee attending were: Representatives Fabrega, Jacobsen, Manning, Harper, Bergene, Wallin, O'Hara, Kessler, Jensen. Rep. Keyser, sponsor was also present. Rep. Fabrega was chairman.

Rep. Fabrega asked whether a theater owner would be placed in the position of a censor if he screened the films before showing them. Tom Keegan, representative of the Motion Picture Association of America, said small towns have had a chance to view and understand the content of movies because they have been exhibited in larger towns. See EXHIBIT A.

Tim Warner, Theatre Operators, Inc., said marketing strategy plays a part in when a picture is shown where. See EXHIBIT B.

Rep. Jacobsen - How does a small town geographically get to view it without driving 300-400 miles? Mr. Warner - Theater owners have a representative view it for them. If it is screened, the word does get out on it. Rep. Kessler - In some cases they have to bid before it gets out. Mr. Warner - The only time small towns would be bidding blind is when they are going on an area saturation marketing strategy.

Rep. Fabrega - Section 4, Blind bidding prohibited, is part of the heart of the bill. What is a major city in Montana? Mr. Warner - Currently movies are screened in Salt Lake City for Utah and Idaho. We are trying to get them to put out a small print, but it is a problem for them and so a city name is not included. It is fine with them if they screen them in Salt Lake City. Donald Garrity, attorney representing the Motion Picture Association, mentioned there are offices in Denver that do screening also. Mr. Warner - They have trouble with Denver, and prefer to do business with Salt Lake City because of the blind bidding laws in Colorado, and they don't want to change from Salt Lake City.

Rep. Jacobsen - How do you handle this with states that have banned blind bidding? Mr. Warner - The TV marketing area includes Montana, Utah and Idaho market area. Mr. Garrity - They do trade screening in Denver, and he didn't think Salt Lake City should be named. Rep. Jacobsen - In states where blind bidding is prohibited, how do they get it screened? Mr. Warner - the movie company screens it. Mr. Keegan - Doesn't fly up to Salt Lake City, he sends a representative.

Rep. Fabrega - The industry in part has screenings in Salt Lake and in Denver, are they screened in Denver or Salt Lake City first? Mr. Keegan said there is going to be a delay in getting movies into Montana. Mr. Warner - Any state that has this is playing to the same size town. The legislation hasn't had that impact. "Superman" is playing in Australia. It would be restrictive if it had to be screened in Montana, but they are offering them a screening in Salt Lake City saying that same screening can serve Montana.

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Paul Verdon, Researcher - Isn't there a screening area in Seattle or Portland? Mr. Warner - There currently is a screening in Seattle for Washington. Spokane is in the western Montana market area of Seattle. Salt Lake City is currently acting as the screening place for Utah and Idaho, and it is no more trouble to include us in Salt Lake. He opposes tying Montana into Colorado as it is in an antibidding state. Utah and Idaho where they would ordinarily screen are currently blind bidding states.

Rep. Fabrega - What is the relationship of the TV market area? Mr. Warner - It is covering the entire market area when they spend their TV dollar. He would have no problem with tying it into Seattle and Salt Lake City. There are three channels from Washington. Mr. Keegan - Billings gets the Salt Lake City channel. Mr. Warner - It is going to be screened so the exhibitors get a chance to go see it.

Rep. Fabrega - Where is the screening going to be? Mr. Warner - He thinks the area should be defined where the exhibitors would have a little opportunity to get to see it. Rep. Manning - What difference does it make as long as it is screened somewhere? Mr. Warner - Their screenings are had later. They screen at Salt Lake City as much as 2-3 months earlier.

Rep. Wallin - If the bill is to outlaw blind bidding, shouldn't we first address whether we want to have blind bidding? Rep. Fabrega - That's the heart of the bill, to prohibit blind bidding. Mr. Garrity - As Mr. Warner stated, there are these kinds of screenings being held in Salt Lake City. Any exhibitor in Montana can go to them. No Montana exhibitor can take the risk and negotiate without the opportunity to screen. He is binding his competition in Missoula; it makes him say 'I'm going to buy that movie up right now', and he is binding every exhibitor in Montana. He strongly supports the law. They can't get together and decide what to bid.

Rep. Fabrega - Why, if blind bidding is so repulsive to all of the industry in Montana, by not participating in it, wouldn't you have the same effect as in passing the law? Mr. Warner - You have to commit the play dates. Even though he owns four theaters in Helena, he is already committed to some pictures that have not been screened as yet. A movie is a very in-and-out product. You have to commit to the play dates. They will still be committing to the play dates, but the only difference is that they will have screened the picture. Mr. Garrity - They could all wait. Mr. Warner - Then they are making the bid ahead of you. Mr. Garrity - This causes no problem in Utah. Mr. Warner - You are way overestimating the size of our company vs movie companies. They do have the ability to be included in the market. In talking to Warners, they will be losing a lot of market.

