

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 9, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on February 9, 1983, at 10:10 a.m., in Room 404, State Capitol.

ROLL CALL: All members of the committee were present.

ACTION ON SENATE BILL 105: Senator Fuller stated they had met on adjournment yesterday with the representative of the Labor Department and what they agreed on was moving it back to where it was prior to the 1981 session. The language was confusing so they put it back to the 1981 laws. There was a handout to the committee. (Exhibit No. 1)

Senator Regan made the motion that we introduce a committee bill. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that we introduce a committee bill.

Senator Kolstad instructed Staff Attorney Petesch to prepare the bill.

CONSIDERATION OF SENATE BILL 206: This bill is an act amending section 32-1-432, MCA, to provide exclusions from a bank's lending limit for loans secured by certain deposits and to provide a similar exclusion for two-day loans to other banks. Senator Delwyn Gage stated he was the sponsor of this bill. This bill is at the request of the Department of Commerce. The only change in the language you will find on page 3, lines 10-15. This bill deals with the limitation of banks as far as loans are concerned. Assuming a person has passed his limit of loans from the bank and he has CD's in that bank in sufficient quantity to go over that limit, the bank would be allowed to loan him funds based upon the pledged funds. The second limit does not apply on the banks loan to another bank if it does not exceed two business days.

PROPOSERS TO SENATE BILL 206: Les Alke, Commissioner, stated this is a monitorization suggested by his department. Banks have present restrictions they have difficulty living with. There is no opposition of any concern. Banks presently under National Charter have the right to make loans as this bill permits. It is not a bill of much consequence but it does modernize our laws.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE:

Senator Christiaens asked how often does Section 5 apply? Mr. Alke stated this is what is termed a fed's fund market. The banks have a volital flow from one bank to another and because these are unsecured there has to be a restriction on the time. These so called fed funds occur many times during the day. The two-day limitation is accepted by the banking industry as a common practice.

The hearing was closed on Senate Bill 206.

ACTION ON SENATE BILL 206: Senator Gage made the motion that Senate Bill 206 Do Pass. Senator Fuller seconded the motion.

Staff Attorney Petesch stated Senator Turnage asked that they have an immediate effective date. (Exhibit No. 2)

Senator Christiaens made the motion that we accept the proposed amendment. Senator Fuller seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 206 BE ADOPTED.

Senator Gage made the motion that Senate Bill 206 As Amended Do Pass. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 206 AS AMENDED DO PASS.

CONSIDERATION OF SENATE BILL 207: This bill is an act to provide for investment by banks in the capital stock of bank service corporations. Senator Delwyn Gage stated he was the sponsor of this bill also. This bill was also by request of the Department of Commerce. This bill has only one change. It deals with investments by banks in the corporate stock of banks. The change is on page 2, lines 3-6. This would allow banks to form a service company to provide data processing services that banks may be interested in having for their own use.

PROPOSERS TO SENATE BILL 207: Les Alke, Commissioner, stated this bill permits banks to invest in stocks that are not presently available to them in institutions, in their own ownership, or other banks. In the present development of banking there are new organizations that are providing services that will require capitalization. Electronic fund transfers use debit grants to another. These require organizations to establish a point to provide these services. National Banks have this power. This is another modernization bill to allow the state banks to have the same privileges.

QUESTIONS FROM THE COMMITTEE:

Senator Fuller asked why haven't we done this before? Mr. Alke stated this section did not permit a bank to invest in any corporation. There also has not been the demand.

The hearing was closed on Senate Bill 207.

ACTION ON SENATE BILL 207: Senator Fuller made the motion that we accept the proposed amendment for an immediate effective date. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 207 BE ADOPTED.

Senator Gage made the motion that Senate Bill 207 As Amended Do Pass. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 207 AS AMENDED DO PASS.

CONSIDERATION OF SENATE BILL 120: This bill is an act to revise the provisions relating to the leasing of power equipment by Class A, B, and C, and D carriers by deleting the requirement for specific approval and certification by the Public Service Commission. Senator Paul Boylan stated he was the sponsor of this bill. His testimony is attached to the minutes. (Exhibit No. 3)

PROPOSERS TO SENATE BILL 120: Ben Havdahl, Montana Motor Carrier Association, stated we support this legislation for the reasons outlined in Senator Boylan's testimony. This is the same procedure with the adoption of the bill that the Interstate Commerce Commission now follows for lease contracts.

Wayne Budt, Montana Public Service Commission, stated they supported this bill. His written testimony is attached to the minutes. (Exhibit No. 4)

There were no further proponents and no opponents.

There being no questions from the Committee, the hearing was closed on Senate Bill 120.

ACTION ON SENATE BILL 120: Senator Christiaens made the motion that Senate Bill 120 Do Pass.

Senator Gage asked would this bill become effective right away? Staff Attorney Petesch stated in October.

Senator Regan seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 120 DO PASS.

CONSIDERATION OF SENATE BILL 305: This bill is an act revising the law relating to utility rate schedule changes; allowing a utility to waive the 9-month automatic effective date of a rate schedule change and allowing the Public Service Commission to determine the interest rate to be paid on excess revenues collected under a rate schedule subsequently reduced by the Public Service Commission. Senator Richard Manning stated he was the sponsor of this bill. He turned it over to Ms. Opal Winebrenner.

PROPOSERS TO SENATE BILL 305: Opal Winebrenner, Public Service Commission, stated they supported this bill. Her written testimony is attached to the minutes. (Exhibit No. 5) She had proposed amendments which are also attached. (Exhibit No. 6)

John Alke, Montana Dakota Utilities, stated they support this bill

with one minor amendment. (Exhibit No. 7)

Larry Huss, Mountain Bell, stated they would support the bill if the amendments of MDU were in the bill.

Gene Phillips, Pacific Power & Light, stated they support the bill with Mr. Alke's amendments.

Bill Opitz, Public Service Commission, stated the amendments proposed by MDU are fine with the Public Service Commission. They have cleared these amendments. We would like to make sure that you get the other amendments in regarding rulemaking also.

QUESTIONS FROM THE COMMITTEE:

Senator Regan asked if she remembers correctly the 9-months were put in here so that the Commission could not put off coming to some kind of conclusion. I notice that this is with the approval of the utilities. She worries about the smaller utilities.

Mr. Opitz stated first of all the 9-months statutes were put in for the protection of the utility. This amendment is giving the utilities the prerogative of putting in the rates or not.

Senator Regan asked have you seen these amendments and do you need a Statement of Intent? Staff Attorney Petesch stated a Statement of Intent is definitely needed.

Senator Gage stated what this is saying is that utility wants to take a chance if you rule favorably to them if not they will pay the interest. Mr. Opitz stated yes.

The hearing was closed on Senate Bill 305.

CONSIDERATION OF SENATE BILL 306: This bill is an act specifically authorizing the Public Service Commission to order an independent audit of a public utility; providing that the cost of an audit shall be borne by the public utility and authorizing the commission to compel the production of information necessary for such audit. Senator Richard Manning stated he was the sponsor of this bill also. His written testimony is attached to the minutes. (Exhibit No. 8) He stated this is the same bill he carried in 1979 except who pays for the audit. The audit costs will be borne on the rate users. He gave handouts to the committee. (Exhibit No. 9)

PROPOSERS TO SENATE BILL 306: John Alke, MDU, stated they support this bill with two amendments. (Exhibit No. 10) The major amendment they feel is it must be performed by the audit staff itself. They feel it cannot be the intent of the Legislature to go out and hire a large firm to do an independent audit. The minor amendment he is suggesting is deleting that the books be produced in the State of Montana. If the expense is going to be borne by the utility he does not think it makes much difference.

Larry Huss, Mountain Bell, stated we join in any of the statements

made by MDU. It is important that the committee recognize some of the difficulties with the audit function. He does not want the bill to include managerial audits. They have proposed an amendment to page 1. (Exhibit No. 11). He has proposed the amendment to Mr. Opitz and they have no objections.

Mr. Opitz stated he had a letter to the committee from Senator Hims1. (Exhibit No. 12) These are three things that the legislative audit definitely is supporting after the sunset audit. He has no problems with what has been stated by the utilities as far as having the audit done by inhouse staff except that they do not have the staff to perform the audits. It is an issue that they will take up in the subcommittee meeting. The chances of the Public Service Commission receiving perhaps as many as 15 additional FTE's to do these three functions as outlined in this letter may be less than bright. The only other option in order to carry this out would be that the Commission have the ability to order an independent audit to be performed by an outside auditor paid by the utilities.

