

MINUTES OF THE MEETING  
BUSINESS AND LABOR COMMITTEE  
50TH LEGISLATIVE SESSION

February 16, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on February 16, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 500 - Credit for Hours of Instruction Common to Barbers and Cosmetologists, sponsored by Rep. Dorothy Cody, House District 20, Wolf Point. Rep. Cody stated the bill would provide that credit be given for education received in a barber school towards a cosmetology license. She said that many of the things the cosmetologists and barbers study are similar and the practice over the years has become similar. She said that in the rural communities they do not have access to a lot of barbers or cosmetologists, and this legislation would help address that and help keep some of the people in business.

PROPOSERS

Sonya O'Connor, Barber, Wolf Point. Ms. O'Connor stated that some of the education required acquired to become a barber should be applied for a cosmetology license. She said that some of the courses are duplicated in cosmetology that are taken in barbering school.

John Rebenberg, Wolf Point. Mr. Rebenberg stated this bill would coordinate the two businesses and professions of barbering and cosmetology, and would allow each profession to recognize the education of each other's field so they could transfer credits. He said the bill is needed to streamline the licensing situation for the two industries, so if a person wants to enter the other field, they would not have to repeat the 2,000 hours of which about 1,000 hours probably would be a duplication.

OPPOSERS

Donna Buska, President of United Professional Barbers Association of Montana, and owner, Rusty Razor, Billings. Ms. Buska stated that no one should be given a license they have not earned. She said this bill would endanger the reciprocity laws with at least 16 states. She commented that the bill is vague and doesn't clearly explain the changes or state additional hours of schooling. She

explained some of the differences in the educational requirements.

Gary Lucht, Vice President, Montana Barber College Owners Association, and owner of schools. Mr. Lucht stated that there are associations within the state that represent the various parts of the profession. He commented that it was decided by the Montana Supreme Court in 1980 that there is no standardization between cosmetology schools and barber schools and there is not a standardized textbook or instructors and all the other things that go along with it. He said these are the things that need to be addressed and debated with the associations and schools.

Don Hawkinson, owner of barber and beauty shop, Butte. Mr. Hawkinson stated that the bill had problems because when they wrote the barber law, it had to comply with state reciprocity laws. He said the state Cosmetology Association and the United Professional Barbers view is to work on the bill for two years to rewrite it in proper form and perspective to present it at the next legislative session.

Bev Ball, Great Falls. Ms. Ball stated that she was concerned, as a cosmetology school owner, how a curriculum would be developed to meet the needs of the intent to cross over the fields. She said the bill is very vague.

Don Anderson, former board member of Montana State Board of Barbers, Stanford. Mr. Anderson stated the bill was irresponsible legislation, and that both cosmetologists and barbers are functioning in an orderly fashion without the bill.

#### QUESTIONS

None.

#### CLOSING

Rep. Cody commented that the bill states under each section, "a licensed cosmetologist who has been engaged in the active practice of cosmetology for at least 3 of 5 years prior to application", and the same language is used for a barber. She said in response to the question of how the schools would establish the curriculum, this can be done through the boards. She added that the bill doesn't address testing so that could be developed by each board.

HOUSE BILL NO. 623 - Prevent Closure or Sale of Profitable Liquor Stores. Rep. Dan Harrington, House District No. 68, Butte. Rep. Harrington stated that the purpose of this bill is to allow the Department the same basis as at present, but

sets up a basis that the store must maintain a 10 percent profit. He said it also mandates that the Department of Revenue has a responsibility to continue inventory at a certain level. An important point, he said, was that all of the grade 12, 11, 10, 9 and 8 stores are running at a profit, with the lowest from 10.3 to a 15.3 range, and the agency stores are also profitable. He added the reason there is state control over the liquor stores as stated in the state liquor act, is that the restrictions, regulations and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of Montana. He submitted information on the facts on the profit margin of the agency stores. Exhibit No. 1.

#### PROPOSERS

Claudia Clifford, representing the United Food and Commercial Workers, that represents the employees in the liquor stores. Ms. Clifford submitted written testimony. Exhibit No. 2.

Patty Scott, owns building that Liquor Store occupies, East Helena. Ms. Scott stated that aside from the philosophical question of whether or not the state should be in the retail liquor business; the fact remains that it is, and until such time that all can agree on how to get out of it the point is that even though the state is in the business, the state is making a profit. She stated that as long as the state is in the business, the bill by Rep. Harrington is the best way to maximize the profits. She submitted data from the Department's last financial report that the state did make a profit in fiscal year 1985-1986 of \$367,528, an 8.46% increase. She commented that on the second page the data compared the East Helena store to what it would have brought in for the state had it been an agency store at a 10% commission. She added that there is a certain level of stores that make more for the state under the 10% commission than they do as state stores. She said that this bill best covers and makes the changes to the system as it is now to maximize the profits. Exhibit No. 3.

Warren L. Peterson, employee of state liquor store, Billings. Mr. Peterson submitted written testimony. Exhibit No. 4.

Dan Faulkner, agent, Walkerville Liquor Store, Walkerville. Mr. Faulkner stated that the agency store system does work well, and as further stores are converted, greater profits in revenue will be recognized.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Harrington stated this bill basically maintains the same system but also regulates the Department of Revenue in what direction they can move. He said this bill will essentially continue in the direction of keeping these people working in the liquor stores and maintaining a profitable situation. If it is not profitable, he added, then it can move in the direction of an agency store, and if it does because it does not meet the profits mandated by the bill, it still maintains the fact that these stores can become independent from any other type of business, as a liquor store, which is important in the state of Montana, with the 10% profit margin that is mandated throughout the bill.

HOUSE BILL NO. 594 - Montana Motor Fuel Marketing Act, sponsored by Rep. Dan Harrington, House District No. 68, Butte. Rep. Harrington stated that this bill is referred to as a fair marketing act concerning the sale of motor fuel in the state of Montana. He said the unfair competition in the marketing of motor fuels occurs whenever the costs associated with the market in motor fuels are recovered from other operations allowing the refined motor fuel product to be sold at subsidized prices, or selling below the cost.

PROPOSERS

Doug Alexander, President of Montana Petroleum Marketers Association, Bozeman. Mr. Alexander stated a good name for this bill would be the predatory pricing bill. Predatory pricing occurs in the marketing of motor fuels whenever costs associated from that marketing procedure are recovered from other operations, allowing the refined motor fuel products to be sold at subsidized prices. He said subsidies most commonly occur in one of three ways: 1) when refineries use profits from the refining of crude oil to cover below costs or negative returns earned from motor fuel marketing operations, 2) when a marketer with more than one location uses profits from one location to cover losses from below cost selling of motor fuel at another location, 3) when a business uses profits of non-motor fuel sales to cover losses from below cost selling of motor fuel. He commented when this happens, independent oil marketers such as

dealers, distributors and wholesalers, are unable to survive predatory subsidized pricing at the market level with these instances mentioned. He said this is a consumer bill and not a bill that regulates the retail price of motor fuel in any way.

William Nooney, High Noon Petroleum, Missoula. Mr. Nooney stated the marketing inequities addressed in the bill do exist. He said that large marketers do subsidize at or below cost selling, and they do it through subsidies or profits from non-petroleum sales. He commented that they use the profits from other high margin petroleum sales in other cities where they've already eliminated the competition and use the profits from other diverse operations to subsidize at or below cost selling. He added that the large vertically integrated marketers, those involved in crude oil production, refining transportation, wholesale marketing and retail marketing have a decided advantage because they can sell at or below cost to create a profit center, be it for refining or crude oil production or whatever. He commented that this bill will enhance competition by keeping more people in the market place; it does not determine prices, but only sets a minimum margin so hopefully the small independent marketer can survive.

John Taggart, President, Automotive Trades of Montana. Mr. Taggart stated they support this bill on behalf of the dealers.

#### OPPONENTS

Ward Shanahan, representing Chevron Corporation. Mr. Shanahan submitted written testimony. Exhibit No. 5.

Janelle Fallan, Executive Director, Montana Petroleum Association. Ms. Fallan submitted written testimony. Exhibit No. 6. She also submitted testimony for the Exxon Company. Exhibit No. 7.

#### QUESTIONS

Rep. Driscoll asked Mr. Shanahan if there is a regulatory body that would stop a gas station owner from selling gas at such a low price that it would force another that could not lower the prices out of business. Mr. Shanahan responded he couldn't answer for the refinery; there may be a contract arrangement between the refinery and that person on an agreed price for the delivery of the gas, but it seems that the marketer through the refinery should be allowed to drop the price to meet the competition, and the Federal Trade Commission should have some say over this. He said the

problem with this bill is it doesn't provide any regulation for this happening.

Chairman Kitselman asked under subsection 2, page 2, how do you determine what a reasonable cost of doing business is between stations. Mr. Shanahan responded that in any price regulation area, price regulations have to be published in order to define these things, otherwise they would have to determine what a reasonable cost is between the two people who are embroiled in the law suit. He said it is a court determination.

Chairman Kitselman asked, on line 22, page 2, if that margin of 6% meant guaranteeing a 6% minimum profit. Mr. Shanahan responded that it guarantees a minimum margin, but there are a number of areas to go over before that point.

#### CLOSING

Rep. Harrington stated that the most important part of the bill is the point of distribution of that gasoline. He said there is no way to avoid lawsuits if there is price fixing, or unfair practice as far as other distributors are concerned within an area. He commented that in this bill the one distinction is that the point of distribution is declared as far as the gasoline is concerned. He said it is wrong when big fuel sellers can distribute their fuels and make enough profit around the state that they can subsidize other stations in order to drive other people out with unfair marketing practices, and this bill will correct that.

HOUSE BILL NO. 691 - Revise Rate Regulation of Small Telephone Companies, sponsored by Rep. Dorothy Bradley, House District No. 79, Bozeman. Rep. Bradley stated that this bill is supposed to save money for the consumers of small telephone companies, and it cuts down the whole process to make it cheaper for the consumers. She explained the provisions of the bill, and said that the purpose of this bill is that it would be far less costly to the small consumers. She commented that it takes approximately \$50,000 to go through this process, and by the time you have the lawyers, accountants, and the other individuals involved and that sum of money is spread among 1200 consumers, the amount is about \$40 per consumer. She added that may be as much or more than the rate increase is even for, so to go through the process doesn't make good sense.

#### PROPONENTS

Jay Preston, Vice President, Ronan Telephone Company. Mr. Preston submitted written testimony. He also submitted

exhibits they filed in their last rate case, and letters from subscribers who are supporting the bill. Exhibit Nos. 8, 9, 10 (a-d), and 11.

Jay Downen, representing small telephone companies. Mr. Downen stated the small telephone companies are paying taxes at a rate of 11%, and these are not the telephone cooperatives. He said they are not eliminating work or positions of the Public Service Commission through this bill, but trying to give rate relief to consumers who often pay \$40 to \$80, or would have to pay that much to get protection from a rate which might amount to only \$12. He commented that they are trying to save consumers some money.

#### OPPONENTS

Joan Mandeville, Public Service Commission. Ms. Mandeville stated that this bill removes Commission jurisdiction over these telephone companies, and in essence it replaces the Commission's role with the Consumer Counsel. She said the Commission and the Consumer Counsel have different roles and different statutory mandates. Exhibit No. 12.

#### QUESTIONS

Rep. Cohen asked Ms. Mandeville, regarding the testimony of Mr. Preston, would it cost the Ronan Telephone Company \$75,000 to apply for a rate increase, and what is the procedure that small telephone companies have in applying for rate increases. Ms. Mandeville responded that there has not been a rate increase for a small telephone company that has cost that much. She said the PSC is concerned about keeping those costs down and have made every attempt to try to lessen those burdens, and have told the companies to bring in their justifications and the PSC will review them.

Rep. Glaser asked if PSC regulates the small telecommunication providers, the long line providers that are providing services in competition with Mountain Bell. Ms. Mandeville responded that they do not. She said the ones that operate in the state right now are resellers, who basically buy services from Mountain Bell and AT&T on what is a bulk basis, and then resell it as a retail situation. She added the Montana Telecommunications Act in 1985 gave them the ability not to regulate those companies; they are competitive services and they did not want to regulate them.

Rep. Glaser asked if the PSC would regulate the carriers that are in the process of preparing engineering data or arranging to run lines across Montana that will be primary providers, and not just resellers. Ms. Mandeville responded

if they are facility based carriers and they have their own facilities, they would regulate those carriers.

Rep. Driscoll asked if the PSC keeps track of the water rates in the state of Montana. Ms. Mandeville responded it only includes municipal water companies.

Rep. Driscoll asked if they keep track of how much the rates have gone up, when they exempted the municipal water companies from the law. Ms. Mandeville responded they have not.

Rep. Driscoll asked if any of the municipal water companies have asked the PSC for a rate increase above the 12% a year they can raise without any review by the PSC. Rep. Driscoll stated the point he is making is that when they exempted the municipal water companies from the PSC regulation, the price of water in Billings doubled within three years; and he asked if the same thing could happen with these people. Ms. Mandeville said there is a fundamental theory that if there is a monopoly, there is a need for some regulatory oversight, especially if it is a poor profit type of entity.

Rep. Swysgood stated that the bill provides that the Commission is still going to be involved if the subscribers feel that this rate increase is unjust, and he asked why the Commission feels that it is not going to be involved if there are extremely high rate increases. Ms. Mandeville responded that what they are referring to is the individual customers that are required to send in written petitions, but customers in other parts of the state such as Billings, already have the right to simply rely on the PSC to protect their interest.

Rep. Glaser stated on page 2, line 12, reference is made to one subscriber for each build account of each small telecommunications provider, and wants to propose an amendment on the line where it says, "build account of", change it to "build line of", and asked if Mr. Preston objected to this. Mr. Preston responded he would not.

