

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 19, 1981

SUMMARIES FOR

HOUSE BILL 695 -

Introduced by Rep. Asay and others, authorizes the state to aid agriculture through low interest loans for acquisition, upgrading, and modernization of land, livestock and equipment and to increase use of irrigation equipment. The bill creates an agricultural finance account in the bond proceeds and insurance clearance fund. Money from this fund may be loaned to banks to make federally guaranteed loans to residents of Montana for agricultural land and improvements, to buy notes or contracts from lending institutions or to make direct loans to farmers or ranchers. Bonds and notes to raise funds for these purposes may be issued for not more than \$375 million. The bill creates the Agricultural Development Advisory Council of seven members to be appointed by the governor. Three members must be members of the Wheat Research and Marketing Committee, three must be members of the Board of Livestock, 2-15-124 requires one member to be a lawyer. This bill requires the members to be experienced in farming, ranching, economics or finance. 2-15-124 says the governor shall designate the chairman of a quasi-judicial board, but HB 695 says the council shall elect a chairman and other necessary officers.

The Agricultural Development Advisory Council members will be confirmed by the Senate, and the terms of four members will expire at the same time as the governor's term while the terms of the other three will expire at the middle of the next governor's term. Only function of the Council, under the bill's terms, is to certify to the Board of Housing that a direct loan to a farmer or rancher is justified because private enterprise has not provided sufficient financing and that the loan is in the public interest.

HOUSE BILL 702 -

Introduced by Rep. Winslow, establishes a ceiling of \$10 on the charge the Department of Administration may impose for receiving and processing a condition report of the elevators in any building and for issuing certificates of inspection.

HOUSE BILL 720 -

Introduced by Rep. Harp and others, provides a fine of up to \$1,500 for any person who acts as an insurance consultant without having been licensed. The bill allows a property or casualty agent to collect a fee for appraisal, risk management, loss prevention or similar services.

SUMMARIES FOR

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HOUSE BILL 701 -

Introduced by Rep. Winslow and others, by request of the Department of Professional and Occupational Licensing, revises the physical therapy licensing law to provide that each member of the Board of Physical Therapy Examiners will receive \$25 per day compensation for each day in actual attendance at a meeting. Under current law board members receive only travel expenses. The bill provides that in addition to a written examination, the board may require an oral interview of an applicant for a license as a physical therapist. The bill allows the board to set rules for application procedures. The board is also allowed to issue a temporary license upon receipt of an application and of a temporary license fee of not more than \$100. Under a temporary license the applicant must work under the supervision of a licensed physical therapist.

This bill coordinates with SB 463 and SB 412. If SB 463 is approved, the provisions of this bill in regard to compensation of board members will be ineffective. If SB 412 is approved, the provisions of this bill in regard to temporary licenses will be ineffective.

HOUSE JOINT RESOLUTION 29 -

Introduced by Rep. Thoft and others, requests an interim committee be assigned to study the feasibility of requiring the Board of Investments to invest a portion of state funds in the economic development of Montana. In addition to four members of each house of the Legislature, the committee membership would also include two other persons educated and experienced in investment and finance areas. The committee would report to the 48th Legislature.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

On February 19, 1981, at 7:00 a.m., Rep. W.J.Fabrega, Chairman, called the meeting to order in room 129, Capitol Building, Helena. All members were present. Bills to be heard were HBs 695, 702, 720, 701, HJR 29.

HOUSE JOINT RESOLUTION 29 -

REP. BOB THOFT, House District #92, Ravalli County, chief sponsor of HJR 29 explained this bill asks for a study of the Board of Investments. There are real possibilities in this kind of a study. Montana is a capital short state. There is lots of room for investments in the state by putting it out at a lesser interest rate and the rollover of dollars ramifications need to be studied. We are talking about over \$1 million. Whether the Prudent Man rule should control; should there be a state investment or not; and should there be a study of that.

JOHN CADBY, Montana Bankers Association, said they have been working on this for about 10 years - it goes in cycles. There was a lot of idle money in banks. Though not all bad, it made a lot of capital available for loans throughout the state. All the money was pooled and the lion's share has since flowed out of state seeking the highest possible yield. The purpose of the Prudent Man rule is to seek the highest return and to insure the integrity of the trust in a safe and prudent manner, not just to get the highest yield. This complies with the highest Prudent Man yield, but it goes out of state and is not invested in the economic development of Montana. Public fund monies invested in the state multiply 7 times. We are talking about \$1 billion. An interim committee of this kind would be most valuable and have them do a study and come back in the 1983 session and figure out how to put those funds to work in Montana.

OPPONENTS: None

QUESTIONS -

Rep. Manning asked if there is much difference in interest rates outside of Montana. Mr. Cadby said some banks are not able to bid as high and look at their cost factor and their needs. There are advantages with out-of-state financial institutions, but removal of the usury ceilings will correct some inequities. Some states provide a discount. They pay taxes and should receive some kind of a break. There is another bill to do that. They might not receive the highest yield, but within a point or two of New York, but if we can take that money and use it here, that's where you will get the benefit by loaning that money out.

Rep. Robbins asked what percentage of investment in the state are we talking about? Mr. Cadby answered about 80% has been flowing out-of-state. The amount of investments in Montana mortgages has dropped substantially in the last year. What percentage would be invested in Montana? Mr. Cadby thought a larger share should be invested in Montana. Should invest in more

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mortgages and bankers tell him that it is easy to do business with other secondary mortgages rather than the Board of Investments and a higher criteria. If you are only going to buy the best loans then you can insist on the highest possible yield. The interim study could really dig into and find out and give a comprehensive report.

Rep. Ellerd questions whether there has ever been a worthwhile study such as this done. Mr. Cadby thought the bank shares study was worthwhile. Rep. Fabrega mentioned it would be necessary to have some people with expertise on such a study committee.