Carl Donovan, low income groups, stated they support this bill. They feel an independent audit is the only way consumers have in getting a fair shake. Also this is a way that the Public Service Commission can see if rate increases of the utility companies are justified or needed. He brought along a letter from Theresa Claybourne, Great Falls, who is also in support of Senate Bill 306. (Exhibit No. 13)

Don Reed, MEIC, stated he supported this bill. His written testimony is attached to the minutes. (Exhibit No. 14)

OPPONENTS TO SENATE BILL 306: Michael Zimmerman, Montata Power Company, stated they were opposed to this bill. His written testimony is attached to the minutes. (Exhibit No. 15)

Gene Phillips, Pacific Power & Light, stated we also oppose this bill on the grounds of the impact it would have on the ratepayers of Montana. They operate in six states, approximately 3% of the electric sales occur in Montana. This would require an audit on the six states and impose the cost on the people in Montana. He would hate to see that kind of cost put on the ratepayers in northwestern Montana. They have been filing rate cases on an annual basis. Anything they put on the rate base is verified. He does not feel this bill is necessary.

Charles Kuether, Great Falls Gas Company, stated he opposed the bill. His written testimony is attached to the minutes. (Exhibit No. 16)

QUESTIONS FROM THE COMMITTEE:

Senator Fuller asked what would be the impact of these audits on the average ratepayer? Mr. Zimmerman stated he does not know. As we are talking about 200,000 it will have an impact. It is unnecessary because you already have the assurance of auditors that is already done.

Mr. Phillips stated if we were to assume \$500,000 that would be borne by 25,000 ratepayers in Montana.

Senator Boylan asked how much would it cost you in FTE's to do this audit. Mr. Opitz stated it would be around \$100,000 per year in that area.

Mr. Opitz stated in answer to Senator Fuller's question they have 180,000 customers, it would be \$1.00 per year for the Montana Power Company.

Senator Gage asked assuming that the amendment is adopted that says the Public Service Commission would use their own audit staff and assuming that would not be totally based on those being audited and realizing this will increase the cost of government and increase taxes along the line and the cost will be passed on to other utility companies, would your organization still be in support of this bill? Mr. Donovan stated I believe so. He would like to see the Public Service Commission do the individual audits.

Senator Gage asked is it your intent in asking that these audits be done by inhouse people by the Public Service Commission to kill the bill? Mr. Alke stated no. The current arrangement is when MDU files a rate change the auditors will go to Bismark and go through records together. He thinks they could do this without more FTEs. They think it could be done more cheaply by the Public Service Commission.

Senator Gage asked on your internal audit for FCRC report do you receive a significant amount of unfavorable comments and what kind? Mr. Alke stated they are harder on the company than the Montana Consumer Counsel. They require rigid standards.

Senator Lee asked what tie is there between the Environmental Information Center and the Public Service Commission? Mr. Reed stated from the environmental and consumer standpoint this is an issue that is important. They thought it was a bill they should take a position on. Does this bill directly affect the environment? No, he does not think it does.

Senator Lee asked the substance of this bill after we disregard what authority the Public Service Commission has, is this a so-called independent audit, is that it? Mr. Opitz stated on the majority of this, the Public Service Commission has that authority. Senator Manning stated I think if you read one of the handouts on what the Public Service Commission's powers are on subpoenas they are rather limited. This issue was before the Supreme Court and they stated exactly what their powers are in that area.

Senator Lee stated the codes are very specific and in respect to Larry Huss he does not want to see a managerial audit, the Public Service Commission can get any books or papers they want. If there is an error in the codes, we should deal with that. He stated to Mr. Opitz you can subpoena and collect any paper you want. Maybe

you are not doing this. You have the power to do it. Mr. Opitz stated he cannot remember of anytime they had problems getting any kind of information they were after. The Supreme Court decision was when the Commission wanted Montana Power to have an independent audit performed on some hydrofacilities. It went to the Supreme Court. They said you can do the audit yourself but you cannot ask them to get an audit done at their expense.

Senator Lee stated instead of saying to Montana Power you do an independent audit, why don't you just subpoena the information and do a mini audit and find a problem and then investigate in that area. Mr. Opitz stated it was a special audit. It was for hydrofacilities.

Senator Gage stated assuming that the Consumer Counsel audits are they doing a sufficient amount of those and are they done sufficiently well and do you feel the consumer has a fair degree of protection right now? Mr. Opitz stated the consumer counsel does not do audits despite what Mr. Alke says. They have rate experts come in and do an analysis on them. They do not audit them.

Chairman Kolstad asked do you feel you need this type of legislation? Mr. Opitz stated that is why they are here to support it. There is a need that has been defined by the legislative staff to have it done by the Public Service Commission.

Senator Severson asked how much auditing staff do you have? Mr. Opitz stated we have one auditor right now for the motor carriers. There are 650 motor carriers in the state.

In closing, Senator Manning stated in regard to the statements made here I realize that we are looking at a bill that would cost the ratepayers an increase in rate costs. The public has said they would like to know for sure. They think it would be nice to know if these people are seeking an increase that everything is on the up and up. In all probability, it could mean a bigger increase but at least the people would be confident that everything is being done fair and square. He was surprised at the testimony this morning but he thinks some realize that this could be a benefit. It could be a deterrent to both the Public Service Commission and the utility. He would hate to see utilities owned by the government because that does not work. They need some source of controlling a utility.

The hearing was closed on Senate Bill 306.

Senator Kolstad stated he had a letter from Senator Turnage and Senator Brown on the WHOOPS plants. (Exhibit No. 17) It will require that certain investments or properties will have membership approval. It would give their membership at least a vote on some of these decisions. Senator Turnage and Brown asked that we draft a committee bill.

Senator Regan made the motion that we ask Staff Attorney Petesch to draft the committee bill to address the problem. The kinds of

rates they are having to charge are horrendous. It is a good idea. Senator Boylan seconded the motion.

The Committee voted unanimously, by voice vote, that Staff Attorney Petesch prepare the committee bill.

ACTION ON SENATE BILL 229: Staff Attorney Petesch gave the committee proposed amendments to this bill. (Exhibit No. 18) This license authority is not in addition to anyother. This would limit only to where there is no licensing authority. It would not apply to licenses inside the city limits. They would apply for a period of time that the County Commissioners determined, if it was more than a year it would be prorated. No license fee could be from a nonprofit organization and it provides a licensee engaged in buying or selling products from house to house to display the license on demand from the consumer.

Senator Boylan made the motion that Senate Bill 229 Do Not Pass. Senator Goodover seconded the motion.

Senator Regan stated right now cities have this power and they use it wisely. It is a regulatory license if you have a massage parlor that moves in and conducts itself improperly they can take the license. It is also a revenue measure. It would be helpful to the county. She sees great merit in this bill.

Senator Severson asked is there any compelling reason for this since the association of counties have not been here? Senator Goodover stated there were no proponents all opponents. He does not know who requested the amendments.

Senator Kolstad stated Senator Halligan requested the amendments.

Senator Kolstad stated at the time he testified it seemed he could care less about the bill.

Senator Fuller stated I think Senator Halligan has addressed the questions that everyone had. That was his intention. As to why the counties are not here he is not sure.

Senator Gage stated if we are concerned to let the county handle their own affairs we can do the same thing then as this bill represents. Those counties may license any business that is not by law unauthorized to operate by the State of Montana.

Senator Regan stated that is exactly what this bill does. You have to amend it into existing law.

Senator Regan made a substitute motion that we accept the proposed amendments to Senate Bill 229. Senator Fuller seconded the motion.

The Committee voted by Roll Call Vote 3-6 that we accept these amendments. The motion failed.

Senator Boylan made the motion that Senate Bill 229 Do Not Pass.

Senator Lee seconded the motion.

The Committee voted by Roll Call Vote 6-3 that SENATE BILL 229 DO NOT PASS.

ACTION ON SENATE BILL 261: Staff Attorney Petesch stated we have struck the entire bill and have prepared the grey bill. (Exhibit No. 19) This would apply to contracts entered into after July 1985. They have tests on pages 2-7 in order to determine plain language. The limitation on page 7 does not apply to an amount over \$50,000. It does not apply to insurance contracts and would retain the same good faith exception for a firm using a contract.