#### CLOSING

Rep. Bradley stated that in response to Rep. Driscoll's statement that water rates had doubled within a short period of time, if that kind of thing was to happen, the subscribers would petition, and the Consumer Counsel or the Public Service Commission would open a case. She said it was stated that minimum requirements already exist; but the small company still has to file, and would have to submit a minimum amount of information and get a waiver. She added there is still a process and a justification that has to be proven. She commented it is not difficult to determine the



10%, because the companies know exactly the number of subscribers. She said she has no problem with Rep. Glaser's amendment, but that information is easy to determine, and is not an objection to this bill. The reason that there is no evidence that the regulation is burdensome at this point, she said, is because these companies have been avoiding going through this process for a long period of time for the simple reason that they believe it is burdensome. She added, there isn't a lot of evidence on the record because they are avoiding the whole thing.

HOUSE BILL NO. 689 - Workers Compensation Independent Contractor Exemption Effective Until Changed, sponsored by Rep. Bernie Swift, House District No. 64, Hamilton. Rep. Swift stated that this bill provides under the Workers Compensation Act, that the independent contractor's exemption status remains in effect until the independent contractor notifies the Workers Compensation Division of a change in his status.

PROPONENTS

None.

OPPONENTS

Hiram Shaw, Workers Compensation Division, stated he would be available to answer any questions.

CLOSING

Rep. Swift made no further comments.

EXECUTIVE ACTION

ACTION ON HOUSE BILL NO. 623

Chairman Kitselman referred House Bill No. 623 to a subcommittee composed of Rep. Jones, Rep. Simon, and Rep. Pavlovich, with Rep. Jones as chairman.

ACTION ON HOUSE BILL NO. 689

Rep. Jones moved that House Bill No. 689 DO PASS. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 691

Rep. Brandewie moved that House Bill No. 691 DO PASS.

Rep. Glaser moved the amendments, on page 2, line 12, after "build" strike the word "account" and insert "line", to

read, "there is one subscriber for each build line of a small telecommunication provider". He said there are a lot of little operators that might have several telephones, such as an individual line to a building, party line, or extension line and it should be weighed on the basis of the amount of service they are providing, and the word "line" would do that. The motion carried with Rep. Wallin, Rep. Nisbet, and Rep. Brown opposed.

Rep. Driscoll stated this is the same thing that was done for the water companies, and the water rates in Billings doubled because no review is required. He said the same thing is going to happen in this situation as these companies are not cooperatives but are profit telephone companies, and there are not enough safeguards in this bill.

Chairman Kitselman explained that in this bill there is a 10% petition, an automatic Consumer Counsel, and the PSC can review the rates. He said none of these three safeguards were in the situation regarding the water companies rates.

Rep. Brandewie moved that House Bill No. 691 DO PASS AS AMENDED. The motion carried with Reps. Pavlovich, Hansen, Driscoll, Brown, and Cohen opposed.

HOUSE BILL NO. 727 - Exempt Live-In Employees From Minimum Wage and Overtime Law, sponsored by Rep. Cal Winslow, House District No. 89, Billings. Rep. Winslow stated that this bill is an act to exempt from the minimum wage and overtime laws, employees of lodging establishments, and personal care facilities who live in the establishment. He said this addresses the problems that small motel and hotel owners have because of their small staff and a person that lives on the premises, usually a manager, that is on call 24 hours a day.

#### PROPOSERS

Ernie Dutton, Billings, submitted written testimony. Exhibit No. 13.

Steve Waldron, representing Montana Residential Child Care Association. Mr. Waldron stated that they are likely to lose some of those foster care group homes if they have to pay minimum wage to the staff that stay on the premises if this legislation passes.

#### OPPOSERS

Chris Volinkaty, representing the developmentally disabled people in the state of Montana. Ms. Volinkaty stated that this bill is open ended, and the problem is the budget and

not minimum wage. She said it is not fair if these people can't be paid \$3.35 per hour to make sure that things are going well in these group homes.

#### QUESTIONS

None.

#### CLOSING

Rep. Winslow stated that this bill is not an attempt in any way to lower wages in these facilities. He said they are addressing the people that live 24 hours on the premises. He said that the bill could be amended to address the fact that only resident managers are affected, and not the employees that work eight hour shifts in group homes, or maids in the hotels and motels.

#### EXECUTIVE ACTION

##### ACTION ON HOUSE BILL NO. 594

Rep. Pavlovich moved that House Bill No. 594 DO PASS.

Rep. Swysgood stated there were problems with this bill; the language is broad as to who determines what; the bill is too open ended.

Rep. Simon stated this bill refers to intent, and it is virtually impossible to prove somebody's intent. He said there are a number of other provisions that are very difficult, and it would be impossible to enforce a bill such as this.

Chairman Kitselman stated that there are a lot of problems with this bill and it needs work to address the issues and their intent. He said there are no provisions in the bill to take care of legal costs, but the references to punitive damages and exemplary damages have been reinserted.

Rep. Swysgood moved a substitute motion that House Bill No. 594 BE TABLED. The motion carried with a voice vote of 10 to 8.

##### ACTION ON HOUSE BILL NO. 500

Rep. Driscoll moved that House Bill No. 500 DO PASS.

Rep. Driscoll stated that the opponents thought they would automatically get a license and all the bill states is that they would get credit for all the classes they have already taken.

Rep. McCormick commented that he is against this bill because there isn't time to work out the problems. He said the cosmetologists' and the barbers' associations should work together on this bill to resolve the problems.

Rep. Brown moved a substitute motion that House Bill No. 500 DO NOT PASS. The motion carried with a voice vote of 13 to 5, with Reps. Driscoll, Hansen, Bachini, Glaser, and Brandewie opposed.

ACTION ON HOUSE BILL NO. 727

Rep. Hansen moved that House Bill No. 727 DO NOT PASS.

Rep. Hansen stated that there are other ways to handle that situation, such as contracts, etc. She said if a person is living in a group home, they are not paid by the hour anyway, and in the case of personal care attendants, they do a good job for the hours they are hired for, and they do deserve that minimum wage.

Rep. Simon commented that the small motels have owners or managers that are on duty 24 hours a day, are not specifically doing anything, but need to be there to check people in and out. He said that the intent is not to actually pay less than the minimum wage for what is considered a normal shift.

Rep. Swysgood moved an amendment on page 2, line 25, insert "resident managers" in place of "persons", and also in the title, on line 5, strike "employees" and insert "resident managers". The motion carried unanimously.

Rep. Thomas moved a substitute motion that House Bill No. 727 DO PASS AS AMENDED.

Rep. Pavlovich moved a substitute motion that House Bill No. 727 BE TABLED. The motion failed.

Rep. Thomas's substitute motion that House Bill No. 727 DO PASS AS AMENDED was voted on. The motion carried with a voice vote of 10 to 8.

ACTION ON HOUSE BILL NO. 54 (was not heard)

Rep. Thomas moved that House Bill No. 54 BE TABLED. The motion carried unanimously.

Rep. Thomas stated that House Bill No. 54 provides for exempting directors and officers of non-profit organizations personally for the liability of the organizations. He said the reason he is asking to table this bill at this time is

that Senator Thayer's bill, Senate Bill No. 49, addresses this issue.

ACTION ON HOUSE BILL NO. 593

Rep. Cohen moved that House Bill No. 593 DO PASS.

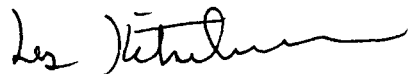
Rep. Cohen moved an amendment on page 6, section 1-4, showing an effective date of July 1, 1989, and section 5-11, an effective date of July 1, 1987. The motion carried unanimously.

Rep. Cohen moved an amendment on page 2, line 18, following: "equipment", insert, "taxes foregone". The motion carried unanimously.

Rep. Cohen moved that House Bill No. 593 DO PASS AS AMENDED. The motion carried with Reps. Pavlovich, McCormick, Nisbet, and Bachini opposed.

ADJOURNMENT

The meeting adjourned at 11:30 a.m.



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REP. LES KITSELMAN, Chairman

## DAILY ROLL CALL

BUSINESS &amp; LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

# STANDING COMMITTEE REPORT

February 16

19 37

## BUSINESS AND LABOR

Mr. Speaker: We, the committee on

report HOUSE BILL NO. 593

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. LES KITSelman

Chairman

### AMENDMENTS AS FOLLOWS:

1) Title, line 7

Following: "PROVIDING"

Insert: "A DELAYED EFFECTIVE DATE AND"

2) Page 2, line 18

Following: "equipment,"

Insert: "taxes foregone,"

3) Page 6, lines 7 and 8

Following: "(1)" on line 7

Strike: the remainder of line 7 and 8 through "is"

Insert: "Sections 1 through 4 are effective July 1, 1939.

(2) Sections 5 through 11 and this section are"

Renumber: subsequent subsection

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# STANDING COMMITTEE REPORT

FEBRUARY 16

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 727

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. LES KITSBLATT

Chairman

## AMENDMENTS AS FOLLOWS:

1) Title, line 5

Strike: "EMPLOYERS"

Insert: "RESIDENT MANAGERS"

2) Page 2, line 25

Strike: "persons"

Insert: "resident managers"

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# STANDING COMMITTEE REPORT

February 16

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 691

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

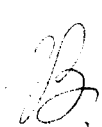
REP. LES KITSELMAN

Chairman

## AMENDMENTS AS FOLLOWS:

1) Page 2, line 12  
Strike: "account"  
Insert: "line"

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# STANDING COMMITTEE REPORT

February 16

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 689

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. LES KITSELMAN

Chairman

  
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# STANDING COMMITTEE REPORT

February 16

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 500

☐ do pass  
☒ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. LES NITSELMAN