EXECUTIVE SESSION -

Rep. Manning moved HOUSE JOINT RESOLUTION 29 DO PASS. Motion carried with Reps. Jacobsen and Ellerd voting No, and four were absent.

Rep. Wallin moved to UNTABLE HOUSE BILL 349. Motion carried. (This bill was introduced for the purpose of reducing the high cost of liability insurance.) Rep. Wallin moved previously proposed amendments be adopted. Motion carried with Reps. Andreason, Metcalf, Harper voting No. Rep. Andreason moved HOUSE BILL 349 BE TABLED AS AMENDED. Reps. Kitselman, Robbins, Jacobsen, Ellerd, Wallin voted No. Motion carried.

Rep. Jensen moved HOUSE BILL 713 DO PASS. Motion carried unanimously.

Rep. Kitselman moved HOUSE BILL 671 DO PASS. He further moved to adopt proposed amendments and these were unanimously approved. Rep. Kitselman reworded his motion to HOUSE BILL 671 DO PASS AS AMENDED. Motion carried unanimously.

Rep. Kitselman moved HOUSE BILL 625 DO PASS. Rep. Jensen moved that HB 625 be amended to show an effective date to be on passage and approval. Motion carried unanimously. Rep. Kitselman then moved HOUSE BILL 625 DO PASS AS AMENDED. Motion carried unanimously.

Rep. Jensen moved HOUSE BILL 597 DO NOT PASS. Rep. Kitselman made a substitute motion HOUSE BILL 597 BE TABLED. This motion carried 18 - 1 - Rep. Ellerd voted No.

Rep. Ellerd moved HOUSE BILL 612 BE TABLED. Motion carried unanimously.

Rep. Meyer moved HOUSE BILL 492 DO PASS. Rep. Meyer further moved HB 492 be amended. (This is the consumers loan act - limited to using 18% maximum rate.) Amendment carried with Rep. Kitselman voting No. Motion was reworded by Rep. Meyer to HOUSE BILL 492 DO PASS AS AMENDED. Motion carried with Rep. Kitselman voting No.

HEARING CONTINUED -

HOUSE BILL 701 -

REP. CALVIN WINSLOW, House District #65, Yellowstone County, chief sponsor at the request of the Department of Professional and Occupational

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Licensing, explained this bill very simply implements a couple of changes to make the Board more workable. Some changes in travel reimbursement are made, as are some qualifications required for licenses, and for those taking applications. There are also some rules made in connection with persons licensed in other states. It talks specifically about renewal fees. It talks about temporary licenses, and others coming into the state.

THOMAS LARSON, State Board of Physical Therapy Examiners member, said this board was established in July 1979 and is one of the few boards that did not have an expense paid to the board. Their financial situation has become better because all of their members have been serving gratis. The bill would clarify whether persons seeking licenses would have to take an oral examination as a physical therapist. Some areas are not clearly understood by persons taking the examination. These measures would make this clear so people would have a better understanding and it would smooth the process a lot. All the fees are in the guidelines with all of the statutes of Montana.

OPPONENTS: None

QUESTIONS -

Rep. Fabrega asked if they were becoming more restrictive? Mr. Larson told him no, they are trying to protect the consuming public's health care in Montana. They are no longer under the State Board of Medical Examiners. They are an independent board and have received the funding and are now a viable board in their own right.

Rep. Harper requested the amount that is being charged now if \$100 is to be the new fee. Mr. Larson said this includes the paper work and time involved, and the issuance of the temporary license, but there is no additional fee for granting the license for a permanent license. Rep. Harper continued further - if you are already charging the maximum, how are you going to cover the \$25 per day? Mr. Larson said the \$25 is due on April 1 each year. Finances were very tight the first year they were in operation. Therapists renew their licenses at a cost of \$25 each April to continue in practice. There are 130 practicing. This way it would be covered.

Rep. Winslow closed saying these few changes will make it more functional.

HOUSE BILL 702 -

REP. CALVIN WINSLOW, House District #65, Yellowstone County, sponsor said HB 702 is an elevator bill. Very rarely elevators are checked by state sources - they are checked privately and then the state sends back a piece of paper that costs \$25. A couple of years ago they worked on these statutes, but are still prohibitive. They might have 10-14 different elevators and are paying \$25 per elevator per year. This simply puts the charge down to \$10 which is more realistic.

CHAD SMITH, Montana Hospital Association, Helena, said SB 647 proposed much of the language proposed to be amended in this bill. Before they had unnecessary inspections by the Department of Business Regulation and the

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insurance companies. The Legislature thought this was an unnecessary cost and an unnecessary inconvenience to the people that run elevators for them to have inspections twice each year. They said they could be made by the insurance people and that they would have to advise the state that they had been inspected. All of the inspections came to \$50 per elevator. It was expected that the fee would be eliminated. The fee has only been cut in half. The work is no longer necessary, but at the rate of \$25 it doesn't require any examination. Review and preparation of license is overcharged for. There will be some talk about getting the general overhead of the office. In some places the elevators are not maintained properly. Unnecessary costs of operation are being done away with.

REP. HARRISON FAGG doesn't think the elevator inspections are necessary as such. He had an elevator written up as being unfit for human occupancy when it had been used for moving dead bodies. There were three complaints. A new internal ruling was still requiring inspections for elevators. The manufacturer and the insurance companies inspect your elevators. He thinks this is an example of bureaucracy, and can see no necessity for this type of inspection.

JAMES KEMBEL, Administrator of the Building Codes Division, said for the \$10 fee that is proposed in the bill he cannot see how they can support this program. Under 50-60-701 MCA they are required to inspect all elevators to comply with the state code. See EXHIBIT A.