Senator Regan made the motion that we accept the proposed amendments. Senator Fuller seconded the motion.

Senator Goodover asked is this a new bill? Senator Severson stated same title new bill.

Senator Lee made the substitute motion that Senate Bill 261 Be Tabled. Senator Goodover seconded the motion.

Senator Regan stated we should not play games and lay it on the table. Senator Lee stated he does not think it is worth the time to stand on the floor and discuss it and try to convince 50 senators to vote against it.

Senator Regan stated that is the point. Those 50 senators have the right to hear this bill that was introduced and have the right to the committee action.

Senator Kolstad stated they could bring the bill back into committee.

Senator Regan stated she recognizes it is a legitimate motion. She is saying in fairness to the sponsor of the bill and the Senate we should address the bill. We heard the bill now lets deal with it and give the senators the opportunity to vote.

The Committee voted by Roll Call Vote 6-3 that SENATE BILL 261 BE TABLED.

ACTION ON SENATE BILL 221: Staff Attorney Petesch gave proposed amendments to the committee on this bill. (Exhibit No. 20) It amends the codification instruction to make it apply to SID's as well as RSID's.

Senator Boylan made the motion that we accept the proposed amendments to Senate Bill 221. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendments to SENATE BILL 221 BE ADOPTED.

Senator Boylan made the motion that Senate Bill 221 As Amended Do Pass. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 221
AS AMENDED DO PASS.

ADJOURN: There being no further business, the meeting adjourned at
11:38 a.m.


ALLEN C. KOLSTAD, CHAIRMAN

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ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 2-9-83

[illegible]

February 9

1983

MR

PRESIDENT

BUSINESS AND INDUSTRY

We your committee on

having had under consideration

SENATE

Bill No

120

Respectfully report as follows: That

SENATE

Bill No

120

DO PASS

AK

STANDING COMMITTEE REPORT

February 9

1934

VB. PRESIDENT

We, your committee on

BUSINESS AND INDUSTRY

having had under consideration

SENATE

206

Bill No.

Respectfully report as follows: That

SENATE

206

Bill No.

be amended as follows:

1. Title, line 8.

Following: "BANKS"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3, line 16.

Following: line 15

Insert: "Effective date. This act is effective on passage and approval."

AND AS AMENDED

DO PASS

4/10

February 9

1933

PRESIDENT

MR.

BUSINESS AND INDUSTRY

We, your committee on

SENATE

207

having had under consideration

Bill No.

Respectfully report as follows: That.....
be amended as follows:

SENATE

207

Bill No.

1. Title, line 7.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 2, line 7.

Following: line 6

Insert: "Effective date. This act is effective on passage and approval."

AND AS AMENDEDDO PASS

February 9

8 33

MR. President

We, your committee on

BUSINESS AND INDUSTRY

having had under consideration

SENATE

221

Bill No.

Respectfully report as follows: That
be amended as follows:

SENATE

221

Bill No.

1. Page 1, line 21.

Following: "part 21,"

Insert: "and Title 7, chapter 12, part 41,"

2. Page 1, line 22.

Following: "part 21,"

Insert: "and Title 7, chapter 12, part 41,"

AND AS AMENDEDDO PASS

46.

STANDING COMMITTEE REPORT

February 9

1931

PRESIDENT

MR.

We your committee on

BUSINESS AND INDUSTRY

having had under consideration

(BOYLAN)

SENATE

Bill No. **229**

Respectfully report as follows: That

SENATE

Bill No. **229**

~~DO NOT PASS~~

DO NOT PASS

AC

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2-9-83 Senate Bill No. 229 Time _____

NAME	YES	NO
PAUL F. BOYLAN		✓
B. F. CHRIS CHRISTIAENS	✓	
HAROLD L. DOVER		
DAVID FULLER	✓	
DELWYN GAGE		✓
PAT M. GOODOVER		✓
GARY P. LEE, VICE CHAIRMAN		✓
PAT REGAN	✓	
PAT M. SEVERSON		✓
ALLEN C. KOLSTAD, CHAIRMAN		✓

Mimi Fancher
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Accept Senator Halligan's Amendments

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

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2-9-83 Senate Bill No. 229 Time

NAME	YES	NO
PAUL F. BOYLAN	✓	
B. F. CHRIS CHRISTIAENS		✓
HAROLD L. DOVER		
DAVID FULLER	✓	✓
DELWYN GAGE	✓	
PAT M. GOODOVER	✓	
GARY P. LEE, VICE CHAIRMAN	✓	
PAT REGAN		✓
PAT M. SEVERSON	✓	
ALLEN C. KOLSTAD, CHAIRMAN	✓	

Mimi Fancher
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Do Not Pass

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

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2-9-83 Senate Bill No. 261 Time

NAME	YES	NO
PAUL F. BOYLAN	✓	
B. F. CHRIS CHRISTIAENS		✓
HAROLD L. DOVER		
DAVID FULLER		✓
DELWYN GAGE	✓	
PAT M. GOODOVER	✓	
GARY P. LEE, VICE CHAIRMAN	✓	
PAT REGAN		✓
PAT M. SEVERSON	✓	
ALLEN C. KOLSTAD, CHAIRMAN	✓	

Mimi Fancher
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Table the bill.

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

SB 105

February 9, 1983

We are requesting that wording in Senate Bill 105 be changed to the wording below in its entirety. The way it is worded now a private employment agency can not charge a fee to an applicant placed on a job until after a year has past which would put all private employment agencies out of business which is 247 more jobs. We are requesting to use the one sentence in the old Montana law which has been used for 10 years.

39-5-303 Regulation of fees. Disapproval of contract.

(1) The fee charged by an employment agency for its service will be a percentage of the annual income calculated on the first month's gross income to any person placed in employment as provided for in the private employment agency's fee schedule. The percentage charged must be determined by the agency and is not subject to disapproval by the director.

Amendment SB 206

1. Title, line 8.

Following: "BANKS"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3, line 16.

Following: line 15

Insert: "Effective date. This act is effective on passage and approval."

Amendment SB 207

1. Title, line 7.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 2, line 7.

Following: line 6

Insert: "Effective date. This act is effective on passage and approval."

MEMO RE SB 120
BY BOYLAN AND OTHERS

SB 120 removes the requirement from present law that says the Public Service Commission must approve in advance a lease drawn by a regulated motor carrier and an independent owner of power equipment; that is, a truck tractor and semitrailer or other similar equipment.

A regulated motor carrier, from time to time, needs to supplement his equipment during high periods of demand by entering into a lease agreement with an owner for use of his equipment to meet peak demand. The law now requires that PSC approve the lease before the equipment can be put into service. Lost time, due to waiting for approval, of up to 10 days to 2 weeks is experienced by the parties to the lease.

The law still requires the lessor to carry a copy of a written lease with a regulated carrier in the cab of the truck to offer to the PSC enforcement officers to verify his leased authorization to haul a regulated commodity under the current authority.

The approval and filing of a lease by the PSC provides no real public benefit in that no real use is made of the recorded lease in the PSC office. Some 500 to 1000 leases are kept on file and PSC handles as many as up to 2500 leases during a year. It is costly to the PSC and the regulated carrier, as well as time consuming and time delaying to the carrier. SB 120 would save the delays and provide a savings to both PSC and the industry.

SENATE BILL 120

Senate Bill 120 proposes to remove the requirement that all leases between Owner Operators and Carriers be approved by the Commission. Under the present statute the carriers are required to submit to the Commission all equipment leases. The Commission staff must then sign off on these leases and return copies to the carriers. A copy must then be carried in the vehicle.

Under the proposed language in Senate Bill 120, the requirement for prior Commission approval would be eliminated.

The carrier or his agent would still be required to have a lease and carry a copy in the operating vehicle so that enforcement personnel can follow the trail of ownership of that particular vehicle.

Elimination of the prior approval requirement should result in:

1. Less time and expense to the carriers.
2. Less time and expense to the Commission.
3. Bring Montana leasing requirements in line with those of the Interstate Commerce Commission.

The Montana Public Service Commission feels that Senate Bill 120 would help eliminate paperwork for both the carrier and the Commission, but would not in any way diminish enforcement of the Motor Carrier Act.

We urge this Committee to give a do pass to Senate Bill 120.

