

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 13, 1981

SUMMARIES FOR

HOUSE BILL 530 -

Introduced by Rep. Yardley, sets a floor of \$350 and a ceiling of 1% of the amount due on the obligation for trustees' fees and attorneys' to be charged to the grantor in the event of foreclosure by advertisement and sale. The present law provides a maximum fee of \$150.

HOUSE BILL 578 -

Introduced by Reps. Vincent and Kitselman, is the "Montana Small Business Licensing Coordination Act" and is intended to eliminate unnecessary procedures and to reduce costs of both government and business. The bill requires the governor to designate a small business licensing coordination center to perform and coordinate all duties of licensing. The bill gives the governor power to change license renewal periods or expiration dates to implement improvements. The bill appropriates \$39,662 for fiscal year 1981 and \$34,962 for fiscal year 1983 for administration, and sets a schedule for setting up the office between July 1 and November 1, 1981.

HOUSE JOINT RESOLUTION 4 -

Introduced by Rep. Moore, directs that within 60 days the Department of Revenue initiate changes in administrative rules to reduce paperwork connected with sale of untaxed cigarettes by a wholesaler.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

The B&I Committee met in Room 129, February 13, 1981, at 8:00 a.m., of the Capitol Building, Helena. Rep. Ellison and Meyer were absent - all other members were present. Bills to be heard were HB 530, 578, and HJR 4. Rep. Jensen was acting chairman until Rep. Fabrega returned.

HOUSE BILL 530 -

Rep. Dan Yardley, sponsored HB 530 at the request of the Montana Bankers Association, which would amend the laws relating to trust indentures within the Small Tracts Financing Act for financing three acres or less when first enacted, but has been modified up to 15 acres. It is mostly used by financial institutions since a trustee has to be a bank, savings and loan or other such institution. It has the effect of a mortgage.

HB 530 applies to a default situation. The aggregate fee is 5% of the amount due on the obligation, and no additional amount can be claimed when the property is resold. The change only takes place when the lender pays off the default amount prior to the sale. There is a 120 day notice of foreclosure, and the borrower can come in any time prior to sale and pay the amount owed at that time, but he doesn't have to pay off the whole amount of the obligation that isn't due as would have to be done under a mortgage arrangement.

HB 530 sets a floor of \$350 and a ceiling of 1% of the amount due on the obligation for trustees' fees and attorneys' fees to be charged to the borrower in the event of foreclosure and sale. Present laws provides a maximum fee of \$150.

PROPOSERS;

DAVID J. BROWN, First Bank, Helena (Montana Bankers Association) said banks have been having a lot of problems with the fee allowed. When the Small Tract Financing Act was enacted in 1963, the fee was acceptable, and a good real estate situation has made for good real estate deals, but with the recent decline in real estate values, they have seen a lot of sales. Since such financing was allowed on up to 15 acres, a great deal of valuable buildings have been built on this acreage requiring high financing situations. Smaller banks and savings and loans also have had substantial losses because of litigation required to foreclose. He thinks it is a chance to help the Small Tract Financing Act become profitable for lenders.

LARRY HUSS, Montana Savings and Loan Association, Helena, added their support to this bill and hope for a do pass.

OPPOSERS: None.

QUESTIONS;

Rep. Yardley explained when the buyer and seller are disagreeing, and the bank has to hire attorneys to get it straightened out is when the costs become very high, especially when there are multiple owners, to obtain a clear title for the bank in case of a foreclosure.

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In answer to a question as to whether there would be a better way than percentage of value, Brown said they wouldn't want to have it wide open, on the other hand they want some restrictions and this is the attempt made. The fees can't be less than \$350, nor more than \$5,000.

Brown explained mortgages on small properties are becoming very scarce because of lack of funding money, and they are being asked to all give uniform documents and are asking for indentures. Mortgages are given on properties over 15 acres in size.

Huss explained indentures are for the protection of the lender and the borrower. In case of default, under a mortgage the whole amount would be due, under an indenture only the installments due are demanded to be paid.

There was some question as to whether the proposed fees are excessive for small loans.

Rep. Yardley closed saying the lending institution can transfer the fee to the borrower - \$150 might have been alright for the three-acre loan, but is no longer valid for the higher acreage.