Rep. Fabrega - Are they screening in Utah and Idaho? Mr. Warner - The movies are being offered for sale on a competitive basis before it is screened, and because of competitive problems, they have to sign before screening.

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Rep. Keyser, sponsor - Blind anti-bidding laws like Montana should include Salt Lake City, Washington and those states that have blind bidding laws. If you are taking them into a state that has blind bidding, you should put them into states where blind bidding is permitted. Rep. Fabrega - It is good to have it shown in Salt Lake City or Montana. Mr. Warner - Both states are being operated under blind bidding. If you restricted them to the state of Montana, some companies secured by tying into Salt Lake City. Rep. Bergene - Theater owners will always be showing movies they have not seen. Mr. Warner - They hire a film buyer who has seen the movie. He is one of the buyers in Montana, and there are others in Salt Lake City. There are several buyers from which a theater owner has the chance to choose.

Rep. Fabrega - If you were including Denver in here, if blind bidding is forbidden, then Billings would be invited to the screening and you wouldn't? Mr. Warner - Billings is considered part of the SLC market. The film companies really set the market place. The Denver market is Colorado, parts of New Mexico and Wyoming. Salt Lake City (SLC) includes Utah, Idaho, and part of Montana. Rep. Wallin - They do advertise those films over SLC? Mr. Warner - They are not tying it into the TV market. The film companies have defined the TV market area as Idaho, Utah and Montana. The ability to be invited to the screening requires that they have to be tied before they can bid or negotiate.

Rep. Manning - Are there several groups blind bidding in Montana? Mr. Warner - They are either blind bidding or blind negotiating. Because Montana doesn't have blind bidding, they can sell in Montana first before Utah and Idaho. But you are still playing the movies.

Rep. Harper - You are sacrificing a week or so? Competition is so great? Why is a movie being shown? You can see the movie in SLC and it can be shown at the same time as we show it. They are selling our market. Mr. Keegan - They are offering them for sale, nobody forces them to buy the film.

Rep. Fabrega - When the national production is on, you get the movie even though you are blind bidding, you still get the movie in the same area and it is shown in both places at the same time? Mr. Warner - We would get it, would still be getting the movies at the same time, but wouldn't be getting tied up on some bomb or tying up our playing time.

Mr. Keegan - If you have a contract with this, you wouldn't put up any front money until two weeks previous to the showing, even if the film is shown in Salt Lake. Mr. Warner - You still have to honor your contract.

Rep. Harper - Is there a certain time by which you do not accept the contract, it is gone? Mr. Warner - Once that offering is submitted and filmed by that company, your chance is gone. Rep. Harper - First come, first served. There might be other films in the marketplace. There is a certain number of films coming into the market area.

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Mr. Warner - If the exhibitors get together and decide which one will be shown and when, that's called restraint of trade. This actually came to a boil in the past. The practice then was no films were blind bid, and then two were blind bid a year, and as film companies got more powerful, it has come to today's practice to blind bid all films. Mr. Keegan - That is not true, 54% are blind bid. Rep. Wallin - Prior to the time when two a year were accepted on blind bidding, what was the procedure? Mr. Warner - They asked them to stop the practice of blind bidding and it was totally unacceptable to MPAA. This has passed in 19 states and Puerto Rico. Mr. Keegan - 19 is less than half. Blind bidding became more prevalent because pictures cost more to make. They want to have their product ready to go when it is finished. Rep. Wallin - And if you go back to a time when this was not done? Mr. Warner - If there are only two blind bids a year, they could stand that.

Mr. Warner - They bought up the 'Exorcist' on a blind bid, and lost a lot of money on it. Had it not been on a guarantee basis, and had been figured on a term basis, we would have paid 64% for the film rental instead of losing money. The same thing has happened when other guarantees had to be paid and the film did not have enough gross returns to make for a profit situation. Bad weather and other entertainment events make for uncertain attendance at a film. Mr. Keegan - Movie producers do not always make a profit on their productions. Mr. Garrity - Nothing has to be guaranteed but if he is in the area of Missoula, then he bids a higher price. He thinks the film industry has a right to set a price for their product when they have a big thing. If one person owned all the theaters in a town, you are forced to make the commitments in order to tie up the production. What is the theater without something on the screen? Otherwise, it is gone and you can't get a print. You can't pick one of these up in two weeks or two months.

Rep. Fabrega - How would it work if this bill were passed where there is competition like that in Missoula? Mr. Warner - The exhibitor gets a chance to see the movie and all theater owners will send a bid in. Rep. Fabrega - It is called a negotiation and if you don't offer enough, you don't get the movie. Mr. Warner - Small towns get their greatest loss from having to put up up-front money. Both the guarantee and the blind bid are the problems. They are entitled to their share of the market.