February 9, 1983

EXHIBIT NO. 5

SENATE BILL NO. 305

MONTANA PUBLIC SERVICE COMMISSION'S STATEMENT OF SUPPORT.

SB 305 amends Section 69-3-302, MCA "Changes in schedules" which concerns utility rate schedules. The bill contains two major amendments:

1. To allow public utilities the option of waiving the 9 month time period in which the Public Service Commission is to issue its final order on a utility's rate application; and
2. To allow the Public Service Commission to determine the interest rate that is assess on revenues collected by the utility that are subject to rebate.

Section 69-3-302(1), MCA currently provides that a public utility cannot alter its rate schedule unless the Montana Public Service Commission approves the rate change within nine months from the date the utility files its rate application with the Commission. If the Commission is unable to issue a final order on a utility's rate application before the nine month time period expires, the utility is required to begin charging its consumers at the rate level that is contained in the rate application. When the final order is issued, if the rates approved by the Commission are lower than the rates contained in the utility's application, the utility may have to rebate some of the revenues it has collected. The rebate period would run from the end of the nine-month time period to the date of the issuance of the Commission's final order.

For example, if the nine month time period expires on January 15, the utility begins charging its consumers the rates it has proposed in its rate application on January 16. If the Commission issues its final order on January 18, the utility then must begin charging its consumers at the rate level approved by the Commission in its final order. If the rates approved by the Commission

are lower than the rates requested by the utility in its application, the utility has to rebate revenues as a result of the overcollection from January 16 through January 18.

The amendatory language in Subsection(1) would allow the utilities to waive the nine month period, so that the utility could charge its consumers at the current rate level pending issuance of the Commission's final order. The amendatory language provides the utility the option of eliminating the possibility of a rebate situation.

Subsection(2) of Section 69-3-302, MCA is amended to make it consistent with Subsection(1) by also including the utility's option to waive the nine month time period.

Section 69-3-302(2), MCA currently provides that the Commission must assess interest on the revenues collected by a utility that are to be rebated at an annual interest rate of 10%. The bill's amendatory language would provide discretionary authority for the Commission to determine the interest rate for each revenue situation.

The bill's Subsection(2) amendatory language also provides that the Commission is to promulgate administrative rules concerning how the interest rate will be determined. The Commission's original draft of the bill had provided that the Commission would have discretionary rulemaking power to promulgate rules for the entire Section 69-3-302, MCA. The Commission proposes an amendment to the bill to provide the Commission with that discretionary rulemaking authority.

EXPLANATION OF PROPOSED AMENDMENT
TO SENATE BILL NO. 305 (INTRODUCED BILL COPY)

SB 305 as introduced amends Section 69-3-302, MCA, "Changes in schedules." The bill provides that the Montana Public Service Commission is required to promulgate administrative rules to specify how the Commission would determine an interest rate to be assessed on revenues collected by the utility that are subject to rebate.

The Montana Public Service Commission's original draft of the bill had provided that the Commission would have discretionary rulemaking power to promulgate rules for the entire section, not merely concerning the determination of an interest rate.

The proposed amendment will provide the Commission with discretionary rulemaking authority for Section 69-3-302, MCA.

PROPOSED AMENDMENT TO SENATE BILL NO. 305
(INTRODUCED BILL COPY)

1. Page 2, line 10.
Following: "a"
Insert: "per annum"
2. Page 2, line 11.
Following: "commission"
Strike: "by rule,"
3. Page 2, line 15
Insert a new subsection: (3) The Commission may pre-
scribe rules necessary to effectively administer this
section.

AMENDMENT TO SENATE BILL 305

1. Page 2, Line 14: After the period add the sentence:

"In the case of an investor owned utility the interest rate set by the Commission shall not exceed the cost of equity capital as last determined by the Commission."

February 9, 1983

EXHIBIT NO. 8

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

I AM SENATOR RICHARD E. MANNING OF SENATE DISTRICT NO. 18.

I AM INTRODUCING SB #306 WHICH DEALS WITH INDEPENDENT AUDITS OF UTILITIES SEEKING RATE INCREASES AND WHY THEY ARE NEEDED.

THE UTILITIES THAT OPERATE IN MONTANA ARE PROBABLY ON THE UP & UP, BUT BECAUSE WHEN THE CONSUMER IS A CAPTURED AUDIENCE, UNDER MOST CIRCUMSTANCES, THE UTILITY FIRM SUPPLYING THE NEED TO THE CUSTOMER DOES NOT HAVE COMPETITION IN THAT AREA. THE ONLY FAIR SOLUTION, TO ANY UNANSWERED QUESTIONS OR PROBLEMS, IS AN INDEPENDENT AUDIT.

I AM CONCERNED ABOUT THE CONSTANTLY ESCALATING PRICES WE ARE BEING FORCED TO PAY FOR OUR UTILITIES. STATISTICS SHOW THAT THE COST OF NATURAL GAS ALONE HAS RISEN ABOUT 2000% OR MORE SINCE 1973. CURRENTLY THE PUBLIC SERVICE COMMISSION IS COMPLETELY RELIANT UPON DATA SUPPLIED BY THE REGULATED UTILITIES IN THE HEARING OF ANY RATE CASE.

I FOR ONE, WOULD LIKE THE ASSURANCE THAT OUR PUBLIC SERVICE COMMISSIONERS HAVE ALL THE FACTS TO CONSIDER IN MAKING ITS DETERMINATIONS. I BELIEVE MOST CONSUMERS, NOW DAYS, WOULD JOIN ME IN STATING THAT THOSE FACTS AND CALCULATIONS SHOULD COME FROM AN INDEPENDENT AUDIT.

ONE POINT I WOULD LIKE TO MENTION IS THAT THERE IS NO STATUTORY DEADLINE FOR PUBLIC SERVICE COMMISSION COMPLETION OF RATE CASES,

FEBRUARY 9, 1983

PAGE 2

BUT THE REQUESTED RATES GO INTO EFFECT IF THE CASE HAS NOT BEEN FINALIZED WITHIN 9 MONTHS (UNLESS WAIVED BY THE UTILITY).

ONE OTHER POINT I WOULD LIKE TO BRING OUT, IS THAT THE LEGISLATIVE AUDITORS OFFICE HAS DONE A SUNSET AUDIT ON THE PUBLIC SERVICE COMMISSION AND SUBMITTED THEIR REPORT IN SEPTEMBER 1982. I HAVE SUPPLIED YOU WITH INSERTS FROM THIS AUDIT. I RECOMMEND YOU READ THEM. THEY REALLY SUPPORT MY STAND ON THIS ISSUE.

IN CONCLUSION, I BELIEVE AS SINCERE LEGISLATORS, IT IS OUR RESPONSIBILITY TO MAKE THIS AUDIT CAPABILITY AND AUTHORITY AVAILABLE TO THE PUBLIC SERVICE COMMISSION, SO THAT OUR CONSTITUENTS HAVE THE ASSURANCE THAT THE PUBLIC SERVICE COMMISSION HAS ALL THE FACTS, AND ONLY THE FACTS, ON WHICH TO BASE IT DECISION. I THANK YOU FOR YOUR TIME, AND WILL REMAIN FOR QUESTIONS, AND RESERVE THE RIGHT TO CLOSE.

February 9, 1983

EXHIBIT NO. 9

PSC AUTHORITY TO ORDER INDEPENDENT AUDITS

In a 1977 order the Montana Public Service Commission expressed concern that the Montana Power Company's books did not accurately reflect the original cost of certain properties used to provide electric service. Accordingly, in that order the Commission directed MPC to retain an independent accounting firm to audit and report on the situation. The Commission reasoned that an independent audit was necessary because if MPC were to conduct the audit itself, the result "would be tainted by suspicions of self-interest."

MPC appealed the Commission's order to the Montana Supreme Court. The Court ruled in MPC's favor. It held that the Commission is empowered only to request desired information from a utility, not to direct the means by which such information is to be gathered. The Court stated that existing statutes make it clear that the primary source of information about utility operation is the utility itself. The Court concluded that the Commission was always free to weigh any such information against any information to the contrary presented by other agencies or the Commission's staff. Petition of the Montana Power Company, 180 Mont. 385 1979.

This Supreme Court decision makes it clear that the Commission has no authority under existing statutes to order utilities to provide independent audits.