PHIL STROPE was to have appeared as a proponent.

OPPONENTS: None

QUESTIONS -

If the fees don't cover the cost of doing this, doesn't the cost come out of the general fund? Mr. Kembel said if they do not collect enough fees, help is laid off and the work isn't done.

Rep. Andreason - regarding the \$1 overhead cost in #9 on Exhibit A, elevators not covered by a certified inspection or by ourselves yet you say that all elevators are inspected. Mr. Kembel advised the law said inspectors had to be certified to do elevator inspections. Nobody wanted to do the certification to do these third party inspections. If the elevators are already inspected by someone then there would be an unnecessary duplication if you had to inspect all elevators. Mr. Kembel said they don't have anyone on their staff with inspection expertise. They are not minimum safety oriented totally. One section checks the minimum safety load tests and that the cables are not broken, and that the safety design works.

Rep. Andreason asked what the insurance companies do? They inspect for safety for their own companies.

Rep. Bergene said there was so much crossover that it was an impediment to the business. How could that be handled? Mr. Kembel said none of the companies have come in to get certified to do inspections. Once they are certified the state would no longer do inspections.

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Rep. O'Hara asked how long they have been inspecting elevators, and he was told since 1977. How many major things have gone wrong? This was not relevant to the bill. Chad Smith said the point you are making is that the charge should be passed on to the person doing the inspecting. Their rule should be adjusted so that payment is credited to those doing the inspecting. Just administrative costs can't be more than \$10. Mr. Kembel said they are inspecting once a year.

Rep. Robbins asked if there is any record of inspections in small apartment houses. Do they usually have a maintenance contract? Mr. Kembel said small buildings probably don't. They do inspect those that are not under maintenance contract.

Rep. Schultz thought your insurance company would require that your elevators be inspected. Rep. Fagg said the best way would be to ask the maintenance man to get certified. These people generally sell and have a maintenance contract. Write up a contract and put in maintenance requirements. They are also checked by the insurance company. I am inclined to think they are just sending me a certificate and charging me \$25. Eighty to ninety percent of the cases he knows of have no problem. The law should be written so as to charge persons who do not take care of it.

Rep. Jensen asked about duplication of inspection. If an insurance company does an inspection and they are certified and they point out corrections necessary, they will require that they do the corrections. They will not go in and inspect if the insurance company has done this.

Rep. Andreason said this bill would charge \$10 for the processing of the report and \$10 for the inspection. Is that \$25 located somewhere else? Mr. Smith said that is the regulation now. For each elevator that has been inspected by an insurance inspector, they are going to charge each elevator \$25 for making out the receipt. There isn't supposed to be any inspection for any elevator that has been inspected by a manufacturer or an insurance company. Just to receive that report from a qualified inspector, the \$10 is the charge made for sending the license.

Rep. Andreason was not sure we should be paying \$25 for processing the report. Mr. Kembel advised if the inspection comes in with violations that are critical and they cannot issue the certificate and have to see that those problems are cleared up. They only act on that inspection report received from a third party. We will accept owner's or a maintenance person's advise that those violations have been cleared up. Rep. Andreason remarked you still don't send an inspector from your office.

Rep. Ellison thought when the report says no need of servicing, it should not have to be paid for.

Rep. Fabrega asked if you have authority to levy fines. Mr. Kembel said they need the right to levy fines so that the people who are causing problems would have to pay. Rep. Andreason asked Mr. Kembel if he would mind submitting some language relative to this.

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Rep. Robbins asked if the department has any authority to go after those having problems and try to stop them from running.

Rep. Winslow closed saying the problem here is that many or most of the elevators are maintained by maintenance companies who are concerned about safety and they are inspected by insurance companies and are charged a \$25 fee for processing some paper. For those who are doing a good job he recommends the load be lightened so they don't pay for some of the elevators that aren't being maintained properly - those that do not meet any safety inspections.

HOUSE BILL 695 -

REP. TOM ASAY, House District #50, Rosebud County, chief sponsor, explained HB 695 deals with the problem of obtaining financing for agriculture in a means and in a manner that can make some financing money available to them with an interest rate that it would be possible for them to handle. This will take a vehicle that is presently in operation - are amending existing authority to extend the operation of the housing authority into agricultural purposes. They are presently making money available for the building of homes and this extends their authority to deal in agriculture. The new language on page 2, line 1 extends existing capabilities. Page 2, line 18 talks about Agricultural Development Advisory Council and says how it is set up. The only changes made are wording that will extend present authority. All funds are issued by the bond proceeds and insurance clearance fund to carry out agricultural financing programs. Page 18, line 8 the Development Board may make certification to the Board of Housing that a farmer or rancher is eligible to receive a loan. Money from the fund would be made available to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending institution for the making of federally guaranteed loans for ag land and improvements for persons residing in the state.

Page 20, line 8, the Board may finance only when a majority of the Agricultural Development Board finds that private enterprise has not provided sufficient financing on sufficiently attractive terms, and the loan will be in the public interest. Financing for ag loans may not exceed \$375 million. That is a beginning figure for the amount of bonds that may be sold for ag interests. Page 22, line 20 explains the requirements for the 7 members of the Council and their qualifications.

This program is tested and tried and in operation through the housing board now. The money could be available to loan in the matter of weeks or months. It does not obligate state finances - does not cost the state a nickel.

JOHN OITZINGER, is a lawyer in Helena and counsel to the Board of Housing. HB 695 is consistent with the Housing programs and will not jeopardize any of the Housing programs now and they are consistent. The law as written would be a constitutional law and would not require a test case. It could be put into effect right now. This type of bonding has been used in other states and these bonds would get a Triple A (AAA) rating.