Rep. Harper - If you had one choice, which would you take? Mr. Warner - We would probably take the blind portion, but that would be selling the small towns down the drain.

Rep. Jacobsen - Aren't we losing sight of the real meaning behind the bill? Theater owners bring in the film and they show things that people are afraid to show to their kids. If they can't see the film before they show it, how can they know what they are showing? There has to be some stop to some of the filth that is coming in. Mr. Keegan - Your small theater owner is not going to SLC. He can go to Billings where it has been shown already. The small theater owners get it later after it has been shown. There is no seating requirement. A \$100 guarantee plus a percentage is requested.

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Mr. Keegan - It outlaws that \$100 guarantee, payment in advance, and outlaws any guarantee at all. If that movie makes \$10 then we have had to send that film to a rural area for \$5 rather than \$100. Mr. Warner - They are trying to force the financial burden of risk on the theater owner who has already invested a great deal of money. Why should they guarantee the film companies? Why should Cut Bank guarantee Gulf Western? Mr. Garrity - The price is set by negotiation between the buyer and the seller.

Rep. Harper - It seems that the only contract that could be signed is one that states the company is going to get a percentage or that can sell at a flat rate. Rep. Fabrega - Producers have a choice of taking a percentage or if you want this film, \$1000, opposed to a small guarantee now and a greater risk-taking on their part? Rep. Keyser - Blind bidding is not a bid as you and I know it. Rep. Fabrega - This is an unusual business. Mr. Warner - The more you understand about it, the better for all of us.

Rep. Manning - How many of these theaters in small towns under the present program actually have an annual gross income or lose money? Mr. Warner - If you have been to a small town theater, you will see that they are not remodeling. Many have closed down strictly because of the guarantee and they cannot make it any more. If the trend is allowed to continue, not only do they set the guarantee and they can exclude a small town, they can say pay \$1,000 and you can have the movie. In Montana they have that right, so they don't place that picture, and the movie gets older and less valuable. Without this bill the small towns are in real trouble. In Utah and Idaho a flat fee too high won't happen.

Rep. Manning - What sort of profit is made? Mr. Warner - The SLC is 2.8% or .9% of all their total film market in the U.S. Rep. Fabrega - You can't tell me what the minimum ticket is? Mr. Warner - They don't care what you charge, but are going to figure on a per capita they want. If you charge \$1.00, and they settle for one-half of \$1.50 per capita they want, and you are operating, they get 75% of the gross. Rep. Fabrega - If it is on a percentage basis, you could show arbitrarily a movie for 50¢? Mr. Warner - The marketplace will determine the price. You can charge so much, and the families will stay home. These provisions are the same as for Idaho and Utah. Mr. Garrity - Walt Disney engages in this because he makes very good childrens' shows. They charge \$2 a car or something in a drive-in. The company wants the product prices higher than that. Also many shopping centers will use a Walt Disney production with free admission. It is a means of protecting this product and they don't want to give it away. It is a legitimate thing.

Rep. Harper - What would the actual difference be in computing the minimum charge per seat? Mr. Warner - The actual seats in the theater don't make that much difference - it is the number of times you show a film. Even though large market films don't always guess right on, it is the opportunity to see a picture that makes the difference in whether the theater owner makes a good choice. They had to pay their obligations off before it could be showed. They are distributing it themselves. Two weeks after 'Heartland' was showed he gave them \$5,000 for film rentals.

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Mr. Verdon - Are the film agreements the same for both indoor and drive-in theaters? Mr. Warner - It would strictly depend on the run of the movie. If it is a second-run picture, it would be less. They are very, very specific that you buy a film for a certain screen - it is very specific. Mr. Verdon - How many films are available at any one time, how many different productions do you have to bid on? Mr. Warner - Christmas time the movie will come out with quite a few pictures. MPAA made 131 films last year. They control 95% of the market. There are main market times during the year. Mr. Verdon - How long does a particular film stay in circulation? Mr. Warner - Basically a film might stay in the market place about 2-3 months, but there is a good chance they will be bringing it back with a market strategy.

Rep. Harper suggested having a statement from each side summarizing their points. These are Exhibits A and B, and the following:

Mr. Warner - Theater owners are trying to ask that shows be screened and that we do exclude guarantees in advance and provide information to the trade. He feels HB 409 is fair and provides fair competition among the dealers, it does benefit the public, and prohibits the exhibitor from having to bid on films that might be unacceptable to his community. It removes the guarantee and inflating of the price which are unfair burdens financially because of the investment the theater owner has. It is current law in Utah, Idaho, Washington, and Oregon, and the bill has been introduced in other states. It also prevents a film company from licensing an exhibitor without having the ability to deliver that picture which forces the exhibitor to commit play time when they don't have the movie ready and permit it to be seen.