Calvin K. Simshaw
Staff Attorney

REQUIREMENT OF THE OPPORTUNITY TO EARN
A REASONABLE RATE OF RETURN

The requirement that public utilities be allowed the opportunity to earn a reasonable rate of return stems not from any specific Montana statute but rather flows from the United States Constitution itself. It has consistently been held that failure to allow rates at a level sufficient to provide an opportunity to earn a reasonable rate of return on investment dedicated to public use constitutes a confiscation of property without just compensation or due process and as such violates the fifth amendment of the United States Constitution. Stated more simply, the power to regulate is not the power to destroy. The Montana Supreme Court in Tobacco River Power Co. v. P.S.C. 109 Mont. 521 (1940) stated that "the law is well settled in all jurisdictions, including Montana that rates must be just and reasonable, and likewise the return to the utility on its investment and for service rendered must be fair, just and reasonable."

Beyond the constitutional restraints, mere business practicality would seem to dictate that the utility be allowed the opportunity to earn a reasonable return. Continued service obviously requires continued investment in necessary plant and equipment. Continued investment requires the attraction of capital from the investment community. The ability to attract capital is in turn dependent upon the opportunity to earn a reasonable return. That is, no investor is going to inject capital into something where he does not perceive at least the

opportunity to earn a reasonable return on his investment. If there is no such opportunity no capital will be attracted. If there is no capital, there will be no plant and if there is no plant there will be no service.

Given its constitutional roots, it is doubtful that the requirement that utilities be allowed an opportunity to earn a reasonable rate of return could be eliminated or modified through changes in Montana statutes. Also, given the business practicalities, there is a question as to whether removal of the requirement might not jeopardize continued service in the long run.

Calvin K. Simshaw
Staff Attorney

January 6, 1983

Rate Case Summary (Selected Major Utilities)

1981

Utility	Number of Dockets	Amount Asked	Amount Given
Montana Power Company (Electric)	1	\$ 36,257,616	\$ 21,707,000
Montana-Dakota Utility (Electric)	1	8,824,065	5,346,000
Pacific Power and Light (Electric)	2	5,726,000	4,327,000
Montana Power Company (Gas)	2	36,221,158	30,854,606
Montana-Dakota Utility (Gas)	6	43,227,422	19,272,874
Great Falls Gas	3	3,115,456	770,158
Mountain Bell	1	30,586,000	16,957,898
TOTALS	16	163,957,717	99,235,536

1982

Utility	Number of Dockets	Amount Asked	Amount Given
Pacific Power and Light (Electricity)	3	\$ 4,579,000	\$ 609,000
Montana Power Company (Gas)	2	30,831,088	19,930,000
Mountain Bell	1	31,008,029	6,410,000

On-Going Review of Utility Financial Status

As previously mentioned, one of the major responsibilities of the PSC is to assure the public of adequate utility service at just and reasonable rates. At present, the PSC and department are not meeting this responsibility because they are not monitoring the financial activity of regulated utilities on a continuing basis. The only time a utility's financial condition is evaluated is when the utility submits a rate change request. As a result, the PSC and department staff are not adequately informed about the utilities' interim financial status between rate cases.

While the PSC receives various summary reports and annual reports from utilities, little effort is made which would allow a comparison with authorized rates of return. The department management said that they have not done more in this area because the staff has been overloaded with rate cases. The PSC should first review the data being requested from utilities to ensure that it meets the needs for on-going review of utility activity. The PSC should also monitor the status of the utilities in order to know how actual earnings compare to authorized earning levels. If the utilities are earning returns which significantly exceed authorized levels, the PSC has the authority and the responsibility under section 69-3-324, MCA, to hold hearing in such cases and make necessary adjustments. An on-going review would provide a basis for PSC action in such cases where the burden of proof would fall mainly on the PSC.

The PSC should also be aware when the utilities are earning less than authorized levels. While it is up to the utility to submit a rate request, the PSC staff could be determining causes and be better prepared to process the rate request case when it is sub-

requests and, as a result, is dependent on information provided by utilities. The present department staff spends a majority of its time analyzing rate requests. Little time is available to verify provided information or to review the actual records of the utilities. As previously mentioned, the rate analyst assigned to a utility rate case and the Utility Division administrator spend one to two days at the applicable utility, but this allows only brief coverage of major concerns.

While many utilities undergo financial audits through retained CPA firms, and some maintain an internal audit staff, there is still a need for independent financial data verification which meet the needs of the PSC. The PSC should develop a staff to perform, or seek funds to contract for, such independent verification. Verification of data provided by the utilities is essential to ensure that PSC decisions are based on accurate and consistent information. The Utility Division could begin a meaningful audit program with the addition of auditor positions. By using staff auditors, the division could build an in-house expertise that could be beneficial as part of the needed on-going review process discussed on page 57 and the rate request analysis process.

While some of the major utilities have undergone management reviews on their own, there is also a need for the commission to either perform or contract for such reviews periodically to provide independent assurance that the major utilities are operating efficiently. This is an area that could be developed as the recommended department audit staff gains experience with the major utilities. The PSC and department could also establish indicators

against which auditors could compare utility activity to determine utility operating efficiency.

Realized Returns

In conjunction with Senate Joint Resolution 27, we next attempted to determine if utilities have a genuine opportunity to realize the returns determined by the PSC to be just and reasonable.

In order to make an accurate determination, realized utility rates of return should be calculated on the same basis as the PSC calculated its authorized return levels. This means using specific methods such as average rate base to ensure comparability between the authorized and realized returns. We found that such information was not readily available from either the PSC or utilities.

The PSC only prepares up-to-date utility earnings information when a utility applies for a rate change, and only for the historical test year used by the utility. As a result, the PSC is not meeting its responsibility of determining if utilities are realizing adequate or excessive returns. This problem is discussed further on page 57. The PSC staff did, however, upon our request, provide us with the estimated overall rate of return figures shown in Appendix III.

The utility companies also are not generally maintaining realized return records which are comparable with PSC orders, but they attempted to provide us with returns calculated on a reasonably comparable basis with PSC authorized returns. These figures for 1976-81 are included on page 40, along with the PSC authorized returns and attrition, which is the difference between authorized and realized rates of returns. The utility figures were discussed with the department staff, but have not been audited by our office or verified by the PSC; these figures are the best numbers available for comparison under current recordkeeping procedures.

The following table summarizes the attrition figures as calculated using utility company realized returns and PSC authorized returns for 1976-1981. For utility A: -7.9 indicates that the realized rate of return during 1976, was 7.9 percent less than the authorized rate of return. While the numerical difference between the authorized and realized rates of return is 7.9, the percent of the authorized return not realized is 67 percent (7.9/11.8). For example, if the PSC had authorized the utility revenues of \$5,000,000, the utility would have only realized \$1,650,000 or 33 percent of the authorized revenue.

As it stands, the PSC is unable to independently verify financial information submitted by utilities and transportation companies because it lacks the staff to audit their books, the audit report said.

Interim Rate Decreases

Although the PSC has statutory authority to grant interim rate increases pending a hearing and final order in any rate case, the PSC does not have authority to order interim rate decreases. Without such authority, the PSC cannot make timely rate decreases, but would have to go through the formal rate hearing process if it determines a utility is realizing excessive returns in the interim.

In order to provide balance in the process of providing utilities with adequate returns, the Legislature could consider giving the PSC authority to make interim rate decreases. As the PSC develops its on-going review capability, it will be in a better position to use interim decreases.

SUBMITTED BY: John Alke
February 9, 1983
EXHIBIT NO. 10

AMENDMENTS TO SENATE BILL 306

1. Page 1, Line 15: Strike the period, insert a comma after "duties", and add the phrase:
"provided the audit is performed by a full-time employee of the State of Montana who is on the staff of the Commission".
2. Page 1, Line 18: Strike the phrase "within the State".
3. Page 2, Lines 8-10: Strike subsection (5) in its entirety.

Submitted by: Barry Huss
February 9, 1983
EXHIBIT NO. 11

Montana S.B. 306

1) Amend Section 1, Page 1, Line 13

Following: "independent"

Insert: "financial"

February 9, 1983

EXHIBIT NO. 12

January 4, 1983

Francis Bardonoue, Chairman
House Appropriations Committee
Capitol Station
Helena, Montana 59620

RECEIVED
JAN 06 1983
MONT. P. & COMMISSION

Dear Representative Bardonoue:

As chairman of the Legislative Audit Committee, I am asking the House Appropriations Committee and the Senate Finance and Claims Committee to consider the following audit committee motion made at its November 8, 1982 meeting. The action was taken during a hearing of the enclosed sunset audit of the Montana Public Service Commission.