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With rating and tax exemption farmers and ranchers should be able to borrow below what mortgages go out to for homes.

LYLE OLSON, Administrator of the Board of Housing, didn't know if he should be involved with this. This has been working in Iowa and they have 3,000 farm applications in Iowa and they will be selling bonds very shortly. We would not be using any general fund money and would probably have to hire an ag expert to work with the Board. They used general funds when starting up. There will be no constitutional questions. They could sell bonds before the end of the year. They make money by using money costing 10% and marking it up 1-1/2% which would cover costs of operations. This is put out at interest while it is in their funds.

OPPONENTS: None

QUESTIONS -

Rep. Ellerd thought the main problem is that these bills come in and they don't consider any other persons who might be in need. Could we give some help to other businesses and to those who need a lower interest rate? Rep. Asay responded practically all other segments of business have some availability to other cheaper funding. Rep. Ellerd thought some farmers should be in here to support this bill. Rep. Asay explained this bill deals solely with the obtaining of money for agriculture as such. The intent is that agriculture as such is in difficult straits and is in need of financing. Rep. Ellerd said there are other industries that need a lot of help too. The bills are all turning to agriculture - we are going to have to start thinking about other industries.

Rep. O'Hara asked if this works; how do people apply? Rep. Asay said you take applications in and sell bonds to cover that amount. They can sell bonds up to \$375 million. This puts a cap on it so that that is all they could have at any special time. Mr. Larson said the Agricultural Advisory Committee would review and approve applications. You would have people in the agricultural community doing this.

Rep. Schultz said the Board of Housing is loaning money at about 9-3/4%, do you think you can get money for agriculture at 9%? Mr. Olson advised with a AAA rating bonds are going for 10%. They are not in the market to sell bonds for housing at the present time. Rep. Schultz asked why 3 members of the Wheat Research and Marketing Committee are being picked as board members. Rep. Asay explained the idea was to find existing agriculture people.

Rep. Robbins - 9% interest - what if the interest rates go down to 7%? Mr. Larson said there is another amendment in the process which would amend that sentence and establish a floating interest rate ceiling. This will address the particular features you are concerned about and the interest rates would be addressed by another bill. Rep. Robbins was concerned about addressing it to the ag people. How do you determine who is in the ag business? Rep. Asay said ag interests would be able to do so. Mr. Larson said these have to be approved by the FHA and ag loans. Someone who isn't eligible couldn't take advantage of this loan.

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(Mr. Thomas G. Larson, State Board of P.T. Examiners, Butte, was at this hearing for informational purposes.)

Rep. Meyer asked if loan applications go directly through you? Mr. Olson said they will be processed with a lending institution of which there are 110 such institutions in the state. The Board would set up the policies how they would want to handle it. Rep. Meyer - is this going to work similar to the way the Board of Housing works? Mr. Olson - two banks in Great Falls say they will take \$3 million. They will ask for applications first. Essentially these are covered by industrial revenue bonds, and can get good interest rates. These programs are designed to protect farmers and ranchers. They do have to be done as industrial revenue bonds and would have to be done on a loan-by-loan basis.

Rep. Meyer continued - banks are not going to come in and give out "x" number of dollars to loan out. Mr. Olson said bankers would probably service the loan. Rep. Meyer mentioned as people can get SBA loans.

Rep. Ellerd asked if livestock could be bought at 10%? Mr. Larson said breeding stock is within the range of eligibility. Rep. Ellerd asked if a livestock marketing business would come under this? Mr. Larson thought so.

Rep. Ellison - 9% will be charged. You will get SBs 90 or 91 which say interest rates will be 1% less than for housing. Housing loans are 9-3/4% right now.

Rep. Jensen - you are familiar with Lund's bill, but which will be used for starting money for agriculture? Is it possible for this bill to be successful in this one? Mr. Larson advised there was a hearing in the agriculture committee two days ago and at that hearing Lund said he was going to restore his bill to do some of the same things as under this bill and he was not sure what his amendments were to be. He thought the Legislative Council is still digesting some of the changes. Some are similar, but not identical. Lund has some other features in giving tax breaks. Rep. Jensen wondered if it would be possible for these two to use the same advisory council and extend its duties. Rep. Asay thinks the bills are compatible. Lund's is for beginning farmers. He feels they are compatible.

Rep. Jacobsen thinks the committee should look at both bills at the same time. The other bill went to the agriculture committee because it was thought that a broader understanding would be obtained by explaining to more people. Under federal tax law this cannot be an existing farm - there has to be a real change in ownership. There has to be an acquisition of land involved and if there is an acquisition, we are dealing with two non-related business partnerships - we are going to have a bona fide acquisition.

Rep. Fabrega said transactions between relatives have to qualify under the 'arm's length measurement' -- you cannot make a low-priced sale to avoid taxes. Rep. Robbins asked how about a person wanting to buy an adjoining person's property? Mr. Larson said their policy has to be established by the Agricultural Advisory Council. They would have to set up eligibility

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requirements. They would help anyone to purchase land in the state.

Rep. Ellison remarked there are no income requirements, and in the absence of policies, it could be anybody who is eligible for a Farmers Home loan.

Rep. Fabrega said you are basing part of the criteria on FmHA. Are you also adopting the criteria of what they could have as a credit risk program? Mr. Larson said they are limited in Housing by the new Federal Marketing Subsidy Act.