Chairman

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157 AND 60

STORE

157 AND 60	NET	UNIT	R/D	UPH	SALARIES	2	RENT	CONT	%	SERV	SERV	SQUARE	12 MONTH	PROFIT	PROFIT	TOTAL	EXP	PROFIT	SALES	EXPENSE
STORE	ADD GROSS	TAXES	SALES	FY86	SALES	NET SLS	RENT	SERV	NET	SERV	NET	AGE	AVE VALUE	MARGIN	EXP	EXPENSES	LNT	UNIT	UNIT	UNIT
LIMA 82	\$29,063	\$5,944	\$3,139	\$3,203	451			\$2,405	10.3552			\$20,431	\$2,828	12.221		\$5,800	16.421	\$0.88	\$9.18	\$1.19
ARLEE 84	\$48,364	\$9,852	\$38,512	\$6,727	297			\$5,700	9.80672			\$18,250	\$5,379	13.977		\$5,358	15.212	\$0.80	\$7.19	\$0.97
DARBY 85	\$75,821	\$15,348	\$60,473	\$8,898	411			\$6,552	10.50321			\$25,856	\$7,929	13.112		\$9,573	\$0.89	\$8.52	\$1.08	
ASHLAND 88	\$28,215	\$5,730	\$22,485	\$6,678	312			\$2,236	9.94321			\$14,813	\$2,452	10.902		\$4,973	22.121	\$0.37	\$4.23	\$0.74
CULBERTSON 89	\$47,083	\$9,347	\$37,735	\$6,144	642			\$3,206	9.39122			\$30,398	\$4,915	13.022		\$5,990	15.872	\$0.80	\$7.66	\$0.97
MED LAKE 90	\$29,301	\$5,806	\$23,495	\$3,871	267			\$2,787	9.27262			\$21,203	\$1,997	8.502		\$4,215	17.942	\$0.52	\$7.57	\$1.07
BRIDGER 91	\$40,356	\$8,139	\$32,217	\$5,673	592			\$736	9.69132			\$18,664	\$4,186	12.952		\$5,199	16.142	\$0.74	\$7.11	\$0.92
WESTBY 93	\$12,142	\$2,485	\$9,657	\$1,625	1002			\$1,894	10.11631			\$10,039	\$859	8.892		\$1,845	17.112	\$0.53	\$7.47	\$1.14
MASHUA 95	\$23,550	\$4,829	\$18,722	\$3,135	461			\$4,094	9.73102			\$10,979	\$1,845	9.852		\$3,522	18.812	\$0.59	\$7.51	\$1.12
816 SANDY 97	\$52,871	\$10,804	\$42,067	\$7,393	642			\$2,593	9.41202			\$24,160	\$5,245	12.472		\$6,417	15.232	\$0.71	\$7.15	\$0.87
STOCKEIT 99	\$34,627	\$7,082	\$27,546	\$4,604	832			\$2,104	9.55142			\$18,464	\$3,780	13.722		\$4,144	15.042	\$0.82	\$7.52	\$0.90
SALO 103	\$27,622	\$5,598	\$22,023	\$3,684	982			\$7,032	9.77472			\$17,837	\$2,535	11.511		\$3,257	17.062	\$0.69	\$7.50	\$1.02
WHITEHALL 104	\$70,213	\$18,267	\$71,945	\$10,971	622			\$7,221	10.07622			\$27,242	\$10,658	14.812		\$10,057	14.032	\$0.97	\$8.22	\$0.92
SHERIDAN 105	\$85,592	\$17,926	\$71,666	\$11,222	553			\$6,483	9.92772			\$45,820	\$9,452	13.192		\$10,808	15.082	\$0.84	\$7.98	\$0.96
FLAINS 108	\$81,822	\$16,524	\$65,298	\$9,598	462			\$2,383	10.38782			\$15,310	\$9,459	14.492		\$9,668	14.812	\$0.99	\$8.52	\$1.01
KEVIN 111	\$28,785	\$5,849	\$22,936	\$3,961	722			\$8,144	10.35902			\$16,923	\$2,552	11.132		\$3,884	16.932	\$0.64	\$7.27	\$0.98
LINCOLN 112	\$98,005	\$19,690	\$78,316	\$11,523	492			\$3,689	9.24032			\$32,732	\$11,670	14.902		\$10,695	13.662	\$1.01	\$8.51	\$0.93
DUTTON 113	\$27,766	\$5,574	\$22,092	\$3,559	531			\$2,525	10.11612			\$13,530	\$2,680	12.132		\$3,403	15.402	\$0.75	\$7.80	\$0.95
STEVENSVILLE 115	\$50,116	\$10,198	\$39,918	\$6,106	112			\$2,507	9.95972			\$13,894	\$5,878	14.722		\$5,874	14.722	\$0.96	\$6.21	\$0.95
WILGALL 117	\$31,549	\$6,402	\$25,147	\$3,993	972			\$4,221	9.95972			\$10,264	\$3,473	13.812		\$3,974	15.302	\$0.87	\$7.90	\$1.00
MORDEN 118	\$58,747	\$11,632	\$45,115	\$7,094	742			\$3,166	9.91102			\$34,259	\$5,452	12.532		\$6,873	15.232	\$0.80	\$8.00	\$0.97
FAIRVIEW 120	\$39,876	\$7,934	\$31,942	\$5,318	402			\$1,946	9.11532			\$15,112	\$3,639	11.392		\$5,749	18.002	\$0.68	\$7.50	\$1.08
MANHATTAN 121	\$26,726	\$5,352	\$21,374	\$3,840	372			\$9,922	10.88192			\$31,472	\$3,084	14.432		\$3,001	14.042	\$0.80	\$6.96	\$0.76
SEELY LAKE 122	\$114,151	\$22,981	\$91,170	\$13,120	432			\$2,421	10.84442			\$31,597	\$11,872	13.032		\$14,487	15.872	\$0.91	\$8.70	\$1.10
NOXON 129	\$35,584	\$7,998	\$31,585	\$4,443	482			\$3,425	9.37212			\$26,876	\$5,442	11.292		\$5,422	17.172	\$0.80	\$6.51	\$1.22
FAIRFIELD 130	\$46,486	\$9,309	\$37,176	\$5,781	482			\$3,484	9.37212			\$26,876	\$5,442	11.292		\$5,422	17.172	\$0.80	\$6.51	\$1.22
DUVER 131	\$18,038	\$3,678	\$14,359	\$3,371	431			\$1,492	10.39382			\$11,330	\$1,631	12.752		\$2,631	18.322	\$0.54	\$5.35	\$0.78
WALKERVILLE 137	\$272,630	\$55,593	\$217,036	\$31,738	682			\$20,667	9.52242			\$55,911	\$33,464	15.422		\$28,230	13.012	\$1.95	\$9.59	\$0.89
ALBERTON 138	\$34,679	\$7,029	\$27,650	\$3,929	431			\$2,775	10.03702			\$19,664	\$3,623	13.102		\$4,531	16.392	\$0.52	\$8.83	\$1.15
SEYER 156	\$11,010	\$2,216	\$8,793	\$1,516	1012			\$839	9.53782			\$6,927	\$1,290	14.672		\$1,456	16.332	\$0.85	\$7.26	\$0.75
WINIFRED 160	\$30,991	\$6,369	\$24,622	\$4,077	602			\$2,414	9.80622			\$12,239	\$2,874	11.672		\$3,975	16.152	\$0.70	\$7.60	\$0.98
HOBSON 161	\$30,612	\$6,166	\$24,446	\$4,007	552			\$2,400	9.81922			\$20,193	\$2,911	11.912		\$4,035	16.502	\$0.73	\$7.64	\$1.01
ABERDEE 167	\$104,785	\$21,034	\$83,751	\$12,485	621			\$8,464	10.10562			\$33,662	\$11,973	14.302		\$12,230	14.672	\$0.96	\$8.39	\$0.58
ST. REBIS 185	\$80,182	\$16,401	\$63,781	\$10,959	472			\$7,002	10.97732			\$6,825	\$6,877	10.782		\$10,627	16.662	\$0.63	\$7.32	\$0.97
JACKSON 188	\$7,310	\$1,445	\$5,865	\$920	521			\$5,862	11.03682			\$44,289	\$98	11.902		\$1,003	17.092	\$0.76	\$7.95	\$1.09
816 SKY 190	\$106,052	\$21,820	\$84,232	\$13,272	521			\$3,265	11.63322			\$21,568	\$3,095	11.032		\$4,903	17.472	\$0.73	\$8.14	\$1.15
E GLACIER 191	\$34,890	\$6,620	\$28,069	\$4,263	372			\$21,221	9.74322			\$71,464	\$28,683	13.172		\$30,850	14.152	\$0.83	\$7.92	\$0.90
LOLO 192	\$272,841	\$55,042	\$217,800	\$34,438	531			\$6,412	9.97582			\$28,265	\$9,218	12.902		\$12,442	16.022	\$0.61	\$5.94	\$0.76
CULSTRIP 194	\$89,344	\$17,905	\$71,440	\$15,031	522			\$407,372	9.75572			\$564,741	\$3,522	13.522		\$622,929	14.922	\$0.85	\$7.88	\$0.94
GRADE 12	\$4,565,410	\$1,002,663	\$3,562,747	\$54,438			\$214,044	5.402	\$95,763	2.472	\$7,192		\$1,044,463	\$606,493	15.302	\$502,790	12.692	\$0.93	\$7.59	\$0.77
GRADE 11	\$8,496,234	\$1,711,760	\$6,784,474	\$1,057,361			\$457,388	6.742	\$150,232	2.362	\$12,570		\$1,771,859	\$62,264	14.182	\$32,660		\$0.90	\$7.96	\$0.98
GRADE 10	\$3,976,303	\$803,774	\$3,172,529	\$13,242			\$248,666	7.842	\$98,687	3.112	\$967		\$953,680	\$403,573	12.722	\$505,293	15.932	\$0.79	\$7.75	\$0.98
GRADE 9	\$1,753,347	\$352,981	\$1,400,366	\$30,749			\$151,631	9.402	\$45,792	3.272	\$149		\$522,731	\$144,460	10.322	\$253,419	18.102	\$0.63	\$7.50	\$1.10
GRADE 8	\$1,616,424	\$286,615	\$1,329,809	\$183,287			\$123,110	10.902	\$32,769	2.902	\$2,089		\$439,582	\$101,425	8.982	\$218,720	19.362	\$0.55	\$7.73	\$1.19
(SUBTOTAL)	\$20,607,719	\$4,157,793	\$16,449,926	\$2,649,077			\$1,174,839	7.142	\$433,243	2.632	\$22,967		\$4,732,315	\$2,218,214	13.482	\$2,412,882	14.672	\$0.84	\$7.78	\$0.91
(STATE STORES)							\$0	0.002	\$0	0.002	\$437,372		\$1,377,555	\$564,741	13.522	\$622,929	14.922	\$0.85	\$7.88	\$0.94
AGENCIES	\$5,233,138	\$1,057,397	\$4,175,741	\$64,016			\$1,174,839	5.702	\$433,243	2.102	\$430,239		\$6,669,900	\$2,782,555	13.492	\$3,035,811	14.722	\$0.84	\$7.80	\$0.92
TOTAL	\$25,840,857	\$5,215,190	\$20,625,667	\$3,313,093																

EXHIBIT

DATE

HB

2/16/87  
623Lima 82  
Manhattan 121  
St. Rebis 185  
Total

#59 AND 60 STORE	ADJ GROSS	TAXES	NET SALES	UNIT SALES FY86	R/D %	UPPH	SALARIES NET SLS	Z	% RENT RENT NET SALES	CONT SERV NET SALES	% CONT SERV NET SALES	SQUARE FOOT -AGE	12 MONTH AVE VALUE INVENTORY	PROFIT MARGIN	TOTAL EXPENSES	EXP LMT /STORE	PROFIT /UNIT	SALES /UNIT	EXPENSE /UNIT	
SHELBY 29	\$150,182	\$30,425	\$119,757	18,945	522	15.40	\$11,018	9.20%	\$2,100	1.75%	1112	2,940	\$80,152	\$13,692	11.43%	\$19,838	16.57%	\$0.72	\$7.93	\$0.90
FORT BENJON 31	\$93,271	\$18,568	\$74,703	\$12,527	501	12.14	\$7,994	13.38%	\$2,155	2.85%	\$39	1,350	\$31,892	\$4,117	5.51%	\$17,008	22.77%	\$0.33	\$7.45	\$1.68
CONRAD 33	\$147,924	\$29,781	\$118,144	\$18,842	432	18.77	\$10,596	8.97%	\$4,200	3.55%	\$148	1,578	\$50,519	\$11,179	9.46%	\$20,995	17.77%	\$0.59	\$7.85	\$0.92
GARDNER 58	\$68,706	\$13,828	\$54,877	\$9,143	512	6.56	\$12,067	21.99%	\$2,100	3.83%	\$20	741	\$17,150	\$1,602	2.92%	\$17,452	31.92%	\$0.18	\$7.51	\$1.94
TRAY 70	\$104,982	\$21,547	\$83,434	\$12,716	481	12.46	\$11,024	13.21%	\$1,925	2.31%	\$36	1,200	\$24,566	\$5,916	7.09%	\$17,720	21.24%	\$0.47	\$8.26	\$1.90
EAST HELENA 83	\$167,432	\$34,209	\$133,223	\$20,828	482	19.94	\$10,541	7.91%	\$5,814	5.11%	\$1,540	2,500	\$37,694	\$14,149	10.62%	\$24,196	18.16%	\$0.68	\$8.04	\$1.15
RONAN 101	\$154,510	\$31,353	\$123,157	\$20,428	452	18.95	\$12,849	10.43%	\$2,450	1.99%	\$45	2,000	\$40,499	\$13,450	10.92%	\$21,593	17.53%	\$0.66	\$7.56	\$1.05
VICTOR 172	\$92,630	\$18,457	\$74,173	\$12,009	423	12.25	\$10,574	14.26%	\$4,200	5.66%	\$0	1,500	\$31,169	\$2,292	3.09%	\$18,819	25.37%	\$0.19	\$7.71	\$1.57
	\$1,416,424	\$286,615	\$1,129,809	183,287			\$123,110	10.90%	\$32,769	3.90%	\$2,089			\$101,425	8.96%	\$218,720	19.56%	\$0.55	\$7.73	\$1.19
THOMPSON FALLS 7	\$101,926	\$20,665	\$81,262	\$12,478	412						\$7,988	\$40,690	\$10,339	12.72%	\$11,723	14.67%	\$0.93	\$8.17	\$0.95	
HYSHAM 10	\$17,215	\$3,484	\$13,732	\$2,171	472						\$430	\$3,312	\$2,466	17.95%	\$1,217	8.82%	\$1.14	\$7.92	\$0.52	
COLUMBUS 16	\$79,044	\$15,771	\$63,272	\$9,560	402						\$5,170	\$25,038	\$8,276	13.08%	\$9,379	14.82%	\$0.37	\$8.27	\$0.39	
816 TIMBER 17	\$117,978	\$23,133	\$94,845	\$14,935	352						\$9,248	\$29,466	\$13,793	14.54%	\$13,642	14.38%	\$0.92	\$7.90	\$0.91	
MILWAUK 19	\$12,058	\$2,449	\$9,609	\$1,610	852						\$660	\$8,939	\$991	10.31%	\$1,635	17.62%	\$0.52	\$7.42	\$1.01	
TERRY 20	\$36,969	\$7,188	\$29,781	\$5,029	522						\$2,789	\$17,712	\$2,858	9.90%	\$1,906	17.64%	\$0.57	\$7.17	\$1.05	
PHILIPSBURG 25	\$65,467	\$13,081	\$52,386	\$8,338	602						\$5,234	\$22,420	\$5,754	12.87%	\$7,869	15.02%	\$0.21	\$7.85	\$1.94	
CHANDLER 28	\$150,394	\$30,505	\$119,889	\$22,569	672						\$11,486	\$32,122	\$17,201	14.53%	\$17,634	14.71%	\$0.76	\$6.66	\$0.78	
SUPERIOR 30	\$55,002	\$13,537	\$41,465	\$6,919	452						\$5,141	\$12,763	\$7,258	13.63%	\$8,060	15.36%	\$0.65	\$7.75	\$0.95	
CHATEAU 34	\$79,583	\$16,027	\$63,556	\$9,870	1002						\$6,293	\$19,669	\$8,462	13.53%	\$9,364	14.73%	\$0.87	\$9.06	\$0.95	
CHESTER 35	\$76,003	\$15,277	\$60,725	\$10,436	492						\$5,616	\$28,792	\$7,073	11.65%	\$9,715	14.35%	\$0.58	\$7.28	\$0.84	
M.S. SPRINGS 36	\$63,952	\$12,972	\$50,980	\$7,275	552						\$5,137	\$16,947	\$7,153	14.04%	\$7,442	14.60%	\$0.98	\$8.79	\$1.02	
HARLOWTON 38	\$76,197	\$15,367	\$60,830	\$10,393	612						\$5,412	\$21,330	\$8,639	14.20%	\$8,549	14.95%	\$0.83	\$7.33	\$0.82	
WINNETT 39	\$16,652	\$3,353	\$13,299	\$2,243	02						\$1,336	\$11,460	\$1,536	11.55%	\$2,178	16.38%	\$0.69	\$7.56	\$0.76	
BROADUS 40	\$44,438	\$12,834	\$31,604	\$6,777	572						\$5,057	\$9,487	\$5,916	11.46%	\$8,791	17.04%	\$0.67	\$7.34	\$1.00	
EVALAKA 41	\$6,605	\$1,336	\$5,269	\$838	932						\$969		\$253	4.80%	\$1,132	21.47%	\$0.30	\$7.88	\$1.35	
BEAVER 42	\$110,700	\$22,477	\$88,223	\$12,642	582						\$8,466	\$42,038	\$10,975	12.44%	\$13,188	14.95%	\$0.97	\$8.76	\$1.04	
STANFORD 43	\$45,583	\$9,146	\$36,437	\$6,647	452						\$3,612	\$16,591	\$5,315	14.59%	\$5,874	16.12%	\$0.80	\$8.86	\$0.88	
ROUNDUP 44	\$95,391	\$17,330	\$78,061	\$11,254	962						\$6,335	\$31,614	\$9,001	13.22%	\$9,971	14.45%	\$0.80	\$7.59	\$0.89	
JORDAN 46	\$26,840	\$5,418	\$21,422	\$3,260	492						\$2,064	\$22,725	\$2,131	9.95%	\$3,538	16.52%	\$0.65	\$8.23	\$1.09	
CIRCLE 47	\$34,922	\$7,137	\$27,785	\$4,579	612						\$2,659	\$15,012	\$3,425	12.33%	\$4,563	16.42%	\$0.75	\$7.63	\$1.00	
RYEGATE 48	\$17,801	\$3,614	\$14,187	\$2,272	542						\$4,438	\$10,606	\$1,544	10.88%	\$2,469	17.41%	\$0.68	\$7.63	\$1.09	
TOWNSEND 49	\$89,520	\$18,053	\$71,466	\$10,976	472						\$5,991	\$25,445	\$10,381	14.53%	\$9,801	13.71%	\$0.35	\$8.16	\$0.87	
STOREY 51	\$66,778	\$13,379	\$53,398	\$8,869	552						\$4,916	\$20,218	\$6,333	11.86%	\$8,686	16.27%	\$0.71	\$7.53	\$0.93	
ROULDER 56	\$84,647	\$17,052	\$67,597	\$10,129	552						\$5,067	\$26,112	\$9,803	14.50%	\$9,509	14.07%	\$0.77	\$8.36	\$1.94	
EMMS 60	\$147,094	\$29,315	\$117,779	\$16,635	472						\$12,898	\$45,192	\$15,929	13.52%	\$17,837	15.14%	\$0.56	\$8.84	\$1.07	
HOT SPRINGS 61	\$29,242	\$5,916	\$23,326	\$3,949	402						\$2,228	\$43,340	\$2,963	12.70%	\$4,033	17.29%	\$0.75	\$7.40	\$1.02	
H. HORSE 62	\$142,859	\$28,937	\$113,922	\$16,791	582						\$12,013	\$45,586	\$14,127	12.40%	\$17,748	15.58%	\$0.64	\$9.51	\$1.06	
BELT 63	\$48,502	\$9,914	\$38,587	\$5,870	632						\$7,740	\$20,702	\$5,494	14.24%	\$14,364	14.36%	\$0.74	\$9.26	\$1.94	
MARTINDALE 66	\$16,439	\$3,357	\$13,082	\$2,159	532						\$1,371	\$11,583	\$1,215	9.29%	\$2,427	18.55%	\$0.56	\$7.61	\$1.12	
EVERGREEN 67	\$149,793	\$30,705	\$119,088	\$18,418	382						\$9,482	\$24,888	\$19,984	16.76%	\$14,756	12.39%	\$1.09	\$8.13	\$0.89	
BRANDON 68	\$35,894	\$7,301	\$28,593	\$4,227	542						\$2,787	\$19,686	\$3,945	13.87%	\$4,271	14.94%	\$0.54	\$8.49	\$1.01	
EUREKA 69	\$147,876	\$29,952	\$117,943	\$18,518	542						\$11,873	\$47,939	\$16,192	13.73%	\$17,335	14.70%	\$0.97	\$7.99	\$0.94	
WISDOM 71	\$18,855	\$3,779	\$15,076	\$2,255	462						\$1,629	\$17,336	\$1,567	13.05%	\$2,351	15.59%	\$0.87	\$8.76	\$1.04	
THREE FORKS 72	\$70,955	\$14,247	\$56,708	\$8,413	512						\$5,707	\$33,613	\$7,816	13.78%	\$8,139	14.35%	\$0.73	\$8.43	\$0.97	
ST. IGNATIUS 74	\$63,914	\$12,951	\$50,962	\$8,762	422						\$4,815	\$20,939	\$7,459	14.64%	\$7,569	14.73%	\$0.85	\$7.29	\$0.86	
FRENCHTOWN 75	\$139,149	\$28,547	\$110,602	\$16,615	752						\$10,587	\$35,201	\$15,702	14.20%	\$15,267	13.89%	\$0.95	\$9.37	\$0.92	
BELGRADE 76	\$83,154	\$16,692	\$66,232	\$10,916	352						\$6,242	\$32,403	\$9,649	14.56%	\$9,223	13.32%	\$0.88	\$7.62	\$0.65	
TWIN BRIDGES 77	\$40,093	\$8,057	\$32,036	\$5,129	432						\$3,238	\$24,698	\$4,225	13.20%	\$4,877	15.22%	\$0.82	\$7.62	\$0.95	
WALTER 78	\$29,960	\$5,876	\$24,084	\$4,071	392						\$2,172	\$10,038	\$3,408	14.16%	\$3,689	15.33%	\$0.84	\$7.36	\$0.91	
CASCADE 79	\$66,692	\$13,536	\$53,156	\$7,575	522						\$5,398	\$26,974	\$7,432	14.08%	\$7,405	14.31%	\$0.99	\$8.89	\$1.20	
AUGUSTA 81	\$47,265	\$9,491	\$37,774	\$5,854	582						\$4,102	\$22,848	\$4,741	12.55%	\$6,035	15.98%	\$0.81	\$8.07	\$1.03	