"The Legislative Audit Committee supports the establishment of the following Public Service Commission capabilities:

1. Capability to audit regulated utilities and carriers;
2. Data processing capability; and
3. Capability for an on-going financial review of regulated utility and carrier earnings.

Audit and data processing capabilities would allow the commission and its staff to verify and more thoroughly analyze, on a timely basis, the information provided by the regulated utilities and carriers. The on-going review capability would ensure that the commission and its staff are better informed about the financial condition and operations of the regulated utilities and carriers between rates cases."

Thank you for your consideration. If you have any questions, please contact me or the Legislative Auditor.

Sincerely,


Matt Himsel, Chairman
Legislative Audit Committee

Mj/mrt

cc. House Appropriations Committee members
Senate Finance and Claims Committee members
Enclosure

I am in support of ^{SB}~~HB~~ 306 authorizing the Public Service Commission to order an independent audit of a Public Utility as it would enable the Public Service Commission to see if the increases the Utility Companies are asking for are justified. It would help them to protect the rights of the Consumers and help them to make more equitable decisions.

Name: Theresa Claybourne
Great Falls, Montana
Member of Montana's Power to the People

Theresa Claybourne

February 9, 1983

EXHIBIT NO. 14

SB 306

Presented to Senate Committee on Business and Industry
By the Montana Environmental Information Center

February 9, 1983

SB 306 would allow the Public Service Commission (PSC) to order an independent audit of a public utility.

Independent audits will allow the PSC to fully evaluate the effects of its regulation of public utilities. Rates are set in order that a public utility might make a specific rate of return on its investments, or rate base.

In practice, the PSC knows the rate base and the rate of return which it wishes to allow a public utility, but it cannot know what revenues will be brought in to cover that rate of return. The utility may in fact earn a greater or lesser rate of return than the PSC has allowed them to make.

This problem was described and verified by the economist Paul Joskow in a 1974 article in The Journal of Law and Economics. In his research, Joskow learned that utilities often received larger rates of return than they were officially allowed by the PSC. When this occurs, the utilities are not likely to point out the discrepancy since it works in their favor. In other words, utilities are regulated from making less than their allotted rate of return, but not prevented from making more than that rate of return.

This points out a need for independent auditing. That is not to say that the utilities are less than honest in their reporting to the PSC. But utilities do have a built-in incentive not to raise a commotion when they are doing better than they were supposed to.

Consumers deserve to know that their utility is not reaping profits in excess of what it is allowed. Independent auditing is not a matter of harassing a utility. Rather, it is a way of verifying that what was supposed to have happened actually did happen.

We urge a "DO PASS" on SB 306.

SENATE BILL 306

NAME : Michael E. Zimmerman
FOR : The Montana Power Company
POSITION: Opposed to SB 306
REASONS :

During the Legislative Audit Committee's SJR-27 review of utility regulatory procedures, the Audit Committee staff asked representatives of The Montana Power Company this question:

"Is there a need for independent financial audits to verify information submitted to the Public Service Commission?"

We responded no and provided rationale for our answer. This answer and the reasons supporting it are applicable in consideration of Senate Bill 306.

We believe Senate Bill 306 is unnecessary because:

- 1) The Public Service Commission may and does verify data submitted to it in rate cases through discovery audits.
- 2) Audits in addition to those already performed will cause additional and unnecessary regulatory expense to be born by the ratepayer.

A number of audits are performed. The Montana Power Company employs an independent audit staff of 11 persons. This staff performs annual audits of the Company's 40 Operational departments and 7 divisions using procedures

which are consistent with standard accounting practices. This audit staff reports directly to an Audit Committee of the Board of Directors.

In attesting to the validity of the Company's financial statements, an external audit is also performed annually by the nationally recognized accounting firm of Price Waterhouse & Co. The results of this annual audit have, in the past, been shared with the Public Service Commission.

Several non-routine audits are performed. For example, the Colstrip Project is audited for financial accounting and management efficiency purposes by a special committee established by the Project partners. The Public Service Commission performs discovery audits in rate case proceedings. And, the Federal Energy Regulatory Commission periodically performs compliance audits. These audits are documented and the results are available to the Public Service Commission.

As you can see, then, additional independent auditing, regardless of the entity performing it, would merely be duplicative. You should know, also, that audits by independent accounting firms simply cost a lot of money. They take time as well. The cost, under Senate Bill 306, will be passed through to the ratepayers. We believe this cost is unnecessary.

Rather than create this additional cost to our rate-

payers, we believe it may be in order for the Public Service Commission to review with us the results of the extensive audits that are already performed. This effort may preclude the necessity of a duplicative and expensive effort.

To the extent this committee may decide independent audits are necessary, we urge you to fund them through an appropriation. Ratepayers should not be required to pay for this additional regulatory expense.

Thank you.

TESTIMONY BY CHARLES W. KUETHER ON SENATE BILL NO. 306
FOR GREAT FALLS GAS COMPANY

As Great Falls Gas Company understands the bill, Great Falls Gas would have to pay the cost of the audit that would be instigated by the Public Service Commission at any time at their request.

Great Falls Gas Company has no problem with the basic premise that the Commission has the right to audit the utilities to verify that the amount shown in its utility cost of service for rate-making purposes is valid and proper. What Great Falls Gas does have a problem with is that we would have to stand the audit fees according to this piece of proposed legislation. We now hire Arthur Young & Co., one of the big-eight companies that comes out of Denver, to audit our books every year and put their signature on our annual financial report. The audit fees, with travel expenses, run in the neighborhood of between \$20,000 to \$25,000 per year. Great Falls Gas Company is a small company and these fees are a major expense item to the Company. If we were also subject to audit fees by some other company that was appointed by the Commission to audit our books, at the whim of the Public Service Commission, that serves as an undue financial burden on the Company.

We think it is only fair that if the Commission wants to audit the books of Great Falls Gas that the legislature should appropriate the money to the Utility Commission to cover the audit cost, whether it be by an outside firm or by the Public Service Commission staff. We believe that Senate Bill No. 306, as proposed--that the utilities pick up the cost of

1 the audit, is an undue burden on utilities and especially smaller utili-
2 ties like Great Falls Gas Company, Cut Bank Gas, Consumers Gas and
3 others of similar size.

February 9, 1983
EXHIBIT NO. 17



The Big Sky Country

MONTANA STATE SENATE

SENATOR JEAN A. TURNAGE
SENATE DISTRICT 13

HELENA ADDRESS:

STATE CAPITOL
HELENA, MONTANA 59620
PHONE (406) 449-4886

HOME ADDRESS:

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POLSON, MONTANA 59860
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COMMITTEES:

JUDICIARY, CHAIRMAN
TAXATION
RULES
COMMITTEE ON COMMITTEES
BILLS & JOURNALS

February 8, 1983

Senator Allen C. Kolstad, Chairman
Business and Industry Committee
Capitol Building
Helena, Montana 59620

Dear Chairman:

We respectfully request that you ask the consent of the committee for introduction as a committee bill and as a committee resolution, drafts of which are attached hereto.

The justification for the bill is that through contractual obligations, many members of Rural Electric Cooperatives have been saddled without their consent for long-term debt relating to nuclear power generating facilities constructed out of state.

Had the members been afforded an opportunity to debate and consider such debt at a members meeting, they may well have avoided paying for the failed power development which they are now required to pay over many years through their rate increases.

The resolution addresses the same problem and relates to all utilities requesting oversight by the Public Service Commission.

Respectfully,

Jean A. Turnage
Jean A. Turnage

Bob Brown
Bob Brown

JAT:MAW
Enclosures

BILL NO.

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT CERTAIN COOPERATIVES MUST HAVE MEMBERSHIP APPROVAL TO CREATE LONG-TERM OBLIGATIONS RELATED TO BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. (1) Long-term indebtedness - membership approval. A cooperative that wants to create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness that may result in a rate increase to the cooperative's members for repayment of the obligation must first receive approval from a majority of its members at a special meeting held for that purpose before the cooperative may enter into such an obligation.