Rep. Fabrega said under the Farmers Home Board, you could apply for farm financing. Why is it necessary to tie to FmHA when establishing a board? Mr. Larson answered it guarantees the program making it attractive to industrial revenue bond purchasers. It would have to be guaranteed by the FmHA and they would get the money. This Board would have a lesser power and it would depend on whether your Board is going to be reasonable. The FHA or VA guarantee for houses; the FmHA guarantee for agriculture. They have the authority to sell this kind of bonds. Mr. Olson said right now there is a new limit on development bonds in the state - a limitation may be coming. These do not involve the state at all. They are indirect credit of the state; there is no reserve fund contributed by the state - they are solely on the collateral provided. How do you develop a sinking fund? Mr. Olson said there would be a fund developed with the bond sales. Who appoints the Wheat Board? The Department of Agriculture, and the governor appoints the Housing Board. How does the Board of Housing get appointed and how political is it? It is a 7 member board informed in financial housing or finance. It is appointed by the Governor and their term expires at the end of his term. The Wheat Board is appointed by the Governor - 4 & 3 for the majority party - you have a purely political board either way. The committee might want to consider this. A person must have knowledge of housing economics or finance.

Rep. Schultz asked where the money for the Housing authority is invested? Mr. Olson said they have four underwriters - the First Boston Corporation in New York, Demmer and Bosworth which is regional, and Piper, Jaffray which is national, and D.A. Davidson which is regional. Ninety percent of their bonds are sold out-of-state.

Rep. Asay closed saying he really feels as a result of your questions that we need it very badly and it is not incompatible with other bills. Anything that's going to get approval of the bank and get appraised as such is the best credit risk. You do have to compete. We want to end up with a good ag base.

HOUSE BILL 720 -

REP. JOHN G. HARP, House District #19, Flathead County, chief sponsor, explained HB 720. A Montana agent is not allowed to charge a fee. We are having large insurance companies coming in and performing these services and then leaving the state. There are three areas that are defined. Risk management involves identifying, analysis and evaluating the risk. A risk management person would come in to an operation and go in and analyze financial

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statements, what assets there are and what the client's exposure is. What would be the effect of a breakdown of an \$80-90,000 piece of equipment have on the business? What risk is there? Would arrange to make provisions to rent in order to prevent loss of revenue, eliminating as much exposure as possible. The City of Billings asked the agent in Billings to perform a risk management study and the study was done. They thought the City of Billings might be better off with self insurance and a firm from the Billings area for \$1,500 provided the service. They said if they introduced a safety program, they might be able to reduce their insurance rate and exposure. Risk management's policy is not to increase the insurance premiums - in some cases it will increase. It is similar to the consultant's bill for providing services to look at their exposure and see that they are properly insured.

You cannot sell them insurance after providing the service. Risk management would give the Montana agent an opportunity to go in and look at a business and after making recommendations to that firm he could also sell them insurance at a later date. People from out-of-state are coming in and providing these services and are not properly protecting the Montana agent. The insurance industry in Montana is paying \$15 million insurance tax which comes under the corporation income tax at a 6.75 net income; state could be deriving income from this instead of it going out-of-state.

ROGER McGLENN, Independent Insurance Agents Association of Montana, Helena, supports HB 720. The process of risk management is very complex today. See his EXHIBIT B. Every contract should be scrutinized by an insurance agent. With a contract for leasing a car you assume the risk of the manufacturer and the person who leased you the car.

You can reduce your risk by reducing the frequency of loss. One example would be to use a computer during the time others are not needing it. The penalty has been changed slightly in the bill and it is easy for the Commissioner's office to look at that contract and see that it is fair. It is not cost effective for small businesses to provide these services. Independent agents in Montana could perform these services.

There were other proponents for HB 720 - David Bruck, Industrial Insurance Agents of Montana, and A.D. Keunning, Industrial Insurance Agents, Helena.

OPPONENTS - None

Valencia Lane, Montana Insurance Commissioner's office, took a neutral position on this bill. They feel if the Legislature feels it is a proper function for insurance agents to be in, their office can probably handle it. She recommended amending page 2, line 23 to reinsert "as provided in 38-18-212".

QUESTIONS -

Rep. Metcalf thought making recommendations and then selling insurance to cover would be a conflict of interest. Mr. McGlenn advised risk management comes from life insurance recommendations. The consultant law is being amended out. There is still a place for unbiased persons to come in and review a whole insurance program. There are fewer than three resident consultants in property and casualty. It is their opinion that the insurance

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industry will someday do away with the commission schedule and you will contract with someone for this insurance. Life and casualty has consultants. In many cases they are cutting premiums.

Rep. Manning asked what kind of a fee do you have in mind? Mr. McGlenn said he had a contract in mind. It will be regulated by the market and agency - maybe \$30 an hour will be agreed upon.

Rep. Schultz commented it was a sad state of affairs to have to bring in an insurance consultant to tell us how much insurance we should have. Rep. Kitselman thinks it is the wise thing to do when it becomes more involved, especially when you are with a large manufacturer there are many, many hours and many specialized things to do. Once you have the trust to be allowed to come in and do an analysis, more than likely you would have a sale from that. Under current law, you do the work for a fee, you can not sell the product. There are certain specified things that only that particular company will handle under your products liability law. All the work you do prior doesn't count until the policy is issued. See EXHIBIT C.

Rep. Fabrega felt if you charge for it, you should be licensed. If you don't charge for it, you don't need a license. Valencia Lane - what about those offering advice to the senior citizens. You don't have to have a license. She said there is some confusion about the service provided. An insurance consultant would look at your insurance program and look at what you have and give you advice. They could charge a fee for that only if they agree beforehand that you are going to have to pay a fee. They want to be able to go in and look at how you are running your business, what kind of training you are providing your employees. They are going to look at more than your insurance - on where you can cut down on your risk. She didn't know if it will be a conflict of interest by allowing one or the other.

Rep. Metcalf - insurance consultants would still be under your supervision, and risk management persons would not be consultants. If he looked at your whole operation and by doing certain things you can reduce your risk then he is a risk management consultant. Ms. Lane said this law would allow them to charge an additional fee in addition to the commission on any insurance they would sell you.