\$59 AND 60	ADJ GROSS	TAXES	NET SALES	UNIT SALES	OLD %	UPPH	SALARIES	%	RENT	%	SERV	%	CONT	SQUARE	FOOT AVE	12 MONTH	PROFIT	MARGIN	EXPENSES	TOTAL	LMT	EXP	PROFIT	SALES	EXPENSE	UNIT	UNIT
STORE				FY86			NET SLS		RENT		NET		NET		-AGE	VALUE					/STORE						
BILLINGS 3	\$982,547	\$194,867	\$787,680	\$155,798	312	36.00	\$45,010	5.712	\$20,359	2.582	\$1,331	0.16892	7.250	\$239,996	\$107,549	13.657	\$108,513	13.782	\$0.79	\$7.24	\$0.80						
BILLINGS 4	\$997,546	\$204,300	\$793,246	\$147,957	762	35.86	\$49,122	6.132	\$16,905	2.132	\$1,713	0.21592	7.000	\$217,040	\$110,810	13.972	\$108,625	13.692	\$0.75	\$5.74	\$0.69						
GREAT FALLS 139	\$877,672	\$175,662	\$702,010	\$115,746	392	33.92	\$40,425	5.762	\$10,750	2.242	\$1,177	0.16762	4.500	\$184,798	\$105,286	15.002	\$88,330	12.592	\$0.33	\$7.72	\$0.78						
MISSOULA 170	\$967,671	\$196,318	\$771,353	\$116,730	422	36.94	\$50,861	5.302	\$20,125	2.612	\$1,165	0.15102	5.000	\$185,423	\$126,347	16.382	\$95,075	12.332	\$1.08	\$8.28	\$0.81						
MISSOULA 171	\$1,139,974	\$231,576	\$908,398	\$140,007	542	42.86	\$38,615	4.252	\$22,624	2.492	\$1,807	0.19892	6.745	\$217,206	\$158,501	17.232	\$102,187	11.252	\$1.12	\$8.14	\$0.73						
	\$4,965,410	\$1,002,663	\$3,962,747	\$654,438			\$214,044	5.402	\$95,763	2.422	\$7,192	0.18152			\$606,493	15.302	\$502,790	12.692	\$0.93	\$7.59	\$0.77						
HELENA 1	\$771,566	\$155,259	\$616,307	\$94,051	472	31.10	\$36,402	5.912	\$21,951	3.562	\$1,409	0.22872	6.500	\$143,556	\$95,364	15.152	\$81,673	13.252	\$0.99	\$8.20	\$0.87						
BUTTE 2	\$384,586	\$77,797	\$306,789	\$50,392	482	20.62	\$32,553	10.612	\$10,917	3.562	\$2,295	0.74802	2.515	\$85,404	\$28,235	9.202	\$60,190	19.622	\$0.56	\$7.63	\$1.13						
BILLINGS 5	\$921,489	\$192,489	\$729,000	\$95,065	552	35.92	\$42,329	6.592	\$16,771	4.542	\$975	0.20412	5.000	\$92,810	\$38,541	10.442	\$61,141	16.572	\$0.65	\$7.81	\$1.27						
BOZEMAN 9	\$740,023	\$146,528	\$593,495	\$100,873	542	35.39	\$42,562	5.492	\$13,375	2.252	\$1,332	0.02232	5.000	\$142,838	\$34,759	14.282	\$74,864	12.612	\$0.84	\$7.34	\$0.59						
KALISPELL 12	\$723,846	\$146,046	\$577,799	\$88,714	362	27.78	\$26,189	6.262	\$5,075	0.882	\$275	0.04762	6.075	\$118,424	\$94,560	16.372	\$69,261	11.972	\$1.07	\$8.16	\$0.49						
MILES CITY 13	\$352,298	\$79,306	\$272,992	\$49,779	532	25.53	\$23,302	7.442	\$4,200	1.342	\$32	0.01022	3.750	\$70,519	\$42,887	13.702	\$45,620	13.942	\$0.86	\$7.68	\$1.02						
ANCONA 14	\$424,274	\$85,570	\$338,704	\$50,625	482	16.97	\$33,004	7.742	\$4,023	1.192	\$38	0.01122	3.500	\$110,134	\$49,459	13.402	\$60,681	14.562	\$0.90	\$8.38	\$1.20						
HAVRE 26	\$497,523	\$100,888	\$396,635	\$53,900	562	28.31	\$30,655	7.732	\$12,341	3.112	\$53	0.01132	5.240	\$215,023	\$49,316	12.432	\$61,001	15.292	\$0.77	\$7.73	\$1.23						
BUTTE 116	\$768,516	\$155,483	\$613,033	\$90,561	412	28.14	\$40,350	6.582	\$13,125	2.142	\$2,078	0.33902	5.000	\$152,126	\$95,775	13.302	\$81,863	13.352	\$1.04	\$8.49	\$0.90						
GREAT FALLS 140	\$632,623	\$127,837	\$504,786	\$81,030	472	28.83	\$33,677	6.672	\$9,800	1.942	\$1,121	0.22212	6.270	\$104,101	\$77,452	15.342	\$66,680	13.212	\$0.96	\$7.31	\$0.82						
GREAT FALLS 141	\$909,391	\$184,818	\$724,574	\$112,123	262	37.99	\$36,912	5.092	\$12,145	1.652	\$1,158	0.16552	5.205	\$188,577	\$121,855	16.752	\$79,752	11.912	\$1.09	\$8.11	\$0.71						
BOZEMAN 193	\$431,232	\$85,571	\$345,661	\$56,011	352	21.03	\$29,038	8.402	\$10,416	3.012	\$446	0.07822	2.796	\$102,671	\$34,649	10.022	\$57,482	16.632	\$0.52	\$7.70	\$1.03						
BILLINGS 196	\$790,681	\$159,310	\$631,372	\$100,194	462	39.01	\$32,900	5.212	\$15,344	2.472	\$1,233	0.07082	3.840	\$140,091	\$94,839	15.022	\$79,715	12.432	\$0.95	\$7.89	\$0.80						
HELENA 197	\$568,127	\$114,858	\$453,268	\$70,043	392	21.94	\$35,514	7.832	\$10,730	2.372	\$1,284	0.27202	2.902	\$105,585	\$62,810	13.862	\$54,759	14.292	\$0.90	\$8.11	\$0.92						
	\$8,496,234	\$1,711,760	\$6,784,474	\$1,067,561			\$457,388	6.742	\$160,232	2.362	\$12,570	0.19532		\$1,771,859	\$962,264	14.182	\$932,660	13.752	\$0.90	\$7.96	\$0.87						
LISBY 6	\$321,022	\$65,505	\$255,519	\$37,704	432	28.44	\$16,328	6.332	\$11,302	4.422	\$17	0.00672	2.500	\$54,683	\$35,426	13.872	\$38,306	14.972	\$0.84	\$8.31	\$1.15						
LIVINGSTON 8	\$399,736	\$80,555	\$319,181	\$48,062	492	23.29	\$22,648	7.102	\$7,811	2.452	\$187	0.05862	1.915	\$95,307	\$47,768	14.972	\$43,507	13.632	\$0.99	\$8.32	\$0.76						
LEWISTOWN 15	\$305,280	\$51,893	\$253,387	\$38,738	542	22.96	\$21,513	8.842	\$3,675	1.512	\$1	0.00022	2.250	\$92,115	\$31,915	13.112	\$36,559	15.012	\$0.82	\$7.68	\$1.12						
HAMILTON 18	\$402,326	\$80,394	\$321,933	\$48,153	442	26.70	\$20,038	6.222	\$9,100	2.852	\$145	0.04512	3.000	\$121,002	\$49,055	13.252	\$43,519	13.522	\$1.02	\$8.26	\$0.57						
GLENDIVE 21	\$274,993	\$55,676	\$219,316	\$35,862	572	36.19	\$12,578	5.742	\$3,150	1.442	\$172	0.07822	2.500	\$90,634	\$33,574	15.312	\$27,456	12.572	\$0.94	\$7.47	\$1.17						
DILLON 32	\$296,277	\$40,158	\$256,120	\$35,800	472	22.42	\$20,049	8.492	\$11,375	4.822	\$137	0.05802	3.233	\$76,162	\$25,820	10.942	\$42,038	17.802	\$0.72	\$8.28	\$0.93						
HARDIN 37	\$171,153	\$34,858	\$136,304	\$34,758	582	22.61	\$19,477	14.292	\$3,325	2.442	\$17	0.01242	2.500	\$55,296	\$7,628	5.602	\$35,291	24.822	\$0.22	\$4.92	\$1.00						
STONEY 50	\$249,995	\$50,362	\$199,633	\$20,379	152	22.45	\$19,110	9.572	\$4,900	2.452	\$22	0.01102	3.592	\$60,242	\$19,513	9.772	\$34,634	17.452	\$0.96	\$12.27	\$1.88						
POLSON 54	\$351,023	\$70,694	\$280,329	\$42,621	342	20.76	\$17,690	6.312	\$8,400	3.002	\$36	0.01272	2.640	\$93,795	\$41,603	14.842	\$38,274	13.652	\$0.98	\$8.24	\$1.10						
WHITEFISH 64	\$424,896	\$85,390	\$339,506	\$50,119	452	22.03	\$23,636	6.962	\$9,275	2.732	\$57	0.01692	3.000	\$92,633	\$49,634	14.622	\$46,924	13.822	\$0.99	\$8.48	\$0.58						
LAUREL 65	\$222,019	\$44,951	\$177,068	\$28,655	492	25.75	\$14,467	8.172	\$4,200	2.372	\$39	0.02182	2.100	\$53,433	\$23,215	13.112	\$27,833	15.722	\$0.80	\$7.69	\$1.17						
BROWNING 189	\$202,590	\$41,318	\$161,272	\$50,731	582	25.62	\$16,862	10.462	\$3,500	2.172	\$25	0.02392	1.875	\$49,393	\$17,331	10.752	\$33,842	20.982	\$0.60	\$3.99	\$1.17						
KALISPELL 195	\$354,993	\$72,031	\$282,962	\$41,460	412	19.15	\$24,270	8.582	\$18,667	6.602	\$113	0.04902	4.000	\$80,979	\$21,048	7.442	\$53,939	20.832	\$0.51	\$8.55	\$1.42						
	\$3,976,303	\$803,774	\$3,172,529	\$513,242			\$243,666	7.642	\$98,687	3.112	\$967	0.00362			\$403,573	12.722	\$505,293	15.932	\$0.79	\$7.75	\$0.96						
BLAINE 24	\$198,044	\$40,172	\$157,872	\$25,331	512	24.90	\$12,455	7.892	\$4,630	2.972	\$17	0.01052	1.408	\$65,645	\$18,697	11.842	\$25,718	16.292	\$0.74	\$7.82	\$1.02						
RED LODGE 27	\$193,443	\$39,010	\$154,433	\$24,385	592	15.89	\$15,256	9.802	\$3,850	2.492	\$20	0.01302	2.760	\$66,715	\$17,167	11.122	\$26,893	17.412	\$0.70	\$7.73	\$1.10						
CUT BANK 45	\$218,820	\$44,077	\$174,743	\$28,012	442	20.27	\$15,093	8.642	\$5,425	3.102	\$18	0.01002	3.200	\$93,637	\$18,447	10.522	\$29,388	16.822	\$0.66	\$7.81	\$1.05						
MOLE POINT 52	\$175,683	\$35,509	\$140,175	\$25,977	542	28.09	\$13,602	9.702	\$4,550	3.252	\$10	0.00682	2.046	\$41,355	\$13,254	9.482	\$27,085	19.332	\$0.51	\$6.76	\$1.64						
PLENTWOOD 53	\$199,905	\$38,272	\$161,633	\$24,868	572	22.82	\$12,489	8.242	\$6,125	2.292	\$14	0.00682	2.046	\$46,123	\$16,538	10.912	\$25,322	16.702	\$0.67	\$7.44	\$1.02						
N YELLOWSTONE 59	\$198,285	\$39,472	\$158,813	\$23,776	512	8.72	\$18,482	11.642	\$6,125	3.662	\$14	0.00892	2.000	\$68,767	\$13,508	8.512	\$31,824	20.042	\$0.57	\$8.34	\$1.34						
COLUMBIA FALLS 73	\$222,462	\$45,107	\$177,355	\$27,414	372	26.76	\$16,626	9.372	\$8,167	4.602	\$28	0.01602	2.360	\$48,353	\$17,312	9.762	\$33,214	16.732	\$0.63	\$8.11	\$1.21						
POPLAR	\$114,743	\$23,182	\$91,561	\$22,158	412	21.61	\$9,523	10.402	\$1,960	2.142	\$8	0.00692	1.736	\$38,850	\$8,700	9.502	\$19,735	21.552	\$0.39	\$5.18	\$0.99						
BIG FORK 179	\$241,960	\$48,179	\$193,781	\$28,628	472	13.47	\$18,106	9.342	\$7,560	3.902	\$24	0.01242	2.400	\$73,286	\$20,839	10.752	\$34,231	17.662	\$0.72	\$8.39	\$1.19						
	\$1,753,347	\$352,981	\$1,400,366	\$230,749			\$151,631	9.402	\$5,792	3.272	\$149	0.01062			\$144,460	10.322	\$253,419	18.102	\$0.63	\$7.60	\$1.10						
DEER LODGE 11	\$156,742	\$31,958	\$124,783	\$19,026	482	17.80	\$11,881	9.522	\$1,750	1.402	\$9	0.00712	2.159	\$35,448	\$17,112	13.712	\$19,210	15.392	\$0.90	\$5.74	\$1.10						
MALTA 22	\$160,506	\$32,472	\$128,033	\$20,793	592	19.01	\$10,950	8.532	\$2,450	1.712	\$127	0.00952	4.106	\$41,618	\$15,612	12.192	\$20,898	15.372	\$0.75	\$7.72	\$1.01						
FORSYTH 23	\$119,541	\$24,017																									