One of the arguments that they use is that they won't make any more movies in Montana - they are the distributors and the movie makers will still make films in Montana. You are talking about small independent theater owners who are dealing with large conglomerates. MPAA who control 95% of the product which they have to buy to stay alive, is about one of the largest conglomerates that the world has ever seen. The theaters are a very viable industry in Montana but are being raped and ripped off. Other than Commonwealth and Mann who operate out of Missoula, all others are family-owned operations. They need your help.

Mr. Garrity - There is a lawsuit in Ohio that was a district court ruling and it is on appeal. There are also lawsuits in other states, and there will be one here if this passes, and it will be borne by the taxpayers in Montana. Their people do produce movies for their livelihood, and that cost has gone up, talent costs a lot, and they want a fair return on that money. They want to be able to negotiate with their customers and don't want to be restricted, and if they take a percentage of the gate, they want to be able to negotiate with an individual for a front cost or a guarantee as a method of dealing and setting a price for their product.

Every theater owner in Montana can wait until they see the movie, 46% that were released in Montana were trade screened for the Montana market. They don't have to deal on those terms. Most of the markets in Montana are

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monopoly markets. Warner wants the Legislature to do something for them themselves. Theater owners can get together and say they won't buy any pictures, and one owner will offer a higher bid and get a blockbuster with no guarantee required. They have the right to bid and we have the right to negotiate.

There aren't many people in Montana, but we want our pictures shown in Montana. He doesn't think Mr. Warner has proved that the Legislature should be in this, but he wants all his competition to be shackled by these limitations. He doesn't think that is necessary and the committee should not sanction this.

Meeting adjourned at 9:15 p.m.

Josephine Lahti  
Josephine Lahti, Secretary

Rep. W. Jay Fabrega by  
REP. W. JAY FABREGA, CHAIRMAN J. Lahti

STATEMENT OF MOTION PICTURE ASSOCIATION  
OF AMERICA IN OPPOSITION TO HOUSE BILL 409

House Bill 409 outlaws many of the existing business practices of the motion picture industry, practices which have been proven in the marketplace. This bill dictates new terms for contracts between motion picture distributors and theater owners and provides that the distributor and theater owner cannot agree among themselves to waive any of those terms. The bill makes it a crime, punishable by up to six months in jail and a fine of up to \$500, for a theater owner or a motion picture distributor to violate any of its provisions.

Why do the sponsors of this measure want to involve Montana's government so extensively in the affairs of a private business? Montana's theater owners are not inexperienced amateurs at the mercy of the major film producers. They are experienced professionals operating large and successful businesses. The majority of the movie theater business in Montana is done by just four companies -- Mann Theatres Corporation of California; Commonwealth Highland Theatres, a Colorado corporation; Theater Operators, Inc., a Wyoming corporation; and Carisch Theaters, Inc., a Minnesota corporation. According to their latest reports, on file with the Montana Secretary of State, those companies had gross receipts of 132.9 million dollars in 1979. The same reports show that those companies took in more than 8.9 million dollars from their Montana operations in that year.

These are not people with whom motion picture companies feel free to deal on a "take it or leave it" basis. They control a large and profitable market for our product. In fact, they are the only market for our films in Montana. We need them to rent and show our

movies far more than they need us. Last Christmas, our members had fourteen films scheduled for release. Helena has four screens. Who is in the better bargaining position? Our rental negotiations with Montana theater owners are far from one-sided affairs. They are tough, able bargainers who are managing their business quite well without the interference of Montana government. The president of the Montana Theater Owners' Association recently reported that, with attendance at Montana theaters increasing, "The theater industry is healthy and it is here to stay." (Great Falls Tribune, May 1, 1980, p. 6-B). Montana theater owners clearly are not in need of the massive governmental intrusion into their business affairs which House Bill 409 would sanction.

With that background, let us examine the specific provisions of House Bill 409.

#### 1. BLIND BIDDING

House Bill 409 prohibits motion picture distributors and theater owners from bidding, negotiating or contracting for the rental of a motion picture until the exhibitor has had an opportunity to see the movie. That sounds reasonable, doesn't it? Unfortunately, the economics of producing motion pictures are such that in many cases producers simply cannot afford the delay that special pre-release showings of a completed film to theater owners would entail.

Because theater owners are the prime market for their products, motion picture producers do provide "trade screenings" for theater owners before bidding or negotiating for their rental as often as circumstances permit. In 1980, members of the Motion Picture As-

sociation of America released 131 films for distribution in Montana. Of those films, 55 were trade screened prior to bidding or rental negotiations. Four were re-releases of earlier movies with which the theater owners were already familiar. One was rented without a trade screening but with a provision in the rental agreement allowing the theater owner to cancel the agreement within 48 hours of receiving the movie. Only 71 of the 131 films were rented "blind", without a trade screening (54%). A majority of Montana's theater owners did not attend the trade screenings of those films for which they were available, even though they were frequently held in Denver or Salt Lake City.