Rep. Fabrega asked the reason for the amendment she proposed. Ms. Lane said it would say that a person cannot accept a fee as provided. When they put new language in they struck more than what was necessary and more than what they intended.

Rep. Schultz commented that under the Hartford program every year an investigator goes through all the buildings - plumbing, wiring, barns, etc. That is a company engineer that comes out and reviews your business. There are ways to shift or avoid the risk to avoid purchasing more insurance. He doesn't do anything to limit or reduce your insurance premium. You have to agree before he does the work the amount of fee to be charged.

Rep. Harp closed asking for the same privilege as other agents have out-of-state of Montana and in some cases they might be able to perform such services.

REP. JENSEN IS ACTING CHAIRMAN WHILE REP. FABREGA PRESENTS A BILL IN THIS COMMITTEE.

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HOUSE BILL 716 -

REP. W. J. FABREGA, House District #44, Great Falls, chief sponsor of HB 716 explained this was introduced at the request of the school boards because of the problem they are having to sell school bonds. The bill is under questionable health in the Senate because bonds are a tricky financial instrument. This bill will relieve the selling, and it then cites a floating method by allowing the school boards to accept bids that are 150 basis points above the rate established by the 20 bond index for 20-year general obligation bonds last published by the weekly bond buyer, New York, New York, prior to the date of sale of the bonds.

You would now be determining how much interest you should pay based on what is going on in the market. You have the weekly bond average - 150 points means 1-1/2% above that average. A school district may accept a bid that is within 1-1/2% of that. If it was 9-1/2%, it means it could go to 11%. There is a need for some mechanism to allow the school districts to sell their bonds. If you cannot sell them, you have taken away their ability to finance other than waiting until interest rates go down.

CHAD SMITH, Montana School Boards Association, feels this is a very important bill. With the ceiling of 7% on school bonds all construction has come to a halt. Not even being tax free makes for less interest. The people who are buying the tax free bonds are in a 50% tax bracket. At the present time there are a number of investments that you can make that are at 17.8% on investments which are taxable, but they have unlimited withdrawal rights and those are attractive enough so that nobody is interested in purchasing anything in Montana. School districts can't construct or rebuild because they have no means of financing. There are a number of bond elections which have passed that cannot proceed because there is no market for the bonds.

Another bill is in the Senate Taxation committee which opens it up to the free market. These limitations go back to when you might have only one person bidding - that is not the case now. There are five who are interested in purchasing Montana bonds. This bill provides some limitation for those who feel the bond market should not go wide open. This bill would limit it to 1-1/2% over the bond buyer's weekly rate at 150 points over. We searched for every possible means of tying this to some sort of regulatory rates, but didn't find anything. This will actually reflect what the actual rate of bonds being sold on a weekly basis is; the 1-1/2% they say should be plenty to meet the difference in demand and still will provide some limitation rather than being wide open.

REP. GLEN JACOBSEN, House District #1, Medicine Lake in Sheridan County, lost a great portion of their school and they had a terrible time to sell bonds and finally some local people who could afford to, bailed them out. He supports HB 716.

OPPONENTS: None

QUESTIONS: None

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Rep. Fabrega closed explaining the 20 year general obligation index is a sampling of different bond issues throughout the country. It is like the Dow Jones market report, except it is for bonds.

If you remove the cap, you are competing with the entire spectrum. This makes sure that you are only competing in the bond market and because of the base it will have a tendency to be kept at a lower rate. Rep. Metcalf said the bond market is less volatile than some of the others. Rep. Fabrega advised any lowering of income tax or other change has a tendency to increase what you pay on bonds. Any reduction tends to increase the bond's interest. Rep. Metcalf reminded you could sell these at 1-1/2% difference.

EXECUTIVE SESSION - REP. FABREGA RESUMED AS CHAIRMAN.

Rep. Metcalf moved HOUSE BILL 716 DO PASS. Motion carried unanimously.

Rep. Meyer moved HOUSE BILL 701 DO PASS. This bill pertained to occupational licensing under the Board of Therapists. Motion carried unanimously.

Rep. Harper moved HOUSE BILL 702 DO PASS. He further moved to amend page 2, line 10 to limit additional charges to \$15. Mr. Kembel advised unless the inspection is done by a certified inspector they cannot accept an inspection report. John Lavinsky, attorney with the Department of Business Regulation, said the bill would repeal 50-60-701 dealing with elevator inspections. It is hard to get compliance with any deficiency inspection report because they have no ability to force the owner to correct problems. The building code is not general funded - its sole support comes from fees. You have given them the liability but not the ability to enforce these provisions. Those who follow the law are subsidizing those who don't.

Rep. Harper withdrew his former motion to amend. He moved to amend so that the Department may not charge more than \$10 for each elevator in a public building and issuing an inspection therefore. Amendment was adopted with Reps. Andreason and Jacobsen voting No. Motion that HOUSE BILL 702 DO PASS AS AMENDED (reworded motion) was adopted with Rep. Jacobsen voting No. Rep. Ellison was absent.

Rep. Kitselman moved HOUSE BILL 720 DO PASS. He further moved HB 720 be amended - and the amendment was unanimously adopted. He restated his first motion to HOUSE BILL 720 DO PASS AS AMENDED. Motion carried with Rep. Meyer voting No. Rep. Ellison was absent.

Rep. Pavlovich moved HOUSE BILL 493 DO PASS. He further moved to amend by striking section (b), and this motion was unanimously adopted. Rep. Meyer moved to amend the title to accommodate the other amendment. Motion carried unanimously. Rep. Pavlovich then reworded his motion to HOUSE BILL 493 DO PASS AS AMENDED. Motion carried with Reps. Andreason, O'Hara, Jensen, Metcalf, Harper voting No. There were three absent. 11-5-3.

