

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 24, 1985

The eighth meeting of the Business & Industry Committee was called to order at 10:06 a.m. in Room 410 of the Capitol Building by Chairman Mike Halligan.

ROLL CALL: All committee members were present except for Senators Gage and Fuller.

CONSIDERATION OF SENATE BILL 165: Senator Pat Goodover, Senator District 20 from Great Falls, was asked to introduce this bill to increase the credit transaction period for credit life and disability policies exempt from regulation.

PROPOSERS: Mr. Jerry Loerndorf, from the Montana Consumer Finance Companies explained the bill would change from 10 to 15 years in which the Montana Act regulating credit insurance is extended. (EXHIBIT 1) Tanya Ask from the Montana Insurance Department gave the committee some amendments they would like to see added to this bill which would bring debtor group statute into conformity with the credit life and disability statute. (EXHIBIT 2)

OPPOSERS: There were no opposers to Senate Bill 165.

Questions were then asked from the committee. Senator Halligan wanted an explanation of why they wanted to go to the 15 year time period and was told people need to finance for longer time periods than the current ten. Discussion of just what and where the amendment proposed by the insurance company would be added into the bill.

The hearing was closed on Senate Bill 165.

CONSIDERATION OF SENATE BILL 143: Senator Joe Mazurek, Senate District 23, is the sponsor of this bill. He introduced this bill at the request of the Development Credit Corporation. This bill would change the limit on loans made to the corporation by financial institutions. After review, they found this would be a more realistic percentage in light of their holdings as compared to banks. The current requirement is out of line when you compare Savings & Loans percentage of assets with banks. It would reduce this percentage from 1% to 1/4 of 1%.

PROPOSERS: Mr. Dick Bourke, President of the Development Corporation, explained it had come to their attention that the potential obligation of S & L's is higher than that of banks and felt this might be an oversight and therefore propose to reduce the obligation to 1/4 of 1% from the current 1%. (EXHIBIT 3)

OPPONENTS: There were no opponents to Senate Bill 143.

Questions were then asked from the committee. Senator Williams wanted to know a brief history of the corporation and was informed it was established in 1969 to make risky loans with sources of funds from credit with banks and savings & loans that were members of the company.

The hearing was closed on Senate Bill 143.

CONSIDERATION OF SENATE BILL 145: Senator Joe Mazurek, Senate District 23, introduced this bill at the request of the Montana Bankers Association as a housekeeping measure which would (1) eliminate the maximum number of directors that a bank may have; (2) in Section 3, makes the requirement that you must hold stock in a bank in order to be a director changed to if you have shares in the holding company that owns a bank you may be a director, and (3) eliminate the requirement that banks must hold monthly meetings of the board of directors.

PROPONENTS: Mr. Les Alke, representing the Montana Bankers Association felt these amendments would modernize the laws and relieve the banks of some obsolete regulations, allow more than eleven directors and eliminate holding monthly meetings of the directors to more convenient times. (EXHIBIT 4)

OPPONENTS: There were no opponents to Senate Bill 145.

Questions were then called for from the committee. Senator Neuman wondered if by changing the required number of meetings it might not be to some people's advantage but Mr. Alke felt this was not a problem. Senator Williams wondered if there was federal law regulating the required number of meetings and Mr. Alke was unaware of any rules in that regard. Senator Halligan felt there should be at least a minimum number of meetings held per year and that perhaps language to that effect should be inserted into the bill.

The hearing on Senate Bill 145 was closed.

CONSIDERATION OF SENATE BILL 120: Mary McCue told of research she had been doing on this bill. She showed the committee copies of sections that would be repealed and the suggestions that the board had decided upon for improvement of the current law. (EXHIBIT 5) She told the committee the remainder of the construction bills will be coming up before the administration committee. There was some discussion about transferring this bill to administration and it was felt by Senator Thayer and Goodover that this committee should deal with this bill. Senator Halligan would like to see the word "state" inserted so that the bill would limit someone from bidding on a state project only and not restrict bidding on other subdivision projects. He expressed concern for the protection of the state and the committee will study the bill more thoroughly before making a final decision. Barbara Martin, from the Department of

Administration will bring the committee notes taken from the meeting of the interim construction advisory council regarding this bill.