It should be emphasized that no Montana theater owner is compelled to bid on or negotiate for any motion picture before he has seen it. He is free to refuse to bargain for any film. He can wait until the film is released in other areas, see it there, and study the box office receipts it generates before committing himself to exhibit it. Of course, if his theater is located within one of the three cities in this state which has competing theaters, his competitor may take the risk and book the film "blind." House Bill 409 would deprive competing Montana theater owners of that freedom of choice.

Motion picture producers bid blind too -- on a much larger scale than any theater owner. They commit themselves to the expenditure of millions of dollars to make a movie from a book, a play, or often on the basis of a rough idea for a movie. The average production cost for a motion picture by a major company is now over ten million dollars. Advertising and promotion can add another five million dollars. Firm commitments for prime time television commercials

must be made as far as eleven months in advance. Release of the film must coincide with the advertising. Delay in booking a film into theaters may not only miss the impact of an expensive advertising campaign but imposes serious financial burdens on the producers. At today's interest rates, a movie budgeted at fifteen million dollars for production and promotion means over nine thousand dollars a day in bank charges! And most theater owners do not pay their rentals until from 30 to 60 days after they have shown a film.

We must get our products on a paying basis as soon as possible. Blind bidding is often the best means of doing so. Our notices to bidders tell them as much as we can about the as yet unfinished movie. If it is based on a book or a play, we tell them that, together with the figures on sales for the book or play. We tell them what the story is about, the audience at which the film is directed (family, adult, youth, etc.), who the stars are, the name of the director and producer, and the advertising campaign planned to promote it.

On the basis of that description, we invite bids or enter into negotiations with theater owners for rental of the film. At the time bids are invited, we have not seen a final print of the movie ourselves. We are not in the business of misleading theater owners. Our relationship is, of necessity, one of mutual trust. Every unsuccessful movie which we produce makes it more difficult to market our other films. Since most of our rentals are based on a percentage of box office receipts, we want our films and the theater owners who rent them to do well. Motion picture distributors often revise the

terms of a rental agreement downward where a film has not done well in a particular theater. For example, the film "Dressed to Kill" was rented to the Campus Cinema in Bozeman on the basis of 70% of ticket receipts. When it did poorly, that rental was voluntarily scaled downward to 35%. We trust the theater owners to give us an honest count of their box office receipts. They trust us to provide them with a quality product.

On occasions, we are both disappointed. But we lose much more from an unsuccessful film than the theater owners.

"Blind bidding" is not uncommon in our economy. Manufacturers spend millions on research and development without any assurance that they will develop a marketable product. Exploration for oil and gas proceeds with only limited knowledge of what lies beneath the earth's surface. The consumer is asked to blind bid on many products. When he buys a book or a ticket to a play or a film, he does so on limited information. When a movie patron is disappointed in a film, he has no recourse to recover his expense. Would the theater owners be willing to require by law that they could collect payment from their patrons only after they had seen the movie and then only in the amount the patron thought it was worth?

## 2. OTHER RESTRICTIVE PROVISIONS OF THE BILL

House Bill 409 would also greatly impair the freedom of motion picture distributors and theater owners to contract in other areas. It would outlaw contract provisions calling for minimum payment guarantees and advance rental payments. If this bill is being sold on the basis of the theater owners' need to see a film before negotiating for its rental, why are these provisions necessary? Do the theater owners want the State of Montana to guarantee them a profit as well?

Montana has a comprehensive Unfair Trade Practices and Consumer Protection Act, enacted in 1973, which already provides adequate protection for theater owners. (Sections 30-14-101, et seq., MCA). The state should not be writing our contracts.

Advance rental payments and guarantees, which would be prohibited by House Bill 409, are sometimes required but they are almost never payable until two weeks before the film is delivered. Such deposits or advance payments are usually required of theater owners whose credit is poor or unknown or who are slow in paying their bills. Every business makes similar demands of such customers. They are a legitimate means of doing business and should not be prohibited.

### 3. HOUSE BILL 409 IS NOT A CONSUMER PROTECTION BILL

In its statement of purpose, House Bill 409 indicates that it will benefit the moviegoing public by "expanding the choice of motion pictures available" and "holding down admission prices". It will do neither.

Nothing in this bill would or could require motion picture producers to make more movies and all of our production is available for screening in Montana. This bill will not reduce or "hold down" admission prices. States which have enacted similar laws have experienced rising ticket prices just as have states without such laws.

If the sponsors of House Bill 409 really want to "benefit the moviegoing public by holding down admission prices to motion picture theaters" (Section 2), they can draft a bill empowering some state agency to regulate ticket prices and the price of popcorn, candy, and soda pop as well. We suspect the theater owners would object as strongly to such a measure as would we.