HOUSE BILL 578 -

REP. JOHN VINCENT, Bozeman, said HB 578 is intended to eliminate unnecessary procedures and to reduce costs of both government and business by setting up a Montana Small Business Licensing Coordination Act requiring the governor to designate a small business licensing coordination center where someone desiring a license would have to go to only one place to get a license or renewal. The governor would be given power to change license renewal periods or expiration date to implement improvements and efficiency. Duties of the center would be to investigate and analyze the status quo, recommend changes, and help businessmen relative to procurement of licenses. The center would have a small businessman's ombudsman where a single master license could be obtained. The intent is to help business by speeding up the licensing procedure.

GARY BUCHANAN, Director of the Department of Business Regulation, said it was the intent of the executive branch if the Department of Commerce and the Department of Business Regulation were to be combined under one department, licensing and development aspects would be more available to the small businessman. They would be able to live with the proposed time schedule.

He proposed a couple of amendments, copy of which is attached, Exhibit A. Such an ombudsman would be able to tell the businessman what licenses he needs and where they can be obtained. He asked that state agencies report any license and fees they would require. They can work with the bill in the case of businessmen's licenses.

BRUCE LARSON, State Auditor's Office and Insurance and Securities Department, did not appear as an opponent or proponent of HB 578; however wholeheartedly approves of making licensing easier for the businessman. He offered an amendment, copy of which is Exhibit B. This bill does not conform to requirements for licensing of insurance and securities which he thinks should be kept under the state auditor's office.

ED CARNEY, Director of the Department of Professional and Occupational Licensing, approves HB 578 wholeheartedly since such a procedure is long overdue. They get many calls regarding licensing, and try to help the person calling by having proper forms sent to them. A study on the licensing procedures of the state has been proposed previously, but because of lack of funding was never studied. He offered an amendment to the bill, Exhibit C. The licenses issued by the Department of Professional and Occupational Licensing are individual licenses usually requiring an examination. The net effect of his amendment would be to just add a sentence of clarification. Want to keep the bill primarily connected with businessmen.

ALLEN ROBERTSON, Attorney in the Secretary of State's office, said they are very much in support of HB 578 and the concept of licensing coordination so people wouldn't have to go all over to get their licenses. He offered some amendments, Exhibit D, which would change the bill with regard to two of its functions. Exhibit E further explains changes the Secretary of State's office recommends.

He thinks licensing should be placed with an elected official since they feel it should be outside the 20 departments so that it can be reviewed by other than bureaucrats. The independent review is most likely to get the kinds of changes which the public really needs and the independent review goes further in this regard. The Secretary of State's office is the only office that can meet all those requirements.

The Secretary of State's office is already where a lot of licensing is done anyway, and they want to serve these along with the rest of the functions as well. Some question as to whether the corporate license tax would be left in the office of an elected official. In the initial decisions when starting a business, the Secretary of State's office is the starting point, especially when it involves corporate structure - name of the business, whether it is a sole proprietorship, corporation, etc., how you are going to finance, whether license for corporate capitalization - many functions are involved with their office. He thinks the Secretary of State's office is the place where all licensing should be taken care of.

His amendments do not address the function of implementation of the change. They would recommend changes to the governor and he would have the authority of implementation. They would make administrative rules and gather and publish that information.

He thinks the Secretary of State has a general attitude of solicitude toward the public. There is a difference in attitude between people who just work for the state government and people who are elected by the people. Placing it among the same people who now have it is not the way to go.

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OPPONENTS: None

QUESTIONS:

In answer to a question from Rep. Kessler as to why the Secretary of State's office had not introduced a bill of their own, Robertson said when this was discussed, they were already past the deadline. They just want changes from the agency whereby the governor sets out licensing would be in the Secretary of State's office.

There is to be an appropriation for \$39,662 for 1982, and \$34,862 for 1983.

A master certificate would be issued after a form was filled out containing enough information for all the licenses a businessman might need. Licenses could be issued at this same place, eliminating those functions from other agencies. If some licenses had special requirements, a businessman would be advised and could comply.

BOB WOOD, attorney for the Department of Business Regulation, said each agency would retain statutory authority for maintaining integrity of compliance with license requirements and have revocation or suspension authorities over businesses under their jurisdiction.

Rep. Kitselman said there are a multitude of licenses necessary, and a licensee has to coordinate and conform with each of those licenses - maybe by using parts of HB 31, something might be made to work,

REP. VINCENT closed saying he thought Robertson had extended a discourtesy to the committee and to him. You didn't come to me before you came to the committee. Speaking for himself, he thought you should have come to him and discussed this bill. He feels the office did not conduct itself quite the way it should have. He didn't think that injection of personalty was in good taste or necessary.