NEW SECTION. Section 2. Codification instruction. The provisions of [section 1] are intended to be codified as an integral part of Title 35, chapter 18, and the provisions of Title 35, chapter 18, apply to [section 1].

-End-

JOINT RESOLUTION NO. _____
INTRODUCED BY _____

A JOINT RESOLUTION OF THE SENATE AND OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PUBLIC SERVICE COMMISSION TO REQUIRE CERTAIN INFORMATION, MONITOR, AND OVERSIGHT LONG TERM DEBT OBLIGATIONS OF PUBLIC UTILITIES IN THE STATE OF MONTANA TO ENSURE THAT MONTANANS WILL NOT FACE IN THE FUTURE SIMILAR FINANCIAL DIFFICULTIES RELATED TO ABANDONMENT OF POWER PROJECTS THAT RESULT IN RATE INCREASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

WHEREAS, a number of public utilities in Washington and Oregon have had serious financial difficulties related to proposed construction of five nuclear power generating facilities for the Washington Public Power Supply System; and

WHEREAS, two of the proposed power generating facilities have been abandoned and one is on hold; and

WHEREAS, the abandonment of the Pebble Springs Nuclear Project in Oregon probably will have a direct effect upon Montana customers of Pacific Power and Light Company; and

WHEREAS, the Pacific Power and Light Company has asked the Montana Public Service Commission rate increases that total 970,000 additional revenue for each of the next five years to amortize losses associated with the abandoned Pebble Springs Nuclear Power Project; and

WHEREAS, such a rate increase would result in a 10.6 percent increase in electricity costs for more than 27,000 Montanan's in the northwest part of the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges the Montana Public Service Commission to monitor and oversight requests for long-term debt obligations to prevent unnecessary rate increases due to abandoned or delayed power generation facilities.

BE IT FURTHER RESOLVED, THAT the Legislature urges the Public Service Commission to require Commission approval for the

issuance of long-term debt obligations that could result in increased rates to customers for electricity.

Amendments to BR 22

Page 1, line 1

Strike: "and addition of any license or fee authorized by law."

Page 1, line 1

Insert: "(3) no licensing authority granted under this section is not an addition to any license or fee authorized by law."

Page 1, line 1

Strike: "wherein or not it is"

Insert: "except those"

Page 1, line 1 through 1

Strike: "The board of county commissioners may provide that only a copy of a form for this county license application receipt, or form need be in the possession of this county."

Page 1, line 1 through 1

Strike: "or when a different amount is specified in the law relating to a specific license."

Page 1, line 1

Strike: "amended"

Page 1, line 1

Strike: "or license" Insert: "or license"

Page 1, line 1 through 16, section 6, subsection (2)

Strike: "(2) The payment of a license fee may not be required for the licensing of an amusement conducted in a county or state fair, conducted for the purposes other than private gain by a public or private school or college, charitable organization, religious body, rodeo association, veterans' organization, or political entity."

Insert: "(2) No license must be collected from any amateur exhibition or concert, school or charitable or religious purposes, from any county, district, or state fair, from rodeo associations, or from any veterans' organization, or political party or union, or conducted for private gain."

Page 1, line 1

Strike: "and"

Insert: "received or money advanced or"

Page 1, line 1

Strike: "and required licenses"

Insert: "and required license"

Page 1, line 1

Insert: "Any license engaged or employed in the business of buying and selling products and disposing of such products by selling them to consumers by going from house to house, must, upon demand of any person exhibit the license and permit the same to be taken and there to be read by the person making such demand."

Page 1, line 16—insert: to possess a "or possess a" license

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONSUMER CONTRACTS TO BE WRITTEN IN CLEAR AND COHERENT LANGUAGE; PROVIDING FOR EXCEPTIONS AND REMEDIES; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Short title. [This act] may be cited as the "Plain Language in Contracts Act".

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases, or obtains property, or services under a written agreement.

(3) "Consumer contract" means an agreement for the

1 sale, lease, or loan of money, property or services
2 primarily for personal, family, or household purposes. For
3 purposes of [this act], "consumer contract" does not include
4 the sale of insurance, but it includes an advance for the
5 purpose of facilitating payment of a premium or a loan
6 against the cash surrender value of a life insurance policy.

7 (4) "Seller, lessor, or lender" means a person who
8 regularly sells, lets, or lends in connection with consumer
9 contracts.

10 Section 3. Requirements for agreements. Every consumer
11 contract entered into after January 1, 1985, must be written
12 in plain language. A consumer contract is written in plain
13 language if it meets either the plain language test of
14 subsection (1) or the alternate objective test of subsection
15 (2). A consumer contract need not meet the tests of both
16 subsections (1) and (2).

17 (1) A consumer contract is written in plain language
18 if it substantially complies with all of the following
19 tests:

20 (a) It uses short sentences and paragraphs.

21 (b) It uses everyday words.

22 (c) It uses personal pronouns or the actual or
23 shortened names of the parties to the contract, or both,
24 when referring to those parties.

25 (d) It uses simple, active verb forms.

1 (e) It uses type of readable size.

2 (f) It uses ink that contrasts with the paper.

3 (g) It heads sections and other subdivisions with
4 captions in boldface type or that otherwise stand out
5 significantly from the text.

6 (h) It uses layout and spacing that separate the
7 paragraphs and sections of the contract from each other and
8 from the borders of the paper.

9 (i) It is written and organized in a clear and
10 coherent manner.

11 (2) A consumer contract is also considered to be
12 written in plain language if it fully meets all of the
13 following tests, using the procedures described in
14 subsection (3) of this act:

15 (a) The average number of words in a sentence is less
16 than 22.

17 (b) No sentence in the contract exceeds 50 words.

18 (c) The average number of words in a paragraph is less
19 than 75.

20 (d) No paragraph in the contract exceeds 150 words.

21 (e) The average number of syllables in a word is less
22 than 1.55.

23 (f) It uses personal pronouns or the actual or
24 shortened names of the parties to the contract, or both,
25 when referring to those parties.

1 (g) It uses no typeface of less than 8 points in size.

2 (h) It allows at least three-sixteenths of an inch of
3 blank space between each paragraph and section.

4 (i) It allows at least one-half of an inch blank space
5 at all borders of each page.

6 (j) If the contract is printed, each section is
7 captioned in boldface type at least 10 points in size. If
8 the contract is typewritten, each section is captioned and
9 the captions are underlined.

10 (k) It uses an average length of line of no more than
11 65 characters.

12 (3) The following procedures must be used to determine
13 compliance with subsection (2) of [section 3 of this act]:

14 (a) To count the number of words in the contract,
15 proceed as follows:

16 (i) Count every word used in the text of the contract.

17 (ii) Do not count words or numerals used in headings,
18 captions, signature lines, graphs, or charts.

19 (iii) Do not count single words or phrases used to
20 identify the information required in a fill-in section of a
21 contract, such as a section for a name or address.

22 (iv) Count as one word a contraction, hyphenated word,
23 numeral, symbol, or abbreviation.

24 (b) A sequence of words is a sentence if it expresses a
25 complete thought, contains a subject and a verb, including

1 the implied subject "you", and ends with a period. If it is
2 an item in a list, it may end with a semicolon. If it is an
3 introduction to a list, it may end with a colon.

4 (c) A syllable is a unit of spoken language consisting
5 of one or more letters of a word, as the word is divided by
6 any dictionary. To count the number of syllables, proceed as
7 follows:

8 (i) If there is more than one acceptable pronunciation
9 for a word, use the one having fewer syllables.

10 (ii) Count abbreviations, numerals, and symbols as
11 one-syllable words.

12 (d) A sequence of words is a paragraph if it consists
13 of one or more sentences, starts on a new line, and is
14 separated by at least three-sixteenths of an inch of blank
15 space from the text immediately preceding and following it.

16 (e) A sequence of words is a list if each item in the
17 sequence is introduced by a numeral or letter and starts on
18 a new line.

19 (f) (i) A printed text line does not exceed 65
20 characters if the distance between the inside left and
21 inside right margins does not exceed the width of 2 1/2
22 alphabets of the type face being used.

23 (ii) A text line typed at 10 characters in an inch does
24 not exceed 65 characters if the length of the line does not
25 exceed 6 1/2 inches.

(f) A text line typed at 12 characters in an inch does not exceed 65 characters if the length of the line does not exceed 5 1/2 inches.