### CONCLUSION

House Bill 409 is an unwarranted government interference with

the contracting practices of a private industry. According to figures compiled by the Montana Travel Promotion Unit, motion picture production companies have spent over 30.5 million dollars in filming movies in this state since 1974. An itemized report of those expenditures is attached to this statement. The movie "Heaven's Gate", which to date has been a financial disaster for its producer, spent some 17 million dollars in Montana.

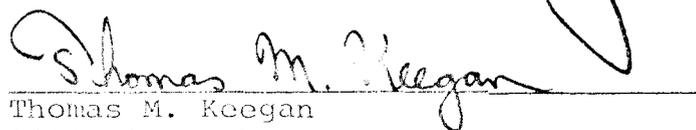
The motion picture industry is a substantial contributor to the Montana economy. We think that entitles us to fair treatment from Montana government. House Bill 409 is not fair -- it is punitive and unnecessary. We earnestly request your vote against this measure.

Respectfully submitted,

MOTION PICTURE ASSOCIATION  
OF AMERICA

BY

  
Donald A. Garrity

  
Thomas M. Keegan  
1313 Eleventh Avenue  
Helena, Montana 59601  
Registered Lobbyists

# DEPARTMENT OF HIGHWAYS



TED SCHWINDEN, GOVERNOR

~~THOMAS JUDGE GOVERNOR~~

2701 PROSPECT

## STATE OF MONTANA

### MOTION PICTURE REVENUE

HELENA, MONTANA 59601

<u>Year</u>	<u>Film</u>	<u>Estimated Revenue Left in Montana</u>	<u>Total</u>
1974			
Aug. - Oct.	KILLER INSIDE ME Butte - Universal	\$ 450,000	
April - June	RANCHO DELUXE Livingston	500,000	
Aug. - Oct.	WINTERHAWK Kalispell - Charles B. Pierce	<u>432,000</u>	\$ 1,382,000
1975			
June - July	MISSOURI BREAKS Billings, Virginia City & Red Lodge Universal	5,000,000	
Aug. - Oct.	WINDS OF AUTUMN Kalispell - Charles B. Pierce	425,000	
August	(TV) Millers Beer - Commercial Great Falls	10,000	
August	1/10 POTATO FRITZ Helena - West German Film Co.	<u>15,000</u>	\$ 5,450,000
1976			
Feb. - July	BEARTOOTH Red Lodge - ESI Production - Waco, Tx.	225,000	
August	1/10 DAMNATION ALLEY Flathead Lake - 20th Century Fox	90,000	
August	(TV) ALPO - COMMERCIAL Forsyth - Dog Food	10,000	
August	PONY EXPRESS RIDER Virginia City - Doty Dayton Prod. Salt Lake	<u>15,000</u>	\$ 340,000
1977			
April	TELEFON Great Falls - MGM	220,000	
June	GREY EAGLE Helena - Charles B. Pierce	475,000	

## MOTION PICTURE REVENUE (cont'd)

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June	DR. HOOKER'S BUNCH Red Lodge - ESI Production	450,000	
August	(TV) DAY OF HELL Aubrey-Lyons Prod. Warm Springs	500,000	
October	(TV) XMAS MIRACLE IN CAUFIELD, U.S.A. 20th Century Fox - Roundup	400,000	
October	SCHOOL BUS SAFETY FILM DOCUMENTARY Missoula	<u>1,500</u>	\$ 2,046,500
1978			
February	WINTER RECREATION U.S.T.S. Film - Whitefish	2,000.	
February	WEST YELLOWSTONE SNOWMOBILE RACES Warner Miller Prod. West Yellowstone	2,000	
August	THE SHINING Stanley Kubrick -- Hawk Films, Ltd. Herts, England Warner Bros. Glacier National Park - Scenic Background	50,000	
October	WHITEHORSE SCOTCH - COMMERCIAL Film Fair, Los Angeles Red Lodge Area	20,000	
October	(TV) RODEO RED AND THE RUNAWAY GIRL Highgate Pictures Learning Corporation of America Billings - Broadview	200,000	
December	DATSUN - COMMERCIAL Billings Area	<u>20,000</u>	\$ 294,000
1979			
January	ARTIC CAT - COMMERCIAL Lyle McIntire Wilson - Kriazh Los Angeles - West Yellowstone	3,000	
February	TOTAL ECLIPSE ABC News Special - Helena	10,000	
February	TOTAL ECLIPSE Astronomical Society of America Paul Ryan - Lewistown & Helena	10,000	

MOTION PICTURE REVENUE (cont'd)