EXHIBIT 2  
DATE 2/16/87  
HB 623

CHARTERED BY  
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION  
AFL CIO & CLC

TESTIMONY IN SUPPORT OF HB 623 PRESENTED BY CLAUDIA CLIFFORD TO HOUSE  
BUSINESS AND LABOR, FEBRUARY 16, 1987.

Mr. Chairman, members of the committee, my name is Claudia Clifford and I am here today on behalf of United Food and Commercial Workers to speak in support of House Bill 623. UFCW represents approximately 4,000 workers in Montana, which includes the state liquor store employees.

Proponents of HB 313 and HB 562, as well as many of the proponents here today supporting HB623, all have voiced the same dissatisfaction: The conversion of state liquor stores to agency outlets is objectionable. UFCW strongly opposes the "Liquor Recovery Plan", a plan to convert state liquor stores to agency outlets currently being implemented by the Department of Revenue, for three main reasons. The conversion is an unnecessary loss of decent paying jobs. The conversion process is handing the liquor retail business to the grocery stores as has happened here in Helena. And, the recovery plan has not recovered slipping revenues, but rather liquor revenues are projected to decline in the next biennium.

I question whether the legislature really understood that when it consented to the Department of Revenue's Liquor Recovery Plan that the result would be agency outlets run by grocery stores. That is precisely what has happened here in Helena. Soon the state liquor store on North Montana, a profitable business netting over the recommended 13%, will be closed. The agency bid was awarded to the grocery store owner nearby and the restaurant space next to the grocery store is already being renovated for the liquor retail business.

Agency stores combined with grocery stores is practical for small towns and rural areas. In these areas volume of sales is low and it is not profitable to run state liquor stores. However, for the large volume stores in bigger towns, it is quite a different question to allow grocery stores to take over the liquor business. When Montana considered allowing grocery stores to sell wine and beer, it was voted on by the people. I recommend that you do the same if you want to see liquor sold in the grocery stores.

Understand that the current bidding process in converting state stores to agency outlets attracts bids from grocery stores. Grocery stores have the advantage of being able to bid low because liquor sales will be only supplementary income. Grocery stores also have the incentive to bid low because having liquor for sale will attract more business overall.

Under the Liquor Recovery Plan even profitable state liquor stores are being converted. This is an unnecessary loss of decent paying jobs to many communities. In converting to agencies, the state will lay off 150 people, including part-time workers. There are no provisions to help these people find another job. Generally, agents can only afford to offer low wage jobs. Therefore, the local economy loses the expendable income of the state jobs, and loses it unnecessarily. Wages for the state liquor store workers comes out of the revenue from sales. Where the state has profitable stores it does not make sense to convert to agency outlets, a loss of income to local economies.

The only way the state could make a few more dollars by converting profitable stores to agencies is by paying low commissions, which only the grocery stores can afford. Opening agency outlets in grocery stores is controvercial and something I think that the legislature would want to debate openly.

I also question whether the Recovery Plan is recovering revenues as it is intended to. Before the Recovery Plan was implemented, liquor revenue profits increased 8.16% for FY 86, that's up \$367,000, over FY 85. The Liquor Recovery Plan began to be implemented at the beginning of FY 87. Comparing profits from the first two quarters of FY 87 and the same period of FY 86, profits have decreased 12.8% under the Recovery Plan. The Governor's Budget projects a continued decline of liquor revenue with the plan. For FY 88 revenues are projected to decline 12.6%. For FY 89 another decrease of 8.73%. I won't predict that retaining the state store system will curtail this decline in revenue, but purposely cutting decent paying jobs, and sacrificing state control over the large volume sales of liquor sales does not make sense.

HB 623 is designed to allow the state to stay in control of liquor sales as long as it is practical. The legislature needs to consider whether it wants to allow grocery stores to become agency liquor outlets which is possible under the Liquor Recovery Plan. I urge this committee to give HB623 a DO PASS recommendation as a means to allow the entire legislature to debate this very controvercial matter.



EXHIBIT 3  
DATE 2/16/87  
HB 623

MONTANA DEPARTMENT OF REVENUE  
10 - YEAR HISTORY OF ALL ALCOHOLIC BEVERAGE REVENUES

	Liquor Operations Net Profit	Liquor Excise Taxes	Liquor License Taxes	Beer Taxes	Wine Taxes	Licensing Revenues	Total Revenues
1976-77	\$ 7,116,488	\$ 6,286,748	\$ 1,964,610	\$ 2,454,724	\$ 0	\$ 1,333,652	\$ 19,156,222
1977-78	7,336,694	6,459,007	4,069,884	3,056,367	0	1,163,304	22,085,256
1978-79	7,508,524	7,022,237	4,337,769	3,203,814	0	418,148	22,490,492
1979-80	5,860,990	5,764,741	3,602,963	3,244,011	1,595,441	1,252,981	21,321,127
1980-81	6,028,927	6,343,783	3,964,865	3,249,022	1,129,526	1,455,564	22,171,687
1981-82	5,681,187	6,581,478	4,113,423	3,279,701	887,797	1,475,390	22,018,976
1982-83	5,010,213	6,554,828	4,096,768	3,294,412	1,118,998	1,357,263	21,432,482
1983-84	5,408,943	6,415,784	4,006,857	3,211,297	1,131,131	1,545,252	21,719,264
1984-85	4,340,660	5,935,058	3,707,794	3,083,163	1,132,060	1,445,442	19,644,177
1985-86	4,708,188	5,833,106	3,645,692	3,105,743	1,558,355	1,547,927	20,399,011

\* Liquor License renewal fees are due on June 30 and are for the following fiscal year. Prior to June 30, 1979 such fees were accounted for as revenues in the year of receipt by the Department. This accounting method was changed June 30, 1979 to account for these fees in the license year rather than when received.

$$* 4,708,188 - * 4,340,660 = * 367,528 \text{ increase}$$

FY86                      FY85                      25

8.46 % increase

DATE PREPARED  
E. HELENA #83  
PREPARED BY  
PAUL MARTELLO  
SEPT. 24, 1985

[illegible]

## WITNESS STATEMENT

EXHIBIT 4  
DATE 2/16/87  
HB 623NAME WARREN L. Peterson BILL NO. 623  
ADDRESS 3833 N. Tanager Ln. ~ Billings, MT 59102 DATE 2-16-87  
WHOM DO YOU REPRESENT? Billings state liquor store clerks  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

Mr Chairman, Business & Labor Committee members, my name is Warren Peterson. I work at a state liquor store in Billings, Montana where I have been employed for 6 years.

I urge you to support House Bill 623 which protects profitable state liquor stores. It is hard for me to believe that in these economic conditions that we face in Montana that our legislators would want to lose any source of revenue that the state has. As you might note we put 44 million dollars of revenue back into the general fund last year.

As a state liquor store employee we are very concerned that we do not sell liquor to minors and in fact in Billings we offer a hot line between stores in case we run into a bunch of minors who are trying to buy liquor. A private entrepreneur would not be concerned about what except to make another dollar in his or her pocket.

The well lighted and clean convenience stores run by the state are seen by many customers as a pleasant place to do business. The elimination of these conditions would only result in reduced sales and revenues.

The two high schools in Billings have SAT/DI organizations and these students which are our future Montana taxpayers want to see a tighter control on liquor by keeping in the state liquor stores hands rather than everybody else's.

In conclusion I urge you to support House Bill 623 which protects profitable state liquor stores and ensures a future viable source of revenue to the state in these tough times. Thank you

NAME Ward A. ShanahanBILL NO. HB 594ADDRESS 301 First Bank Bldg, POBOX 1715 Helena, Montana DATE Feb. 16, 1987WHOM DO YOU REPRESENT CHEVRON CorporationSUPPORT \_\_\_\_\_ OPPOSE XXXX AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Mr Chairman and members of the committee,

HB 594 is a protectionist bill masquerading in sheeps clothing. The bill is intended to penalize a marketer from meeting competition. It tends to provide a guaranteed margin of profit to its sponsors or would otherwise limit competition by involving a marketer who would lower prices in a lawsuit while it is proving itself "free" of blame.

The bill appears to be directed at marketers who operate through leased stations. They are given a heavy "burden of proof" to justify any price changes. Even though a person might lower his prices to meet competition this is just a defense that he has to prove in a lawsuit. His competitor can stop him merely by making an accusation. There is no penalty if the accusation is false. The award of attorneys fees is up to the discretion of a court. There is no definite penalty for a false accusation.

It seems clear that the bill would favor companies which operate their own retail outlets. The bill points out that there are "exemptions" such as those provided in Section 30-14-213 MCA, this includes "owners stock". The bill is directed against a refiner that might give its leased station a chance to meet local competition.

The result of this legislation will be uniformly higher prices. This effect should be carefully considered at a time when this legislature is considering the imposition of higher "at the pump" taxes on gasoline and other motor fuels.

This bill should be defeated, or at least referred to the judiciary committee for consideration of its anti-competitive effect. The federal Robinson Patman Act recognizes a need to meet competition..this bill may very well interfere with rights granted by that act.

DO NOT PASS HB 594

**MANDATED MARK-UP/STATE MINIMUM MARK-UP**

**ISSUE:** State legislatures are considering requirements that would force retail marketers to price petroleum products a specified amount or stated percentage above cost.

**BACKGROUND:** A law of this type would be a throwback to "fair trade" legislation. Fair trade laws were designed during the Depression to combat inflationary pressures. These laws were repealed at the federal level in 1976 and virtually all of the states have repealed or declared such laws invalid. They were deemed anti-competitive, inflationary, and burdensome on consumers. Such legislation succeeded only in subjecting consumers to high prices which subsidized inefficient operators. Over 40 years of experience with so-called "fair trade" laws indicates that consumers vigorously resist price fixing.