The meeting was adjourned at 10:55 a.m.



Chairman Mike Halligan

cd

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-24-85

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens			
Boylan	X		
Fuller			
Gage		X	
Goodover	X		
Kolstad	X		
Neuman	X		
Thayer	X		
Williams	X		

Each day attach to minutes.

SENATE BILL NO. 165

This bill increases from 10 to 15 years the scope of the Montana Act regulating credit life and credit disability insurance.

When this act was first enacted in 1959, credit life and credit disability insurance was limited to a term of 5 years. In 1969, the act was amended increasing the term to 10 years. Now it is appropriate to again amend this act increasing the term for which credit life and credit disability can be sold to 15 years.

The reason for this amendment is there are now many more loans which exceed a term of 10 years and credit life and credit disability insurance should be available to the insured during the entire term of the loan.

A good example of the type of transaction that could require longer term insurance is the financing of the purchase of a mobile home. As you know, mobile homes are much larger than they used to be in 1959 and 1969 (when they were often referred to as trailers). The price of these larger homes are higher and often financed over a term longer than 10 years. This bill would allow credit insurance to be extended to cover such longer term loans.

Thank you, Mr. Chairman.

(This sheet to be used by those testifying on a bill.)

NAME: Tanya M. Ask DATE: 1/24

ADDRESS: Montana Insurance Department
Mitchell Building Helena

PHONE: 444-2996

REPRESENTING WHOM? Montana Insurance Dept

APPEARING ON WHICH PROPOSAL: SB 165

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Recommend proposed attached amend-
ments to bring all credit statutes into
conforming

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 2
BUSINESS & INDUSTRY
January 24, 1985

SB 165

Proposed Amendments

Statement of intent on line 6:

; Amending Sections 33-20-1105 and 33-21-102, MCA;

Add new Section 2, and renumber "Section 2", and "Section 3" accordingly.

Section 2. Section 33-20-1105, MCA, is amended to read:

33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable either in installments or in one sum at the end of a period not in excess of 18 months from the initial date of the debt or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships of the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only of the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of 5 years, except that such insurance may be continued for an additional period not exceeding 6 months in the case of default, extension, or recasting of the loan.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(This sheet to be used by those testifying on a bill.)

NAME: RICHARD BOURNE DATE: 1/24/85

ADDRESS: Box 916 HELENA

PHONE: 442-3850

REPRESENTING WHOM? DEV. CORP. OF MT.

APPEARING ON WHICH PROPOSAL: SB 143

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

COMMENT:

1. DEV. CORP OF MT. HAS LINES OF CREDIT WITH

STL'S AND BANKS; THERE IS A CEILING ON

THESE LINES OF CREDIT OF 3% OF CAPITAL AND

SURPLUS (BANKS) AND 1% OF OUTSTANDING LOANS (STL'S)

2. OBJECTIVE OF AMENDMENT IS TO BRING INTO PARITY

LOAN OBLIGATIONS OF STL'S AND BANKS

3. OTHER STATES' LAWS HAVE STL OBLIGATIONS AT

1/4 OF 1% , NOT 1%

4. BILL SUPPORTED BY OUR BOARD OF DIRECTORS

5. BILL REDUCES OBLIGATIONS OF STL'S FROM

1% OF OUTSTANDING LOANS, TO 1/4 OF 1% OF

OUTSTANDING LOANS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 3
BUSINESS & INDUSTRY
January 24, 1985

(This sheet to be used by those testifying on a bill.)

NAME: Les Alke DATE: 1/24/85

ADDRESS: #1 Last Chance Gulch

PHONE: 443-4122

REPRESENTING WHOM? Mont. Bankers Assoc.

APPEARING ON WHICH PROPOSAL: S.B. 145

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

This bill modernizes our old, somewhat
absolute banking laws.

Two of the amendments make state law
parallel federal law, so state banks have
the same rights as national banks

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 4
BUSINESS & INDUSTRY
January 24, 1985

18-2-302

PUBLIC CONTRACTS

1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979.

Cross-References

Supervision of construction of buildings,
18-2-103.

18-2-302. Bid security. Each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

History: En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133.