Meeting adjourned at 11:30 a.m.

Josephine Lahti
Josephine Lahti, Secretary

W. J. Fabrega
REP. W. J. FABREGA, CHAIRMAN

VISITORS' REGISTER

HOUSE

COMMITTEE

BILL

Date _____

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Jesse P. Casman	2906 Prospect Helena	DPOC	✓	
Thomas H. Linsen	1019 West Madison St. Butte	Held Back off P.T. Blumens ✓		
Roger McLeod	HELENA	IND. AGT. OF MT. 720		
John O'Rourke	HELENA		696	
Daniel Bruck	Helena	Ind. Agt. of MT 720		
Ed Smith	Helena	Ind. Agt. of MT 716		
Alfred Fryspe	Helena	N. FO. MT. Cattlemen MT. Cattlefeeders 695		

NAME Thomas G. Larson BILL No. HB 701
ADDRESS 1019 W. Wolcott St. Pitts., MT DATE 2/19/81
WHOM DO YOU REPRESENT State Board of Phy. Therapy Examiners
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

H.B. 702

COMMENTS OF THE DEPARTMENT OF ADMINISTRATION

BUILDING CODES DIVISION

PREPARED BY W. JAMES KEMBEL, ADMINISTRATOR

As drafted, the bill will make it impossible for the Division to carry out the elevator inspection program as required by Section 50-60-701, MCA. The Division is self-supporting and therefore, must charge fees to cover the cost of providing services required by the state statutes.

Currently, the fees charged by the Division for the elevator inspection service are as follows:

Fees when inspections are made by the Division

\$58

Fees when inspections are made by a certified
inspector

\$25

Section 50-60-701, MCA requires the Division to do the following:

1. Inspect all passenger elevators and escalators in public places to insure compliance with the requirements of the state building code.
2. Adopt standards for passenger elevator and escalator inspections to assure compliance with the requirements of the state building code.
3. Adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators in lieu of state inspections.

The following are those duties generated by the elevator inspection program:

1. Perform inspection of those passenger elevators not covered by certified inspectors of insurance and maintenance companies.
2. Receive, review, and file all inspection reports either of state retained or certified elevator inspectors.
3. Follow up to see that all deficiencies listed on the elevator inspection reports are corrected so that the annual operating certificate can be issued.
4. Issue the annual operating certificate.
5. Bill and collect inspection fees for annual certification.
6. Prosecute violations when the need arises, including all necessary administrative hearings.
7. Close elevators that become dangerous to life-safety.

- 8. Provide consultation for owners, designers and other interested parties concerning passenger elevators.
- 9. Certify inspectors of insurance and elevator maintenance companies.

The fee break down for providing the service is as follows:

Division Inspected Units (576 Inspections)

Contract Elevator Inspectors	\$38/unit
Processing Inspections	
Clerical	\$ 6/unit
Administrative	13/unit
Overhead Cost*	<u>1/unit</u>
	<u>\$20/unit</u>

TOTAL \$58/unit

*This includes postage,telephone, printing, rent, insurance.

Third Party Inspected Units (30 Inspections)

Processing Inspections	
Clerical	\$ 8/unit*
Administrative	15/unit*
Overhead Cost	1/unit
Administering Certification Program	<u>1/unit</u>
	\$25/unit

*These costs are higher than for Division inspected units because of coordination efforts necessary.

Although the above is the break down of how the fees are expended, it does not reflect the actual costs of the program. In reality, the Division has one bureau chief and one secretary spending a minimum of one third of their time on the elevator program. This does not include the amount of time spent on attempting to collect fees, that customers refuse to pay, through other state agencies nor does it include the cost of holding administrative hearings. The program's financial picture is as follows:

Income

State Inspected Units	576 units x \$58	=	\$33,408
Third Party Inspected Units	30 units x \$25	=	<u>\$ 750</u>
	TOTAL INCOME		\$34,158

Expenditures

1/3 Bureau Chief	\$ 7,335
1/3 Secretary	3,739

Contracted Elevator Inspectors	\$21,888	✓
Communications	1,165	✓
Rent	1,070	
Printing	<u>505</u>	✓
	\$35,702	

The elevator program is the Division's function, carrying the greatest liability to the state. Each year the elevators are certified to guarantee that the cables are safe, safety devices function, controls function and that necessary load tests are current.

The \$10 fee established by the law makes it impossible to carry out the program.

NAME Alice Fryslie BILL No. HB 695
ADDRESS Helena DATE Feb. 19, 1981
WHOM DO YOU REPRESENT National Farmers Organization and Montana Cattlemen's Assoc.
SUPPORT X Concept OPPOSE _____ AMEND _____
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This legislation has been looked at for many sessions and is finally come to serious consideration. We feel that the concept of this HB695 as well as HB 640, SB163 and other have real potential toward an incentive program for farmers and ranchers to stay in business and to encourage young people to enter the agricultural industry.

Our recommendation to this committee would be to gather all these proposed measures and analyze the best parts of each; then combine those parts to carry on through passage of a workable acceptable Bill.

Alice Fryslie
N.F.O/MCA

NAME Jack Asay BILL No. HB 695
ADDRESS Deer Lodge DATE Feb. 19, 1981
WHOM DO YOU REPRESENT Montana Cattle Feeders Association
SUPPORT X Concept OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Our organization feels very strongly that something must be done to encourage entering and continuance of operation in the agricultural industry. This Bill as well as some of the others that have been proposed during this session of the Legislature have merit. We support the concept of HB695 and would urge the Agriculture Committee to gather all like proposed Bills and determine the best of each to be combined into one which can then be passed into law.