**RMOGA'S POSITION:** The Rocky Mountain Oil and Gas Association believes that legislation being considered to establish minimum mark-up levels for petroleum products or to mandate mark-up rates within a state should be opposed. This type of legislation traditionally is promoted by those individuals who are trying to avoid the competition of a free market. Considerations for unit costing, volume pricing, improved technology, etc. are not part of mandated mark-up programs. It is important to recognize a variety of market forces may adjust prices up or down relative to cost and do not apply uniformly over any broad scale. The consumer benefits from price competition and is harmed by legislation which fixes prices at an artificial level.

**RMOGA OPPOSES:** ● Federal or state minimum or mandated mark-up legislation

**RMOGA SUPPORTS:** ● The free market system in determining product prices

*Danella Tallan*  
*Montana Petroleum Ass'n*

EXHIBIT 7  
DATE 2/16/87  
HB 594

Statement of Exxon Company, U.S.A.  
Before the  
Business and Industry Committee  
of the  
Montana House of Representatives  
on House Bill 594  
February 16, 1987

Exxon Company, U.S.A. appreciates this opportunity to present its views on House Bill 594. We are opposed to this measure because we believe it is unnecessary in today's highly competitive motor fuel marketplace. Further, we believe this bill will not provide its supporters with any significant long-term benefits, but could cost consumers money through higher prices. It is also a complex and technical piece of legislation which will result in protracted litigation.

The stated purpose of H.B. 594 is to protect independent motor fuel marketers whose income is primarily derived from the sale of motor fuel from unfair competition by marketers who allegedly subsidize motor fuel sales with income from other operations. The bill purports to do this by prohibiting sales of motor fuel below cost. Cost is defined as the average terminal price in the area in question to which must be added a number of other factors including a "reasonable cost of doing business." The reasonable cost of doing business is assumed to be 6% of the retail price of the gasoline in the absence of proof of a lesser cost.

Unnecessary

This bill is clearly unnecessary to protect the legitimate business interests of independent motor fuel marketers. These merchants are already protected against unfair pricing or other unfair marketing practices of their suppliers by a large body of law including the Montana Unfair Trade Practices Act, the Sherman Act, Clayton Act, Robinson-Patman Act, and the Federal Trade Commission Act which prohibit actions to control prices, control supply or drive out competition by selling below cost.

Some marketers have maintained that these existing laws do not work. This is simply not the case. When government agencies believe that anticompetitive actions are taking place, they have not been reluctant in the past to initiate litigation. Using present laws, the Federal Trade Commission, various state attorneys general, and individual dealers have worked within the administrative and court systems to seek redress. With all of these laws already on the books, there is no need for additional legislation.

#### Won't Provide Any Benefits

In our view, this legislation will not provide any additional benefits to those who support it. Since there are laws already existing to protect against predatory practices, the intent of the bill appears to be to raise prices to consumers and increase profits for individual competitors by preventing vigorous price competition in Montana. Experience in other states which have enacted below cost selling or minimum markup laws indicates the effect of such laws is to set a floor below which motor fuel retailers will not price, thus putting upward pressure on prices. A similar effect could be expected in Montana because of the definition of cost. Using the average terminal price plus a set markup would remove any efficiencies a marketer has which allow him to legitimately price his product lower than a competitor who is not similarly efficient. A 1985 U.S. Department of Energy (DOE) study concluded that such laws cost U.S. consumers over \$600 million in 1982 alone.

Another DOE study of deregulated gasoline marketing maintains that higher prices resulting from below cost selling laws would not benefit existing dealers and distributors in the long run because the higher than competitive prices would attract more competition which would reduce the volume thruput of the existing marketers. While higher prices to consumers and higher unit margins for dealers and distributors would likely stay, any increased profits for marketers would quickly vanish due to lower volumes.

#### Unworkable and Costly

Along with being unnecessary, Exxon believes HB 594 would be effectively unworkable. A few other states have passed similar laws which even the independent petroleum marketers they were supposed to help now believe are ineffective or unenforceable. Jobbers in Utah, Maine, Virginia, and Colorado have all expressed the opinion that the below cost selling prohibitions in their states simply don't work. In fact, a 1983 analysis for the National Oil Jobbers Council (now the Petroleum Marketers Association of America), the national petroleum wholesaler organization, has expressed a similar opinion. This same report noted that in the majority of lawsuits filed to enforce below cost sales laws, small retailers, rather than major oil companies, have been the subject of allegations of unlawful conduct.

Due to the ambiguous language of this bill, it would undoubtedly be subject to protracted litigation, on a number of issues. One issue which will likely be raised in federal court is the bill's conflict with federal antitrust laws, because it would restrain price competition.



Conclusion

Today's marketplace simply doesn't need this kind of remedy. Any legislative changes such as these can only result in reduced competition and higher consumer prices. Accordingly, we ask you to vote against House Bill 594.

## WITNESS STATEMENT

EXHIBIT 12-1-1-1  
DATE 2/16/87  
HB 594NAME Thomas F Richardson BILL NO. 594  
ADDRESS 600 So Main Bldg MT DATE 2/16/87  
WHOM DO YOU REPRESENT? Town Pump Food Stores  
SUPPORT \_\_\_\_\_ OPPOSE X AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Town Pump is a Montana owned Independent Marketer with approximately 55 locations in Montana. It is opposed to HB 594 because it greatly eliminates the opportunity for a retailer of gasoline to compete on the basis of price. It encourages competition with advertising ~~and~~ and "gimmicks" such as "free car wash with fill-ups", "senior citizens discounts", "drawings" for various give-aways, "discounts to ski areas", full service for self service gas etc. ~~etc.~~ A retailer should be allowed to compete based upon price rather than gimmicks & it is to the benefit of the consumer.

Current law prevents sales below cost so ~~the~~ HB 594 is not needed.

The bill will not result in lower prices to the consumers. What it will do is cause prices to increase in other locations such as Great Falls. Likewise, for a marketer with more than one location, it will not lower the price ~~in~~ at a location.

## WITNESS STATEMENT

EXHIBIT 8  
DATE 2/16/87  
HB 691

NAME Jay Wilson Preston BILL NO. 691  
ADDRESS 312 Main St. SW. Ronan, MT 59864 DATE 2-16-87  
WHOM DO YOU REPRESENT? Ronan Telephone Co. - Hot Springs Telephone Co.  
SUPPORT ✓ OPPOSE          AMEND         

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The aim of this bill is to reduce the direct and indirect costs of the rate making process for small telephone companies and **their** customers.

Please refer to the attached exhibit for details of the administrative costs of the current regulatory system for Ronan Telephone Co.

The customer notice provisions and 10% petition trigger for full PSC review provision maintain protection of the subscribers of small telephone companies from predatory pricing. In addition, Consumer Council can initiate review ~~can~~ independently, if that office feels the company is not proposing equitable rates.

Small telephone companies desperately need relief from the high costs of administering the regulatory process, particularly from the increased burden that has occurred since the break-up of the Bell System. This bill is one small step to let the operators of Montana's small telephone companies get back to the business of serving their customers, rather than an inflated regulatory process.

RONAN TELEPHONE COMPANY

DIRECT COSTS OF RATE MAKING PROCESS

Ronan Telephone Company has petitioned for increases in its basic rates only 3 times since 1960. Below are summaries these rate cases and the direct costs associated with them.

1st Rate Petition - 1961

The company was purchased by the present owners on Jan. 1, 1960. At that time the system utilized a manual switchboard, all calls had to be completed with operator assistance, and the standard rural service was 20 subscribers on each line. In the fall of the year of purchase, dial switching was introduced and the service was upgraded to only 8 parties on each rural line.

In 1961, the company filed for its first rate increase under the new management. All work associated with this rate case was done in house.

Direct Cost of Filing - Not Available

2nd Rate Petition - July 1976

Legal Fees Incurred: (Local Attorney) \$600.00

Most of the exhibit preparation was done by RTC staff with the aid of our local attorney.

The case asked for increases to fund upgraded service for the area. Basic service was upgraded from 4 & 8 party service to 1 & 2 party service. The entire process consumed the better part of 1.5 years from the time the case was filed until the case was completed.

A very minor technical mistake was made in accounting for ITC in the rate case exhibits. After the rates had been implemented, RTC was audited by the IRS, and the result was a claim against RTC to repay all ITC taken by RTC in the service expansion investment period of 1972 to 1976. Thus, as a result of RTC's desire to save its subscribers the cost of a sophisticated rate case prepared by expensive professionals, RTC had to deal with a \$60,000 IRS claim for ITC repayment + interest that consumed 5 years to resolve and cost \$40,000 in legal fees and \$10,000 in accounting fees. During this 5 year period, the fate of the company was in question, management was unable to plan for the future in any meaningful way, and the total cost, both in human terms and financially, is impossible to estimate.

RONAN TELEPHONE COMPANY

DIRECT COSTS OF RATE MAKING PROCESS  
(Continued)

3rd Rate Petition - July 1980

Legal & Accounting Fees incurred:	\$9500.00
(Not Local Firms- Both firms were in Helena.)	
1829 Subscribers- Cost per Subscriber for Prof.	\$5.20 per Sub.
Estimated RTC in house expense:	\$15,000.00
(Includes the cost of time & travel to Helena on many occasions to confer with Professionals, print exhibits for case, and miscellaneous expenses.)	
Total Direct cost per subscriber	\$13.40 per Sub.

Estimated Cost for Rate Case Today - 1987

Legal & Accounting Costs	\$20,000
Consulting Costs	\$25,000
In House Expenses	\$30,000
Total Estimated Cost of Rate Petition	\$75,000
Total Estimated Cost per Subscriber for RTC	\$36.62

This estimate does not account for the continuing expense of monitoring the regulatory process and fulfilling the post-divestiture requirements of the FCC & PSC for rate averaging activities. RTC estimates the ongoing cost for this process, which did not exist before the divestiture of the Bell System, is between \$1.50 and \$3.00 per subscriber per month. This is the most damaging cost, because it is continuous and ongoing. It is RTC's current opinion that this cost will only rise over time. Nothing on the telecommunications horizon reveals any abatement of this unproductive unnecessary cost in the foreseeable future.

For RTC, this activity represents perhaps an ongoing expense of \$75,000 per year.

EXHIBIT 10(a)  
DATE 2/16/87  
HB 691

## RONAN STATE BANK

February 11, 1987

Montana State Legislature  
Helena, Montana

Re: House Bill 691

Dear Legislators:

Ronan State Bank would like to take this opportunity to support House Bill 691, An Act Reducing Rate Regulation of Small Telephone Companies.

In reviewing this proposed legislation with our local telephone company, it appears the costs associated with a general rate review are excessive as they apply to minor modifications of rates. We believe the protection is available through the proposed legislation to require a full review if the public comment is not favorable to the proposed changes.

Thank you for the opportunity to present our support of this issue.

Sincerely,



Martin M. Olsson  
Vice-President

11

# WESTERN SEED & SUPPLY, INC.

1308 ROUND BUTTE RD. W.

**WESTLAND SEED INC.**



RONAN, MONTANA 59864

EXHIBIT 10(8)  
DATE 2/16/87  
HB 691

Feb. 12, 1987

Les Kitselman  
Chairman  
Montana House of Representatives  
Business & Labor Committee  
State Capital  
Helena, MT 59601

Dear Mr. Kitselman:

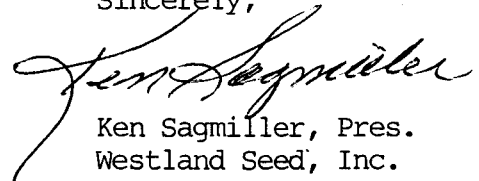
I am writing to express my support of HB 691, "AN ACT REDUCING RATE REGULATION OF SMALL TELEPHONE COMPANIES: ETS."

I am presently a resident and business man in Ronan, Montana, and am served by Ronan Telephone Company for both my business and residential telephone service. My experience dealing with our locally-owned and operated telephone system has convinced me that service here is of the highest quality and comparable to, or better than the service I have experienced in other communities, namely Bozeman, MT. and Bismark, ND.

I am also convinced that the regulatory burden small telephone companies are required to submit to, is an expensive process that raises the cost of telephone service to our local residents above what it could be if the process were simplified. The owners of our local system, the Preston family, live in the community they serve, and have demonstrated a long term interest in the communities well being.

Being in business myself, I can well understand the burden, bureaucratic regulations cause. Therefore I strongly support HB 691.

Sincerely,



Ken Sagmiller, Pres.  
Westland Seed, Inc.  
1308 Round Butte Rd W  
Ronan, MT 59864

EXHIBIT 10(c)  
DATE 2/16/87  
HB 691

## NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY

NORTHWESTERN FINANCIAL SERVICES, INC.  
ART AYLESWORTH - REPRESENTATIVEOFF: (406) 676-0300  
RES: (406) 676-8100

2/13/87

Les Kitzelman  
Chairman  
Montana House of Representatives  
Business & Labor Committee  
State Capitol  
Helena MT 5601

Dr. Mr. Kitzelman,

I would like to offer my support of HB 691 "Act Reducing Rate Regulation of Small Telephone Companies."

I am a rural resident & business man in Ronan. Both phones are served by Ronan Telephone Co. I can only report excellent service at both locations & far superior service than I have at a summer residence in St Regis MT.

This legislation appears to be aimed at reducing costs associated with general rate reviews. Also adequate protection exists for abuse of privileges offered. Any changes such as this, that will reduce bureaucratic interference with good government should be supported.

Sincerely  
Art



# MISSION VALLEY NEWS



EXHIBIT 10/d)  
DATE 2/16/87  
HB 691

February 14, 1987

Montana State Legislature  
Helena, Montana

Ladies and Gentlemen:


My name is Dwight Tracy. I own and operate a weekly newspaper in Ronan, Montana, and after talking with the owners of Ronan Telephone Company I want to support House Bill 691.

The Bill would eliminate the requirement of Public Service Commission hearings for rate changes. It does contain provision for PSC approval upon request of 10 percent or more of a small rural telephone company's customers after they have been notified of a pending increase. Rate regulation by the PSC would also be required when requested by the Consumer Council.