Page 3

Feb. - Oct.	HEAVENS GATE United Artists Kalispell, E. Glacier, Butte & Pole Bridge	17,000,000	
March	SECURITY BANK - COMMERCIAL Fry - Sills Associated Film Makers - Miami, Florida Billings Area	8,000	
March - May	HEARTLAND Film Haus/Wilderness Women Prod. Harlowtown - White Sulphur, Two Dot	500,000	
May - June	(TV) WALKS FOR WOMEN - NBC EMI Production Billings, Hardin, Red Lodge	1,400,000	
	MILLER BEER - COMMERCIAL Backer and Spielvogel, Inc. Great Falls, Dillon	20,000	
June	(TV) SOUTH BY NORTHWEST Production - Black Pioneer Virginia City - Nevada City	80,000	
August	RICHARD LEVINE - COMMERCIAL American Airlines Productions Great Falls	10,000	
Sept.	WINSTON - COMMERCIAL Frank Moscoti - New York Kalispell, Thompson Falls & Pole Bridge	50,000	
October	TIRE PRODUCT - (BANGDAD) COMMERCIAL Great Falls - Missoula - Cedar Rapids, Iowa Vieda Limited	5,000	
	MILLER BEER - COMMERCIAL Backen & Spielvogel, Inc. Red Lodge	70,000	
November	WRIGLEY'S GUM - COMMERCIAL Hang Glider Kalispell - Corum	<u>50,000</u>	\$19,216,000
1980 June	GENERAL ELECTRIC CO. - COMMERCIAL Big Sky	10,000	

MOTION PICTURE REVENUE (cont'd)

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July - August	FAST WALKING Lorimar Prod. Deer Lodge - Old Prison Rocker	1,750,000	
August	GOOD MORNING AMERICA - TV Billings Area	5,000	
September	BIG JOHN JEANS - JAPANESE COMMERCIAL Pyramid Production Bozeman - Livingston	10,000	
	AMERICAN TRAIL - TV DOCUMENTARY Syndicated TV in 25 states Smiloft Television, Lincoln, NE Missoula - Glacier National Park - Big Fork	6,000	
October	KHQ TV - DOCUMENTARY PM MAGAZINE Spokane, WA Moiese Bison Range - Virginia City	5,000	
	CONTINENTAL DIVIDE - FEATURE Universal Studio West Glacier - Apgar - Eagle Migration 3 week shoot	10,000	
November	BIG JOHN JEANS - JAPANESE COMMERCIAL - 2nd Shoot Pyramid Production Bozeman - Livingston	<u>10,000</u>	
			\$ 1,806,000
			\$30,534,500

*Exhibit B  
L. ...*

February 5, 1981

Members of Business &  
Industry Committee  
Montana House of Representatives  
Helena, MT 59601

Dear Committee Members:

I am submitting as testimony, the following documents to help clarify in your minds why the exhibitors of Montana are not only opposed to the blind bidding aspect of the film buying arrangement, but also the guarantee and advance portion of the Bill.

The guarantee portion of the Bill is primarily offensive to the small towns of Montana. However, it does have a severe economic impact on the larger towns in the state. I will cite some examples of which I am personally aware, however, it is very common for these examples to happen to any exhibitor in the State of Montana.

We feel that the film companies are entitled to a percentage of the film gross in any given market place, and the percentage is negotiated either through bidding or negotiation with the film company. But by including guarantees in that negotiation, the film companies are forcing an unfair risk on the exhibitor client in the market place.

Because of the nature of the film business, motion pictures which might do extremely well in large communities might not do as well in the Montana communities due to the theme of the motion picture. In our small communities there are several factors that can alter the gross such as bad weather or local high school football or basketball games, etc.

By including guarantees and advances, they are altering the agreed upon percentage, since if a film does not gross a certain amount, the exhibitor still pays the guarantee, thereby paying a higher percentage.

An example of this is that in Billings, Montana, Theatre Operators Incorporated put up a guarantee of \$50,000 on THE EXORCIST. The picture only grossed \$58,000. The following is a chart showing what we should have paid on a percentage basis.

Weeks 1-3	Gross \$35,000 x 70% = \$24,500
Weeks 4-6	Gross \$12,000 x 60% = \$ 7,200
Weeks 7-9	Gross \$11,000 x 50% = <u>\$ 5,500</u>
Total % Payment	\$37,200 or 64%

If we had just paid the percentage, the film rental would have been 64% for the 9-week period. However, because of the guarantee, the film rental for the 9-week period was 87%. Also, in addition to the \$12,800 loss in film rental, we also lost our weekly house expense of \$3,000, or \$27,000 for the 9-week period, bringing the total loss to approximately \$50,000 on a picture which Warner Brothers Communications made millions.

In some small communities which I buy for such as Cut Bank, Conrad, Shelby, Hamilton and Miles City, it is not uncommon for the film companies to place a \$1000 guarantee on a motion picture. If a motion picture only grossed \$1500, it would normally be settled on a percentage basis at 35% or \$525. However, because of the guarantee, the film rental percentage changes to 66%.