Jack Asay, Exec. Vice Pres.

NAME ROGER McGLENN BILL No. 720

ADDRESS HELENA DATE 2-19-81

WHOM DO YOU REPRESENT IND. INS. AGENTS ASSOC OF MT.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: ATTACHED.

Independent Insurance Agents of Montana

INCORPORATED



To: The House Business and Industry Committee
From: Independent Insurance Agents' Association of Montana
Date: February 19, 1981
Re: Support for House Bill 720

The process of risk management is very complex in today's insurance industry. Many agents are providing some of the risk management techniques to service their clients today. However, to provide the complete risk management and loss prevention process for the insurance consumers is not cost efficient for our Montana agents. The amount of time to provide a comprehensive study of a client's needs and to work with that client to implement the findings of this study can run from days to weeks.

THE STEPS IN RISK MANAGEMENT:

(1) IDENTIFICATION:

A risk survey, not an insurance survey, is used to identify the potential for any losses. A complete study of the client's operation is required in this step.

(2) MEASUREMENT:

A complete idea of what the losses identified in step one could mean to the client. Frequency and severity of these losses and what they would do to the client's operation.

(3) CONTROL:

Here you determine what risks shall be handled by insurance or other means. Four basic means of control are:

(A) Avoid or eliminate the loss; in the case of an auto risk, sell the car and walk or ride the bus.

(B) Retention of the risk; including self-insurance.

(C) Loss prevention and reduction; again with a car the driver could take a defensive driving course as a means of loss prevention, and in order to reduce the financial risk of the loss of the car, buy an older car.

(D) Transfer the risk; in the case of our car, contract with some one to drive us around in their car, or buy insurance.

(4) IMPLEMENTATION

Three factors must be considered, cost, availability, and thoroughness:

(A) Cost- You want the most protection for the lowest cost, cost also involves considering alternate uses for the money saved.

(B) Availability- Some tools of the risk manager like non-deductible collision, or flood insurance in some cases, are not available because of cost or other reasons.

(C) Thoroughness- If the risk management program is complete and unitized, it reduces insurance costs and also reduces chance of mistake by the client.

No risk management plan is final, it must be constantly modified and improved as the client's business changes. However, after the initial risk management and loss prevention process has been completed, there will be no need for further charges for review and update, as the commissions from any insurance

the agent writes for the client would deserve this service.

TWO QUICK EXAMPLES:

An agent in Billings writes: "We were approached by the City of Billings to perform a risk management study on self-insurance for worker's compensation. The cost of doing this proposal is \$1,500.00. In order to do a risk management study of this nature, it is necessary for us to hire computer time to do the actuarial work. We then could provide the City of Billings with the necessary information to decide whether it would be more more feasible from a cost standpoint to self-insure or purchase normal insurance. A risk management study would indicate that if a proper safety program were initiated, it would be possible, and save a great deal of insurance dollars for them to be self-insured. The problem is that once I did the study, I was prohibited from then implementing the program through the excess market which is required when there is self-insurance. I also, under Montana law, could not sell them the required excess insurance even on a bid basis and then, in turn, charge for the safety services that are required to implement the program. As you can see, this is entirely contrary to the needs of the client."

ONE LAST EXAMPLE:

"We currently have a client who would like us to do a risk management study. We currently write insurance for this client. According to current Montana Law, I cannot perform the services of risk management for this client because we are currently writing insurance for him. This forces our client to go to an

out-of-state broker to obtain these services. I think this is unfair to a Montana insurance consumer and agent."

Many large companies in this country have risk managers on staff. Very few have this service on staff in Montana. We feel that this is a very important service to clients that can not hire a full time staff person to perform risk management for operation.

The association urges that the House Business and Industry Committee to give a do-pass recommendation to House Bill 720.

damages and the amount of judgments and settlements arising from defective products has increased greatly in recent years. Because of these increases, the insurance industry has substantially increased the cost of product liability insurance. The effect of increased insurance premiums and increased claims has increased product cost through manufacturers, wholesalers and retailers passing the cost of premiums to the consumer. Further, certain product manufacturers are discouraged from continuing to provide and manufacture such products because of the high cost and possible unavailability of product liability insurance.

(2) In view of these recent trends, and for the purpose of alleviating the adverse effects which these trends are producing in the manufacturing industry, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide product liability insurance.

(3) In enacting this act, it is the purpose of the legislature to provide a reasonable time within which actions may be commenced against manufacturers, while limiting the time to a specific period for which product liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

History: C. 1953, 78-15-2, enacted by L. 1977, ch. 149, § 2.

78-15-3. Statute of limitations.—Application.—(1) No action shall be brought for the recovery of damages for personal injury, death or damage to property more than six years after the date of initial purchase for use or consumption, or ten years after the date of manufacture, of a product, where that action is based upon, or arises out of, any of the following:

- (a) Breach of any implied warranties;
- (b) Defects in design, inspection, testing or manufacture;
- (c) Failure to warn;
- (d) Failure to properly instruct in the use of a product; or
- (e) Any other alleged defect or failure of whatsoever kind or nature in relation to a product.

(2) The provisions of this section shall apply to all persons, regardless of minority or other legal disability, but shall not apply to any cause of action where the personal injury, death or damage to property occurs within two years after the effective date of this act.

History: C. 1953, 78-15-3, enacted by Cross-Reference.
L. 1977, ch. 149, § 3.

Effect of disability on limitations generally, 78-12-36.

Compiler's Notes.

This act became effective May 10, 1977.

78-15-4. Prayer for damages.—No dollar amount shall be specified in the prayer of a complaint filed in a product liability action against a product manufacturer, wholesaler or retailer. The complaint shall merely pray for such damages as are reasonable in the premises.