Even without those safeguards, I have great confidence in the integrity and community loyalty of our locally owned telephone company. We receive fine service here, and I suspect that removing some of the increasingly expensive governmental requirements of operating a business will be in the best interests of both the company and its customers.

Thank you for considering support of House Bill 691.

Sincerely,

  
Dwight Tracy,  
Publisher

STATES WHICH HAVE NO REGULATION OR REDUCED  
REGULATION OF SMALL INDEPENDENT  
TELEPHONE COMPANIES

EXHIBIT 11(a)  
DATE 2/16/82  
HB 691

North Dakota -

No jurisdiction of local rates if under 3,000 subscribers  
Section 49-02-01.1, North Dakota Century Code

South Dakota -

No jurisdiction if less than 7,000 subscribers  
Section 49-31-5.1, South Dakota Codified Laws

Minnesota -

No jurisdiction if less than 15,000 subscribers  
Sections 237.01 subd. 3, and 237.075 subd. 9,  
Minnesota Statutes Annotated

Iowa -

No jurisdiction if less than 15,000 subscribers  
Section 476.1, Iowa Code Annotated

Illinois -

No jurisdiction if less than 15,000 subscribers  
Section 13-504, Illinois Annotated Statutes

Wisconsin -

No jurisdiction if less than 7,500 subscribers unless:  
- petition by 10% of affected subscribers, or  
- proposed increase exceeds 30% in one year  
Chapter 196, Wisconsin Statutes Annotated

Oklahoma -

No jurisdiction of local rates if less than 15,000  
subscribers unless:  
- petition by 15% of subscribers, or  
- proposed increase exceeds \$2 per month, or  
- PSC investigates after the fact and orders reduction  
17 O. S. 1981, Section 137

Nebraska -

No jurisdiction under 5,000

Nevada -

exempt telephone cooperatives

Oregon -

No jurisdiction upon petition

Utah -

No jurisdiction under 5,000

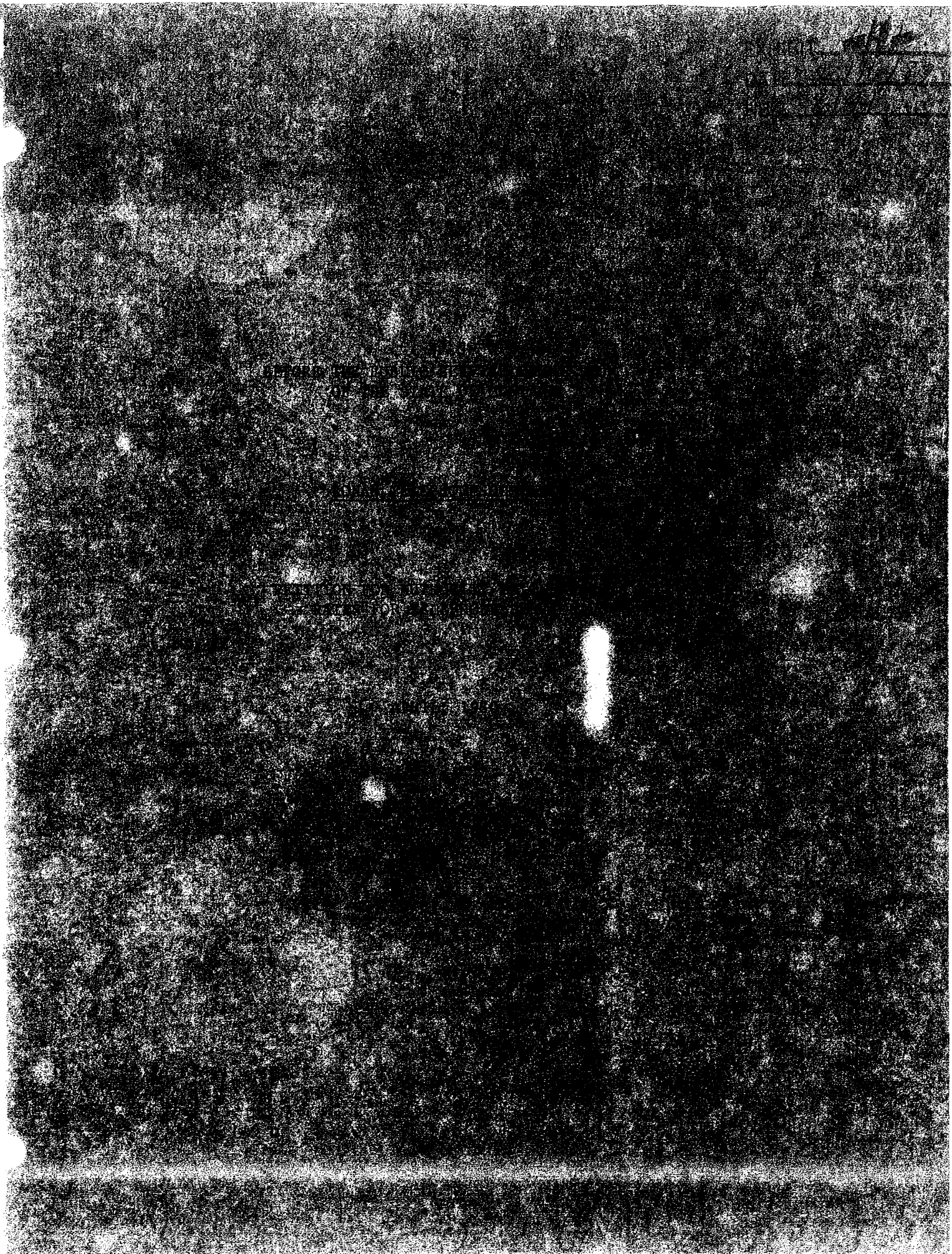


EXHIBIT 12

DATE 2/16/87

HB 691

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620  
Telephone: (406) 444-6199

Clyde Jarvis, Chairman  
Howard Ellis, Vice Chairman  
John Driscoll  
Tom Monahan  
Danny Oberg

WRITTEN TESTIMONY OF THE PUBLIC SERVICE COMMISSION IN OPPOSITION  
TO HB 691

If enacted this legislation would reduce rate regulation of privately owned telephone companies with less than 5,000 customers. That means that 6,000 customers, including 1,000 business lines, in the territories of 5 telephone companies in the state would be effected. The Companies are:

Hot Springs Telephone  
Lincoln Telephone Company  
Project Telephone Company  
Ronan Telephone Company  
Southern Montana Telephone

The bill would remove the Public Service Commission's automatic review of rate increases. The Commission could review rate increases (including the formation of new rates) only in the following instances:

- 1) If 10% of affected customers have petitioned the Commission to review the rate increase;
- 2) If the telephone company requests the Commission review the increase;
- 3) If the Consumer Counsel petitions the Commission to review the case.

A strong majority of the Commission voted to oppose this bill. We feel that the current regulatory process works well. Under

existing law the Commission is required to provide an opportunity for hearing before rates are increased. The Commission reviews each request to determine the fairness and necessity for the increase. This is a system where monopoly ratepayers have the right to point out problem areas for themselves and have a hearing before the Commission to express their views. The Commission also has a responsibility to the monopoly ratepayers to use their expertise to assure just and reasonable rates.

The purpose of the Commission is to provide oversight to utilities offering monopoly services. We do not think the Commission should be relieved from the responsibilities it currently has to protect customers of monopolies. These customers should not be expected to have the expertise to decide whether or not an increase is cost justified and if the total of all increases represent a reasonable increase in revenues. Customers should be able to rely on this Commission to protect their interests.

Utility customers should have the same rights and protection regardless of the area of the state in which they reside. Customers in Huntley should have the same rights as customers in Billings. This bill takes away the rights of individual customers in the state.

The Commission wants to make it clear that the rates that this bill seeks to remove from Commission review are not competitive services. This bill would affect basic telephone services. Services such as your monthly local rate, the amount you're charged to get a telephone installed, and the amount you pay for directory assistance. The Commission has the flexibility to relieve companies from unnecessary rate regulation of competitive services. We were given this flexibility when the 1985 legislature passed the Montana Telecommunications Act. The Commission testified in favor of that legislation. However, the services that would be affected by this bill are offered by PRIVATELY OWNED UTILITIES and are NOT COMPETITIVE.

The Commission feels that if this bill passed it would be unworkable. The bill requires companies to file a "summary of the justification for the proposed rate increase". This is very vague and may not give enough information for customers and consumer counsel to decide whether or not an increase is reasonable or the Commission to determine rates should a review under Section 4 take place. The bill also requires review if 10% of affected customers petition the Commission. How will the number of affected customers be determined for construction charges, installation charges, late payment charges, and new services?

We feel that the Commission has been and continues to be sensitive to the needs of the small utilities it regulates. In June of 1986 the Commission enacted a rule, on its own motion, that exempts these companies from most of the minimum filing requirements. The Commission keeps minimum filing requirements to the minimum that will provide sufficient information for effective regulation. The MTA was present at the hearings on the minimum filing requirements and did not testify that they would cause unnecessary burdens. The Commission has offered to further amend its rules to solve any perceived problems with the burden imposed on smaller companies, but that proposal has been rejected by these companies. Until there is a good faith effort to address perceived problems through the established process, we shouldn't resort to the more drastic approach of limiting jurisdictional authority.

The Commission is ahead of the Federal Communications Commission in amending its rules to reduce the filing requirements for small telephone companies. The FCC is only now considering reduced filing requirements, not reduced regulation. This committee should be aware of the note of caution sounded by the FCC in announcing its proposed rulemaking to reduce filing requirements: "local exchange carriers ... have a monopoly regarding the provision of ubiquitous access to the subscribers in their service area".

There has been attempts all across the country to deregulate the provision of telephone services, many of which are still offered on a monopoly basis. The Commission sees this bill as a premier to further unwarranted deregulation of monopoly services.

In summary, this Commission has a responsibility to regulate the provision of monopoly services. Customers have certain rights to express their views that would be eliminated under this bill. The Commission strongly opposes this type of legislation.



# LINCOLN TELEPHONE COMPANY, INC

P.O. BOX 175 • LINCOLN, MONTANA 59639 • (406) 362-4216



February 12, 1987

Mr. Les Kitselman, Chairman  
House Business & Labor Committee  
Room 312-F  
Capitol Building  
Helena, MT 59620

EXHIBIT *did not to*  
DATE *2/16/87*  
HB *691*

Mr. Kitselman:

As we are unable to personally attend the scheduled hearing on Monday, February 16th, the Manager and Board of Directors of the Lincoln Telephone Company would like to offer the following comments on House Bill #691, and for these comments to be included in the official record.

We see the passage of this bill as a way of insuring that our customers will not be forced to pay the additional costs of preparing a full rate case in the event of a need for a small increase. In this age of deregulation, the added burden of fees mandated on our customers, such as customer access line charges and 911 fees, etc., are driving up the local service rates.

This bill would give us the flexibility we would need, while giving our customers the protection of both the Consumer Counsel, and the Montana Public Service Commission, and still gives them the vehicle to protest the increase if they feel the need.

In the Commission's response, they stated that, in 1980, the Ronan Telephone Company requested a \$ 165,000 increase, with a rate case expense of \$ 10,000. While \$ 10,000 is a small percentage of the total requested amount, had this been our case, the \$ 10,000 would have to be born by about 640 subscribers.

We would also like to offer our objection to the Commission's statement that we, or any small telephone utility, today, offer local exchange service on a monopoly basis. By-pass is daily becoming a reality in many parts of the country.

By board resolution this day, we strongly urge you to support this bill.

Thank you for your time and this matter.

Sincerely,

*Robert G. Orr*  
Robert G. Orr, Manager

For:

J.P. "Pat" Mulcare  
E.S. "Buck" Haines  
Thelma S. Hines  
E.S. Grady, Sr.

Copy: Montana Telephone Association  
Mr. Jay Downen

Mr. Chairman & committee members.

For the record, my name is Ernie Dutton. I reside at 4456 Audubon Way in Billings.

Let me begin by giving you some background information. I am part owner of two small motels in Billings. One has 21 rooms, the other has 28. These motels are typical of many small motels throughout Montana. Each motel is managed by a married couple who live on premise. In addition, we hire several part-time maids to clean the rooms. We ask \$19<sup>00</sup>/night for singles and \$70<sup>00</sup>/week for weeklies.

Both motels have lost money during each of the last 3 years. Small motels such as these are very marginal businesses, even during good times. But small motels continue to exist in Montana, because they continue to serve a need, especially in small rural communities that could not support a larger motel.

I am here today to ask you to give your approval to HB Bill # 727, which would "exempt from minimum wage and overtime laws employees of lodging establishments."

under the terms of their employment, live in the establishment or Facility;" We are asking you to exempt our on-premise managers from the existing law because it is economically impossible for us to comply with the current law. There is probably not a single small motel in the state that is managed by an on-site manager that is in full compliance with a strict interpretation of the present law. Why is compliance impossible? Because the current law can be interpreted such as to require that an on-premise manager be paid minimum wage plus overtime for 24 hours per day, 365 days per year, or over \$40,000<sup>00</sup>/yr. Some small motels don't gross \$40,000<sup>00</sup>/yr. We are currently paying our managers, including room, utilities, etc., about \$14,000<sup>00</sup> per year.

I went to an attorney to find out how we could change our operation in order to comply with the law.

The attorney's nine pages of research will be submitted to your committee. The attorney's conclusion was that the existing laws actually work against the small business. For instance, we would get some relief, if the motel manager would fall into the executive exemption under Montana law. He ... to ... if ... the ...

employees, and devote less than 20% of his or her time to non-management type activities. Neither criteria is met in small motels, that have small staffs, and where each employee wears several hats.

Small motels will be the main beneficiaries of this legislation. Larger motels, by necessity, hire several shifts to cover the front desk. Larger motels, grossing over \$362,500<sup>00</sup> annually will continue to have to comply with the Federal minimum wage laws for all employees.

You won't find alot of innkeepers testifying before you today, because very few are aware of the problem. For some reason, this portion of the law has not been stringently enforced. However, I found one motel that has paid over \$19,000<sup>00</sup> to a former manager who took her case to the Labor Standards Division.