(g) Count the total number of words and sentences in the contract, as described in this section, and then divide the number of words by the number of paragraphs. The result is the average number of words in a paragraph.

(h) Count the total number of syllables and words in the contract, as described in this section, and then divide the number of syllables by the number of words. The result is the average number of syllables in a word.

(i) To count sentences and paragraphs if a list format is used, proceed as follows:

(i) Examine the introduction to the list and each item in the list to see if it is a sentence or a paragraph.

(ii) Do not count as part of any sentence the words "and", "or", "if", and "only if", or "then" if they are used to link the items of the list to each other in the introduction.

(iii) If each item in the list is a sentence, count each as a sentence. If any item is not a sentence, count the entire list as part of the sentence and paragraph containing the introduction. Do not count an item in a list as either a sentence or a paragraph if the subject or verb appears in the introduction.

(iv) If each item in the list is a sentence, but the introduction is not, count the introduction as part of the sentence containing the first item in the list.

(v) If each item in the list is a sentence and, in addition, each item is separated by at least 3 1/16 inches of blank space from the sentences immediately preceding and following it, count each item as a paragraph.

Section 4. Scope. (1) Except as provided in subsection 2, [this act] applies to any agreement signed in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) This act does not apply to:

(a) consumer contracts in which the value of the money, property or services bought, leased, or borrowed exceeds \$50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) consumer transactions subject to the provisions of 33-15-321 through 33-15-239;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality; or

(e) language or arrangement of an agreement required by federal or state law.

(3) The use of specific language expressly required or

1 authorized by court decision, statute, regulation, or
2 governmental agency is not a violation of this act; nor is a
3 legal description of real property a violation of this act.

4 Section 5. Consumer's remedy. (1) Except as otherwise
5 provided in this section, if an agreement does not comply
6 with the requirements of [section 3], the seller, lessor, or
7 lender is liable to a consumer who signed the agreement in
8 an amount equal to:

9 (a) \$50 plus any actual damages; and

10 (b) costs of the action, together with reasonable
11 attorney fees as determined by the court.

12 (2) A consumer may bring an action under this section
13 in any court of competent jurisdiction.

14 (3) A consumer may not bring an action under this
15 section after the date on which his obligations in
16 connection with the agreement are scheduled to be finally
17 performed.

18 (4) No seller, lessor, or lender is liable under
19 subsection (1) if he attempts in good faith to comply with
20 requirements of [section 3].

21 (5) Noncompliance with the requirements of [section 3]
22 does not make a consumer transaction void or voidable if it
23 is otherwise legal, nor may a consumer raise noncompliance
24 as a defense to his obligation to perform in connection with
25 the transaction.

1 (6) In a class action brought under subsection (1),
2 the seller, lessor, or lender is liable under subsection
3 (1)(a) for not more than \$10,000 plus actual damages.

4 Section 6. Limitation on remedies. (1) In any
5 individual transaction, if there is more than one consumer
6 who is a party to a single consumer contract, only one award
7 of statutory damages may be made for that transaction.

8 (2) No consumer may bring an action under [this act]
9 on a contract if the consumer was represented at the signing
10 of the contract by an attorney and this fact is shown by the
11 attorney's signed and dated statement on the contract.

12 Section 7. Contract enforcement. (1) A consumer
13 contract remains enforceable, even though it violates this
14 act.

15 (2) Nothing in this act precludes a consumer from
16 making any claim or raising any defense which would have
17 been available to the consumer if this act were not in
18 effect.

19 (3) A consumer may not waive the rights provided by
20 this act, and any such waiver is void.

21 Section 8. Applicability. This act applies to consumer
22 contracts entered into after January 1, 1985.

-End-

AMENDMENT TO SB-221

1. Page 1, line 21.

Following: "part 21,"

Insert: "and Title 7, chapter 12, part 41,"

2. Page 1, line 22.

Following: "part 21,"

Insert: "and Title 7, chapter 12, part 41,"

2-9-83

BUSINESS & INDUSTRY

Senate

(Please leave prepared statement with Secretary)

NAME

Stephen Ten

DATE

2-7-83

ADDRESS

1115 Stuart

PHONE

443-4121

REPRESENTING WHOM?

Montana Bankers Assn.

APPEARING ON WHICH PROPOSAL:

LB 206 - LB 207

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENTS

*Housekeeping bills requested by
the Commissioner of Financial
Institutions*

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Ben Hardan

DATE:

2/9/83

ADDRESS:

Box 1714

Helena

PHONE:

442 6600

REPRESENTING WHOM?

Montana Motor Carriers Assn

APPEARING ON WHICH PROPOSAL:

SB120

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

MMCA supports bill for reasons

outlined in the attached memo

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Wayne Budt

DATE:

2/18⁹/83

ADDRESS:

1227 11th Ave

PHONE:

449-2349

REPRESENTING WHOM?

Mont PSC

APPEARING ON WHICH PROPOSAL:

SB 120

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Opal Winebrenner

DATE:

2/9/83

ADDRESS:

1227 11th Ave

PHONE:

449-3007

REPRESENTING WHOM?

Public Service Commission.

APPEARING ON WHICH PROPOSAL:

SB 305

DO YOU:

SUPPORT?

✓

AMEND?

✓

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Doe DATE: 2/9

DATE: 2/9

ADDRESS: 406 Fuller Belmont

PHONE: 447-3690

REPRESENTING WHOM? In BC

APPEARING ON WHICH PROPOSAL: SB 305 & 306

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

SUPPORT? X

AMEND? X

OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

LITELY Huss

DATE:

FEB 9 1983

ADDRESS:

WELSH

PHONE:

449-4160

REPRESENTING WHOM?

Mountain Bell

APPEARING ON WHICH PROPOSAL:

SB 306

DO YOU:

SUPPORT?

AMEND?

X

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: 2/9/83

ADDRESS KALI SPELL

PHONE: 755-6644

REPRESENTING WHOM? PACIFIC POWER & LIGHT

APPEARING ON WHICH PROPOSAL: SB 305

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Michael E Zimmerman

DATE:

2-9-83

ADDRESS:

40 E Broadway, Butte MT

PHONE:

723-5421

REPRESENTING WHOM?

Montana Power Co

APPEARING ON WHICH PROPOSAL:

SB 305

DO YOU:

SUPPORT?

AMEND?



OPPOSE?

COMMENTS:

MP Co supports the amendment offered by
MOU in oral testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME

Carl J. Donovan

DATE

2-9-83

ADDRESS

1201 St. Falls, MT 59403

PHONE

403-3763 (H) 761-0310 (W)

REPRESENTING WHOM?

Montana Power to the People
Montana Coalition Against Poverty

APPEARING ON WHICH PROPOSAL:

SB 306

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

I support because indept audit is only fair way for the consumer. Also a way that PSC can see if enclosures of the Utility Companies are justified or needed. Have no problem with PSC do the audit.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

[Signature]

NAME: DON REED

DATE: 2/9/83

ADDRESS: P.O. Box 1184 AECENA

PHONE: 443-2520

REPRESENTING WHOM? MEIC

APPEARING ON WHICH PROPOSAL: SB 306

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: (see written comments)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Michael E. Zimmerman DATE: 2-9-83

ADDRESS: 40 E Broadway, Butte MT

PHONE: 723-5421

REPRESENTING WHOM? Montana Power Co.

APPEARING ON WHICH PROPOSAL: SB 306

DO YOU: SUPPORT? ☐ AMEND? ☐ OPPOSE? ☒

COMMENTS: See prepared statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME

GENE PHILLIPS

DATE

2/9/83

ADDRESS

KALISPELL

PHONE

755-6644

REPRESENTING WHOM?

PACIFIC POWER & LIGHT

APPEARING ON WHICH PROPOSAL:

SB 306

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Charles Koether

DATE: 2-9-83

ADDRESS: % Great Falls Gas Company
Great Falls MT 59403

PHONE: 761-7100

REPRESENTING WHOM? Great Falls Gas Company

APPEARING ON WHICH PROPOSAL: Senate Bill # 306

DO YOU: SUPPORT?

AMEND? x

OPPOSE? x

COMMENTS: We feel that the proposed legislation should
be amended to read, that funds appropriated to the
Public Service Commission (PSC) may be used to conduct audits
of the utilities or that the ~~legis~~ proposed legislation
be billed in committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

I have left prepared comments with the
committee Secretary