One example is in Conrad, Montana, we put up a \$500 guarantee vs 35%. The show only grossed \$950 and we should have paid 35% or \$333, yet with the guarantee, we paid 53%.

Another example is in Bozeman, Montana we paid a \$25,000 guarantee on THE EXORCIST and the picture only grossed \$23,000. The following chart shows the percentage we should have paid.

Weeks 1 & 2	Gross \$14,000 x 70% = \$9,800
Weeks 3 & 4	Gross \$ 6,000 x 60% = \$3,600
Weeks 5 & 6	Gross \$ 3,000 x 50% = <u>\$1,500</u>
Total % Payment	\$14,900 or 65%

Business & Industry Committee  
February 5, 1981  
Page Three

However, because we had paid a guarantee on the motion picture of \$25,000, we ended up paying 109% in film rental.

In closing, as the exhibitors of Montana, we sincerely feel that we have an obligation with the film companies to share the risk for the picture playing in our market place. However, we do feel that this risk is equally shared when the movie is bought on a percentage basis and both parties receive a percentage of the gross that is realized in the market place.

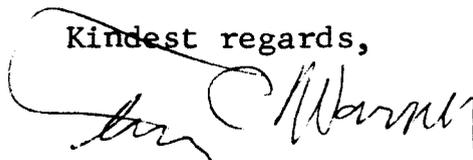
The exhibitor in Montana has already invested very substantially in the movie business with his theatre property. An example of this would be that in Bozeman, Montana, Theatre Operators Incorporated has just invested \$1,089,000 to build the Campus Square Theatre facility, and in the past year we have invested several million dollars in Billings, Montana between the Rimrock Four, the World West and the Crossroads Theatres. Also, in Helena, Montana, we have invested well over \$1 million in our theatres there.

At no time in making these investments, have the film companies guaranteed us or guaranteed our notes at the bank.

I am sure that the exhibitors throughout the State of Montana can cite very similar investments according to the size of the community in which they operate.

If you have any need for further examples or clarification, I would be more than happy to visit with you. Thanking you in advance for your time and cooperation.

Kindest regards,



Tim C. Warner  
Theatre Operators, Inc.

TWbp



January 29, 1981

POINTS TO CONSIDER ON BLIND BIDDING BILL

1. Prohibits blind bidding - Simply means that the picture must be screened in market area, either Montana or Salt Lake.
2. Prohibits the payment of minimum guarantees or soliciting of advance monies as a part of either bid or negotiated contracts.
3. Provides information on trade screening either to exhibitor or his representative.
4. Provides for fair and open provisions of licensing of motion pictures within the state.
5. Provides for fair and effective competition among competitive exhibitors within the state, both large and small exhibitors.
6. Benefits movie going public by prohibiting per capita requirements in bid or negotiated contracts. Example: Buena Vista sets per capita requirements of \$1.50 on children thereby forcing exhibitor to charge \$1.50 or higher because that is what exhibitor is going to be settling on.
7. Prohibits exhibitor from having to bid on product which they have not seen and which might be objectionable to local community.
8. Current practice to place guarantees not only on the large exhibitors but also on the smaller exhibitors thereby effectively eliminating the smaller exhibitors from playing the film at certain times.
9. Is current law in surrounding states of Utah, Idaho, Washington, and Oregon and a bill has been introduced in Wyoming.
10. Is current law in over twenty states: Alabama, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Territory of Puerto Rico. It has also been introduced in several other states.
11. Has been ruled as constitutional as a result of a lawsuit in Ohio.
12. Prevents film companies from tying up their theatres with fair commitments until the film is finished. Example: SUPERMAN II, HEAVEN'S GATE, APOCALYPSE NOW, etc.

13. Argument used against blind bidding bill is that the film companies will not film in Montana. Not true because three of the states that have anti-blind bidding bills lead in the states, outside of California and New York, for filming pictures; those being Utah, Georgia, and Louisiana.
14. It is really David versus Goliath because even the largest exhibition company in the state of Montana which would be either Mann in Missoula or Commonwealth Theatres are dwarfed by the size and financial resources of Gulf & Western, Trans America, or Warner Bros. Communications and the smaller exhibition companies, or approximately 99% of the exhibition companies in the state of Montana, does not have anywhere near the financial resources of the large conglomerates.
15. Another factor that the exhibitor faces is not only does he have to bid or negotiate with companies such as Gulf & Western but between these large conglomerates which make up M.P.A.A. are Buena Vista, Columbia, Paramount, 20th Century Fox, U.A.-MGM, Universal, and Warner Bros. and they control approximately 95% of the film production in America and all basically operate under the same policies forming what has to be one of the largest monopolies in the entire world.