The amendments other than the ones offered by the Secretary of State's office are acceptable. The bill is to set up a coordinating center for the sole job of doing only the work under this bill. It would be just another function if added to the Secretary of State's office. He thinks it should be a center by itself. He goes along with HB 31 in a spirit of cooperation.

HOUSE JOINT RESOLUTION 4 -

REP. JACK MOORE, District #41, sponsor of HJR 4, said this resolution intends to require the Department of Revenue to reduce the paperwork both to the state and to the people who do business throughout the state in connection with the tobacco industry.

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THOMAS W. MADDOX, Helena, executive director of the Montana Candy and Tobacco Distributors, feels the State of Montana is in the tobacco business, and in fact is a monopoly. It calls the shots at any turnover of the cigarettes from the time of entry to the retail outlet. It is also a partnership because it requires the individuals who are licensed and bonded to handle the cigarettes on behalf of the state. It requires them to prepay some \$12 million to the State of Montana. The tax is prepaid before any cigarettes are sold. The first tax was enacted in 1949 in Montana. For 31 years there has been a handful of dealers paying in this \$12 million and there has never been a scandal. Different state agencies have done policing the handful of persons collecting who have been trustworthy. There are meters and the voluntary inventory in addition to the spot inventory, annual inventories and bonding requirements. He thought taxes were to be applied on a cost/benefit basis.

OPPONENTS:

ELLEN FEAVER, Director of the Department of Revenue, feels the forms that are in question should be maintained since she feels they are not a burden to the individuals who have to fill them out. All this tax form requests is a listing of inventory and purchases for a month. The primary use of the form is for enforcement of the tax. The information can very easily be compared to both distributor and manufacturer figures. The DoR can do an excellent audit with hardly any cost involved to the State of Montana and to the distributors of the cigarettes. Monthly reporting on cigarettes is required by many other states. She maintains that almost all states require monthly reporting such as Montana requires. If staff personnel had to travel over the state to each distributor and obtain the same information, it would cost a great deal in staff time and travel expenses.

QUESTIONS:

The third page of the example handed out, Exhibit 1, has to be filled out only if tax exempt cigarettes are sold. This requirement has been in effect since February of 1980.

Rep. Harper advised that every single form used by the state had been studied by the Administrative Code Committee during the interim. Rep. Moore said he had not been advised of the study.

This type of form had never been used before - checking was done on a spot check basis.

REP. MOORE closed saying prior to allowing selling to reservations untaxed cigarettes, everything was very simple, but something that requires a lot of bother for everyone was developed. He wants to put it back to the status that it was prior to 1980.


REP. WILLIAM RAY JENSEN, Vice Chairman

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EXECUTIVE SESSION: Rep. Fabrega returned to the committee and was chairman.

Rep. Jacobsen moved HB 132 Do Pass. He also moved amendment #1 of the proposed amendments be adopted, and they were unanimously adopted. He moved #2 amendment be adopted, and it was unanimously accepted. He moved #3 amendment be approved with the word "the" changed to "its", which was also unanimously adopted. Amendment #4 was moved to be adopted, but was not approved. Amendment #5 was unanimously adopted.

Rep. Metcalf moved Section 3 of HB 132 be stricken and it was unanimously approved.

Rep. Jacobsen further explained this bill and moved that HB 132 Do Pass As Amended. The motion was carried by a 12 to 5 vote of approval. Reps. Ellison and Meyer were absent. Reps. Ellerd, Metcalf, Vincent, Kitselman, and Harper voted no.

Rep. Schultz, chairman on the subcommittee studying HB 130, explained the amendments proposed and moved they be adopted, which was unanimously accepted. Rep. Schultz then moved HB 130 Do Pass As Amended. This motion carried with a 15 to 2 vote in favor of it. Rep. Ellerd and Metcalf voted No.

HOUSE BILL 262 - Rep. Jensen moved HB 262 be removed from Tabling and this was unanimously accepted.

Rep. Manning moved amendments proposed, and they were unanimously adopted. He then moved HB 262 Do Pass As Amended, which motion carried with a 14-3 vote with 2 members absent.

HOUSE BILL 530 - Rep. Manning moved HB 530 Do Pass. This motion was withdrawn after discussion because of lack of understanding full implications the bill might have.

HOUSE JOINT RESOLUTION 4 - Rep. Andreason moved HJR 4 Do Not Pass. Motion carried with Reps. O'Hara, Ellerd and Jacobsen voting no - 14-3 vote with 2 absent.

The meeting adjourned at 11:30 a.m.


REP. W. J. FABREGA, Chairman


Jo Lahti, Secretary

Statement of Intent - LC 638

A statement of intent is required for [LC 638] in that it delegates rulemaking authority to the governor in Section 5.