Cross-References

Advertisement for bid to specify required security, 18-1-202.

Form of security, 18-1-203.

Forfeiture — bidder's liability, 18-1-204.

Suretyship, Title 28, ch. 11, part 4.

Acceptance and issuance of drafts and letters of credit, 32-1-437.

Certified checks, 32-1-441.

18-2-303 through 18-2-310 reserved.

18-2-311. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in 37-71-101, who has been awarded a contract by the state of Montana or any board, commission, or department thereof or by any board of county commissioners or by any city or town council or agency thereof for the construction or reconstruction of a public work and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals or enter into any additional contract with any public agency of the state of Montana, county, or city thereof until he has completely executed the contract upon which he is working beyond contract time and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

Cross-References

Competitive bidding, 60-2-112.

18-2-312. Excusable delays. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "act of God".

History: En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

18-2-313. Contract provisions necessary for federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that

Review of the Law on
Contractors working past Deadline

Background:

Currently, a public contractor as defined by MCA 37-71-101, who is working beyond the contract time on a public project may not bid on another public project (see MCA 18-2-311, attached) until the last project is completed.

The purpose of this law is to prevent a contractor who is over-extended on work undertaken, as evidenced by working past the deadline, from extending himself further, and not being able to complete additional projects on time or possibly not at all.

Assessment:

The intent of this law is to protect the public, but there are some difficulties in application:

- Lack of definition of what constitutes "completely executed" in MCA 18-2-311.
- There is no system for keeping track of contractors working past deadline on public projects other than state projects.
- There are no penalties imposed on a contractor who violates this law by not disclosing work being done past the deadline on a public project.

Any law must be enforceable to justify its existence. This could be done by:

- Revising the language to limit the scope of the law to contractors working past deadline on state projects and only prevent them from bidding on other state work. This would be fairly easy to monitor.
- Leave the scope of the law as it is, and develop a monitoring system to keep track of all public construction projects.
- Establish enforcement procedures for contractors who violate the law by bidding on public work when they're past due on another public contract.
- Define the term "completely executed" in the law by specifying an event that can be documented, such as the date of issue of the Certificate of Substantial Completion.

Even if the changes suggested above were implemented, the contractor who may be working past the deadline on a private project is not addressed by the law, this may result in penalizing contractors who are involved in public work without providing protection to the public from a contractor who is over extended, but on private sector projects.

The alternatives are either to amend the law so it only can be enforced, or to repeal the law.

Recommendation:

Repeal the law for the reasons cited.

Amendments to SB 120.

1. Page 1, line 6 through line 9.

Following: "AN ACT"

Strike: remainder of lines 6 through 9

Insert: "to allow a public contractor to submit a bid when working beyond contract time on other public work if he has been issued a certificate of substantial completion; to waive enforcement of sections 37-71-203 and 18-2-311, MCA, if a public highway contractor is working on a project financed by federal funds; amending sections 18-2-311, 37-71-203, and 60-2-112, MCA; and"

2. Page 1

Following: line 12

Insert: Section 1. Section 18-2-311, MCA is amended to read:

18-2-311. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in 37-71-101, who has been awarded a contract by the state of Montana or any board, commission, or department thereof or by any board of county commissioners or by any city or town council or agency thereof for the construction or reconstruction of a public work and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals or enter into any additional contract with any public agency of the state of Montana, county, or city thereof until he has completely executed the contract upon which he is working beyond contract time and all supplemental agreements thereto.

Renumber: subsequent sections. *or has been issued a certificate of substantial completion*

3. Page 1, line 15.

Following: "~~time~~"

Insert: "and not beyond a contract time"

4. Page 1, line 21.

Following: "~~preject~~"

Insert: "and is not presently working beyond the contract time, including authorized extensions, or has not received a certificate of substantial completion on any previously awarded public contract project"

Amendments to SB 120, page

5. Page 2, line 3.

Following: "~~time~~"

Insert: "and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time or has been issued a certificate of substantial completion"

6. Page 3, lines 6 and 7.

Strike: Section 3 in its entirety.

7. Page 3, line 10.

Following: "commerce,"

Strike: "or"

Insert: "and"