Without this legislation, small motels will continue to incur a potentially great liability. Yet, their ability to pay is almost nonexistent. Allow them to stay in business - to provide good, honest jobs and to serve their community's needs. I ask you to please support HB Bill No.

DAVIDSON, POPPLER & VANNOY, P.C.  
Attorneys at Law  
SUITE 810, FIRST BANK BUILDING  
BILLINGS, MONTANA 59101-1297

EXHIBIT *did not testify*  
DATE 2/16/87  
HB Telephone 243-9156  
Area Code 406

JOHN R. DAVIDSON  
DORIS M. POPPLER  
C. V. VANNOY

February 19, 1986

Magic City Investors  
Attn: Mr. Dutton  
P. O. Box 21184  
Billings, Montana 59104

Re: Minimum Wage Requirements

Dear Mr. Dutton:

Pursuant to your request I have researched the question of the requirements of the Montana wage and hour statutes as applied to the motel business.

The minimum wage and overtime compensation statutes are set out in Part 4 of Chapter 39 MCA. A few basic definitions are necessary in order to analyze the scope of the problem. "Employee" includes any individual employed by an employer. "Wage" means compensation due to an employee by reason of his employment payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided, however, that in no case shall such inclusion exceed an amount equal to 40% of the total wage paid by such employer to such employee (§39-3-402(7) MCA).

The statute then establishes minimum wage at at least \$3.05 an hour after 9/30/85 and before 10/1/86, and at least \$3.35 an hour on 10/1/86 and thereafter (§39-3-404 MCA). Overtime compensation requires a workweek no longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than one and one-half (1½) times his hourly rate. There are 31 exclusions set out where the overtime provisions do not apply. There is only one which could be applied to a motel manager. This exclusion is "any individual employed in a bona fide executive, administrative, or professional capacity as defined by the regulations of the commissioner of labor (§§39-3-405, 406 MCA).

Magic City Investors  
Attn: Mr. Dutton  
February 19, 1986  
Page Two

In reviewing the facts of your two motels, it appears that these motels have in the past hired a husband and wife who are furnished an apartment, utilities and other facilities plus a wage of approximately \$600.00 a month. As part of the manager's duties, he works as desk clerk, collects the monies, supervises the maids and does some routine maintenance and also laundry. He is on duty 7 days a week and 24 hours a day. The wife customarily helps out with these duties.

1. Does the motel manager fall into the executive exemption of the Montana law?

In order to be exempt as an executive, the employee must have managerial responsibilities; be able to hire and fire; or recommend that other employees be hired and fired; must supervise at least two (2) full time employees (a recent case ruled that the two full time employees requirement could be met by part time employees working 80 hours a week); must customarily and regularly exercise discretionary powers; in addition he must not devote more than twenty percent (20%) of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described above.

In addition it does not apply in case of an employee who is in sole charge in an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the establishment and is compensated for his service on a salary basis of not less than \$150 a week, exclusive of board, room and other facilities. Such an employee is considered to be an employee in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work. However, the pay must be high enough to assure that the minimum wage law is not being circumvented.

In our example above, if we assume his pay at \$600 plus \$450 for room, utilities and other facilities, \$1,050 a month divided by \$3.05 an hour = 344.26 hours a month divided by 30 days = 11.5 hours a day maximum allowable. We would need to pay him \$13.73 a day more to work him 16 hours a day.

2. Can we circumvent these provisions through a contract on reasonable agreement?

Reasonable agreements revolve around computing compensation for overtime actually worked. Case law holds that an employee may not enter into an agreement which operates to waive compensation. If he is there, and subject to call, he is considered to be working. The administrative procedures manual specifically sets out many examples of such agreements, or schemes, which did not work.

Magic City Investors  
Attn: Mr. Dutton  
February 19, 1986  
Page Three

In addition, the labor standards board says he must have at least five hours uninterrupted sleep a night.

Among the agreements which were not allowed were a lump sum or fixed sum for varying amounts of overtime; a flat rate for special job performed in overtime hours; payment only for productive time, e.g., waiting time, travel time, or similar "non-productive" time.

3. What can the employer do to protect himself against large overtime assessments?

The employer must keep records in order to supply the information necessary in an administrative hearing - for example, time cards and records. The burden is on the employer. All the employee needs to do is produce sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. An employer must refute by producing evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee.

Incidentally, this risk holds for eighteen (18) months after discharge.

The precedent setting case, Garsjo v. Dept. of Labor, is found in 562 P.2d 473. Its facts are right in point with our case.

This is an appeal from the district court, Valley County, which affirmed a wage decision by a hearings examiner in favor of Loraine Horner.

Carlyle M. Garsjo, employer, is the owner of the Rainbow Motel in Glasgow, Montana. In mid-summer 1974 he hired Loraine Horner, employee, to operate the motel. The first month she was employed on a trial basis and paid by the hour. During this month she worked and was paid for 14 hours per day. At the end of the trial period, she was hired full-time at \$275 per month salary and an apartment at the motel valued at \$125 per month which she was required to live in. During the term of the employment, employee's duties consisted of checking people in and out of the motel; attending the motel switchboard; keeping all of the motel records; doing a large part of the daily cleanup which included changing sheets, cleaning the rooms, doing

Magic City Investors  
Attn: Mr. Dutton  
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the laundry, and other maintenance work. She was assisted in the cleanup by a series of part-time maids. The employer came by every few days to pick up the proceeds for deposit in the bank. Employee kept the records at the motel and the only hours she kept, after she became a salaried employee, were those hours she worked on her day off and for which she was paid overtime.

In the fall 1974, employee asked for a raise and failing to get one filed a wage claim with the Montana Department of Labor and Industry. A hearing was held before a Department of Labor and Industry hearings examiner who found that employee (1) was not employed in a "bona fide executive \* \* \* capacity," (2) was covered by the Montana Minimum Wage and Hours Act; (3) was not paid the proper wage; and (4) was due \$2,267 in back wages.

The employer argued that the employee should be exempt as an executive. The Court responded:

The provisions of section 41 2303 of this act shall not apply with respect to:

\* \* \* \*

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

The commissioner of labor has promulgated regulations which cover over 40 pages in the Montana Administrative Code interpreting this section of the Act. For the most part these rules are a verbatim copy of the federal regulations (29 C.F.R. Part 541) promulgated to interpret the equivalent section of the Fair Labor Standards Act, modified to make them compatible with the Montana statute.

The regulations involved here are MAC 24-3.14BII(2)-S1420 and MAC 24-3.14BII(2)-S1450(13). The first rule defines "Executive" and reads as applies here:



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- (1) The term "employee employed in a bona fide executive \* \* \* capacity" in section 41-2304(j) of the Montana Minimum Wage Law shall mean any employee:
  - (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and
  - (b) Who customarily and regularly directs the work of two or more other employees therein; and
  - (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
  - (d) Who customarily and regularly exercises discretionary powers; and
  - (e) Who does not devote more than 20 percent or in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (a) through (d) of this section:

Provided, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which he is employed; and

- (f) Who is compensated for his services on a salary basis at a rate of not less than \$150 per week, exclusive of board, lodging, or other facilities \* \* \*.

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MAC 24-3.14BII(2)-1450(13) deals with the "sole-charge exception" and states in pertinent part:

- (a) An exception from the percentage limitations on nonexempt work is provided in MAC 24-3.14BII(2)-S1420 subsection (e) for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment \* \* \*." Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work.

\* \* \*

The regulations attempt to set out specific objective and subjective criteria which are generally characteristic of an executive's job. Certainly an executive must manage as his primary duty, and it would be rare indeed to find an executive who did not direct two or more employees - employees he has the authority to hire and fire. The typical executive's job requires the exercise of discretion and he does executive type work as a substantial, if not exclusive, part of his job. Therefore, these regulations are logical and well within the boundaries of the fair and natural meaning of the word "executive."

Here, employee does not fall within the requirements of subparts (a) through (e), MAC 24-3.14BII(2)-S1420, because she exercises little discretion and spends a substantial amount of her time doing nonexecutive work.

\* \* \*

The effect of the regulations set out above is that an employee who meets the requirements of MAC 24-3.14BII(2)-S1420, subparts (a) through (e), is a bona fide executive and is excepted from the minimum wage and overtime provisions of the statute. If the employee (1) spends over 40% of

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(v. her time doing nonmanagement work, but is in sole charge of an independent enterprise, (2) meets the requirements of subparts (a) through (d), and (3) is paid more than \$150 per week, then there is also an exception to the general applicability of the wage and hour provisions of the statute. The logic of these regulations is clear. A real full-time executive doing executive work is given an exemption from the minimum wage and overtime provisions no matter what he is paid, but an executive who does a substantial amount of nonexecutive work for which the minimum wage would have to be paid if done by another person, may avoid the provisions of the Act only if the pay is high enough to assure that the minimum wage law is not being circumvented. (Emphasis added)

The Court also discussed the burden of proof as follows:

Here, employer did not keep records required by law and which could have easily supplied the needed information. In *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687, 66 S. Ct. 1187, 1192, 90 L.Ed. 1515, 1523, the United States Supreme Court in a Fair Labor Standards Act case discussed this difficulty:

"\* \* \* where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes, a more difficult problem arises. The solution, however, is not to penalize an employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. \* \* \*"

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Finally, the Court awarded the employee attorney's fees and costs and assessed a statutory penalty against the employer.

It appears to me that the motel owners, especially small motels, must attempt to obtain a legislative exemption from the legislature such as agricultural workers have, or small businesses under the Federal Fair Labor Standards Act. In Montana, Article XII, Section 2 of our Constitution states "that a maximum period of eight hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare."

Minimum wage and overtime compensation provisions are then set out in Title 39, Chapter 3, Part 4 MCA as quoted previously in this opinion. The exclusions are found in §39-3-406. This part and section is the target area for a legislative revision of the law. For example, the 1985 legislature added exclusions for public safety department employees; officers or other employees of a police department in a city of the first or second class working under a work period established by the chief of police under §7-32-4118 MCA; certain employees of municipal and county governments; certain employees of hospitals and other health care facilities; and the 1981 legislature excluded certain employees of the Sheriff's department.

The Federal Fair Labor Standards Act is found in Title 29 U.S.C., with the minimum wage and hours provisions found in Sections 206 and 207. The general exclusions from minimum wage extends to certain overseas areas under the control of the federal government. There is also an agricultural provision. However in the footnotes it is interesting to note a policy statement which really points up the problem to employers throughout the country. It reads:

The policy of overtime provisions of FLSA is to spread employment throughout the work force by putting financial pressure on the employer, and to compensate employees for burden of overtime workweek.

Apparently, until 1979 there was some type of limited exemption for hotel, motel and restaurant workers. Under 29 U.S.C. §213(b)(8), Wage and Hour opinion letter WH-477, January 22, 1979, these were repealed. The exclusions in §207 were generally for seasonal workers, and although the exclusions extend the maximum hours allowed in a day, overtime must still be paid after 48 hours.

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In conclusion, in order to circumvent these state provisions, a plan of employment wherein the manager met the executive exclusions, or by which you devised a lease-back arrangement making them sole proprietor would seem to be the only solution to avoid real overtime jeopardy. I must caution you, however, that certain lease arrangements have been set aside by Montana courts within the past three years with heavy financial consequences to the lessor-company. This was a gas station-convenience store situation, but the 24 hour manager idea was similar.

Very truly yours,

DAVIDSON, POPPLER & VANNOY, P.C.

A handwritten signature in dark ink, appearing to read "Doris M. Poppler", with a stylized, flowing script.

DORIS M. POPPLER

DMP/dmg

## VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 500

DATE February 16, 1987

SPONSOR Rep. Dorothy Cody

[illegible]

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## VISITORS' REGISTER

BUSINESS AND LABORCOMMITTEEBILL NO. House Bill No. 500DATE February 16, 1987SPONSOR Rep. Dorothy Cody

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Charles L. Feltz</i>	<i>Barb...</i>		<i>/</i>
<i>...</i>	<i>...</i>		<i>/</i>

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We, the undersigned oppose H.B. 500.

Ralph Cross

Theodore Olson

Gordon Mickelson

Monty & Lisa Holden



## VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO.      House Bill No. 623

DATE February 16, 1987

SPONSOR      Rep. Dan Harrington

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## VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 594DATE February 16, 1987SPONSOR Rep. Dan Harrington

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
WARD SHAWNAHAN	Chewon		X
Marie E. Tabor	MT Petroleum Assoc		X
Randy H. Lyons	MT Petroleum Marketers	X	
William Noonan	MT Petroleum Marketers	X	
	Missoula		
Bob Burt	Burt	X	
Kurt Krueger	MT Petroleum Marketers	X	
Doug Alexander	MT Petroleum Marketers	X	
John Thigart	ATC II	X	
Tom H. Johnson	Tom H. Johnson		X

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BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 727

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SPONSOR Rep. Cal Winslow

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## VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 689DATE February 16, 1987SPONSOR Rep. Bernie Swift

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>John Shaw</i>	<i>LOCKR Comp</i>	<i>/</i>	

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## BUSINESS AND LABOR

BILL NO. House Bill No. 691

DATE February 16, 1987

SPONSOR Rep. Dorothy Bradley

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## VISITORS' REGISTER

## BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 623

DATE February 16, 1987

SPONSOR Rep. Dan Harrington

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Rae Browning	Anacosta	✓	
Mary T. Schuler	Loring station	✓	
Doris Brown	Wardman	✓	
Angela Blair	"	✓	
Cynthia Biddle	"	✓	
Norman Bond	Battle		✓
N/A (C) Co.	Tank Hill	✓	
Katie Turville	Parkton	✓	
Ulline Turville	Parkton	✓	
Tom Atkins	WCCO	✓	
Frank Chappas	MEPA Shirley, N.Y.		✓
US & Home	Mr. Sen. Bill Hassel		✓
R Thompson	WFOU - 40, 61A	✓	
Alex Thompson	Hokick	✓	
Theresa Bauer	Kalamazoo	✓	
Eugene Howard	Columbia Falls	✓	
Albert E. Howard	Local 1981 Kalamazoo	✓	
Roy O'Leary	" " "	✓	
Charles Howard	Local 1981 Kalamazoo	✓	

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