1. Subsection (1) of section 5 provides that the governor has the power to direct changes in license administration, consistent with law. The governor may direct certain changes based on the recommendation of the small business license coordination center. The duties of the small business license coordination center are set forth in section 4 of this bill. As a point of clarity, the governor's authority to direct changes in executive agencies already exists. It is not intended that subsection (1) of section 5 delegate new authority or additional power to the governor.

2. In subsection (2) of section 5, the governor is authorized to adopt rules to change the license renewal period or expiration date of any license. This authority has been delegated to the governor in order to realize the primary goal of this legislation. Presently, any one business may require more than one license that expires on different dates. The intent of this bill is to create a uniform licensing procedure if possible, to eliminate unnecessary steps if the applicant could apply for more than one license at one time. If the objectives of consistency and uniformity are to be met, it is imperative that the governor have the power to change license expiration and renewal dates. Any rule adopted that relates to changing the expiration of renewal date of a license shall be consistent with the provisions of the Montana Administrative Procedure Act.

Carney

Proposed Amendment to House Bill 578

Page 2, line 1

Following: "activity."

Insert: "License does not include licenses, permits, or registrations issued under Title 37. Such licenses are excluded from the coverage of [this Act]."

PROPOSED AMENDMENTS TO HOUSE BILL 578

It is proposed that the following sections be added to the bill to broaden as much as possible the scope of the bill and assure cooperation.

Amendment 1- ADD

" The small business coordinating center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordinating center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements. "

Amendment 2- ADD

" Each state agency shall report to the coordinating center any new license or permit or modification of an existing license or permit that becomes effective as a requirement subsequent to the effective date of this act, together with the applicable forms and pertinent rules and information. "

Drafter's Note: It is suggested that Section 9 of the bill be renumbered (11) and that these two amendments be numbered (9) and (10) respectively.

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AMENDMENTS PROPOSED FOR HB 578 -

Page 2, line 1.

Following: "activity."

Insert: "'License" does not include licenses, permits or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, and Title 37. Such licenses are excluded from the coverage of [this act].

Bruce Larson (Insurance) and Ed Carney (DPOL)

2. Page 6, following line 2.

Insert: "Section 9. Information availability. The small business coordinating center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordinating center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

Section 10. New licenses, permits or modifications. Each state agency shall report to the coordinating center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after the effective date of this act, together with the applicable forms and pertinent rules and information."

Renumber: subsequent section

Gary Buchanan

VISITORS' REGISTER

HOUSE Bill 530

COMMITTEE

BILL 530

Date 2/13/81

SPONSOR Yardley

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME LARRY HINE BILL No. HB 520
ADDRESS Box 501 Hesperia DATE 2-13-51
WHOM DO YOU REPRESENT West Valley Home Bldg.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE BUSINESS & INDUSTRY COMMITTEE

BILL HJR 4

Date 2-13-81

SPONSOR J. MOORE

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME BOB WOOD BILL No. HB 578
ADDRESS 805 N MAIN DATE 2/13/81
WHOM DO YOU REPRESENT DEPT OF BUSINESS REG
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

REASONS WHY IT MAKES SENSE TO PUT LICENSING COORDINATION
IN THE SECRETARY OF STATE'S OFFICE

1. This function should be located in the Capitol so citizens know right where to go and don't have to chase all over Helena looking for an unfamiliar office or street.
2. It should be placed with an elected official so as not to have bureaucrats reviewing bureaucrats.
3. It should be outside of any of the 20 executive departments so that an independent review of licensing fees, procedures and requirements can be maintained at all times.
4. An independent review is most likely to result in the recommendations for change which the public needs.
5. The Secretary of State's office is the only office in State government that can meet all of points 1 thru 4.
6. The Secretary of State's office is already charged with the function of registering many of the documents required to start a business.
7. Almost all of the very initial decisions of forming a business involve the Secretary of State's office somehow. Whether the issue is:
 - (a) the business name (registering it or reserving it);
 - (b) organizational structure (corporation, partnership, limited partnership or sole proprietorship with an assumed name);
 - (c) financing (corporate capitalization or secured interest in business property); or
 - (d) product (registering a trademark, tradename or service mark) the new business will need to contact the Secretary of State's office.
8. Since the Secretary of State's office is one of the first places most businesses need to go, it is a good place to have the other information available also.
9. The Secretary of State's office already administers the ARM so that any responsibilities regarding that could be easily carried out.