

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

March 17, 1987

- The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 17, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 205 - Voucher System for SRS Payment for Prescription Medication, sponsored by Senator Mike Halligan, Senate District No. 29, Missoula. Senator Halligan stated that this bill provided that a voucher system be created so that pharmacists could be paid almost immediately. He said when it was amended in the Senate to create a 30-day period so that the state would have a chance to review it, it would have caused problems that the federal government would not reimburse for the major portion of the medicaid costs. He asked that the Committee table the bill.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 205

Rep. Wallin moved that Senate Bill No. 205 BE TABLED. The motion carried unanimously.

SENATE BILL NO. 291 - Allow Out-of-State Bank to Acquire or be Acquired by In-State Bank, sponsored by Senator Tom Keating, Senate District No. 44, Billings. Senator Keating stated this bill is a movement toward easing the purchasing of banks in and out of state on a regional basis. He explained this meant that a bank in Montana could buy a bank in another state, or a bank in another state could buy a bank in Montana, if the two states fell in a reciprocal category. The bill provides that the Department of Commerce will be the Department in charge, the bank examiners are utilized to make certain that the acquiring bank must be sound according to good financial banking practices.

PROPONENTS

Bob Wood, representing the Montana Bank Systems, a holding company holding 12 banks in the state. Mr. Wood stated that he knew first hand about the trauma involved in closing a bank in Montana. He said there are banks in Montana that are in danger of closing and which won't have ready buyers within the state because of the current economic conditions.

He added that the bill would provide, only in the reciprocal states in the region, the opportunity for passage of capital across the state lines to keep banks available and alive. He commented that by providing the sale of a bank to out of state under the limitations provided, the Montana Bank System feels that this bill provides the entire state additional tools with which to deal with capital shortage problems.

#### OPPONENTS

Jack King, Chairman, Valley Bank of Kalispell, and past president of the Independent Bankers Association of America. Mr. King submitted written testimony. Exhibit No. 1.

Art Wiedeman, President of First National Bank of Cut Bank, and President of Montana Independent Bankers. Mr. Wiedeman stated that the 169 commercial banks in Montana employ hundreds of people in a variety of functions including lending, administration, accounting, trust departments, etc. He said that many of these functions are contingent on the bank headquarters remaining in Montana, and loss of jobs in banking would reduce total spendable income thereby reducing consumer spending and business activity, and the reduced business activity would give rise to additional job losses. He said the consequence is difficult to identify, both in terms of extent and implication, but if a bank is owned and controlled by distant interests, they will not have the same motivations and actions of those of a locally owned and controlled bank.

Chris Stobie, Thompson Falls. Mr. Stobie stated his primary interest of being in opposition is the fact that they have seen a big bank take over their bank in Thompson Falls, which resulted in a period of chaos in their county. He said that a local bank has a lot more interest in the people, industry and the jobs in their locality than a bank that is controlled out of Arizona or Denver or any large area.

Earl Wright, Citizens State Bank, Hamilton. Mr. Wright stated that in a matter of this type, there may be an idealistic issue to keep in mind that as long as the chief executive officer of the bank, his senior lending officers and board members, have a major part of his own individual assets invested in that bank, the better that community will be served over time. He said this bill moves further away from that ideal.

Roger Tippy, representing the Montana Independent Bankers Association. Mr. Tippy stated that they are proposing amendments but does not lessen their opposition to this

bill. He said they recognize the concept, the ability of a bank to buy a failed bank from the FDIC when there were no local bidders for it, does have some merit. He said if approval of the interstate acquisition of healthy banks is authorized, they ask that a 2-year delayed effective date be placed on it. He summarized that their primary position is that the amendment be adopted of inserting the new section 2, for acquisition of failed banks, and strike everything else in the bill; and their secondary position is that if the rest of the bill is not deleted, the rest of the amendments be adopted. Exhibit No. 2.

#### QUESTIONS

Rep. Simon asked if all the states have laws that would be reciprocal to Montana in this type of transaction. Mr. Wood responded that they do not all have laws which are currently in existence.

Rep. Simon asked Mr. Flanders if he can explain the differences in the bill that in some areas it states "may approve" and in other areas it states "shall approve", as it seems a conflict in the bill. Mr. Flanders responded that the intent of the bill is to require the Department of Commerce to approve those acquisitions.

Rep. Swysgood asked Senator Keating to comment on Mr. Tippy's amendment. Senator Keating responded they would limit the intent of the bill considerably, and could not support them.

Rep. Brandewie asked how many states have reciprocal laws that this bill would match with. Mr. Wood responded that the current states that have reciprocal laws are Idaho, Utah, Arizona, Nevada, and Washington.

#### CLOSING

Senator Keating stated this bill addresses a reciprocal interstate banking proposal. He commented that a lot of supposition, fear, and superstition should be overcome. He said that many banks became insolvent during the 1930's, and it was outside money that came to this state as a capital investment to make loans to local businesses and farmers, and these banks became local banks, hired local people, and that capital was available for the people to borrow and those communities prospered with that outside money. He commented that more banks failed last year than ever before since the 1930's, and more banks will fail this year than last year. He added that the reasons banks are failing are

because of bad loans, bad economy, and other factors that have nothing to do with regional interstate banking.

SENATE BILL NO. 198 - Merging Banks, Branching by Independent Banks, sponsored by Senator Gene Thayer, Senate District No. 19, Great Falls. Senator Thayer presented written testimony. Exhibit No. 3.

#### PROPONENTS

Mike Grove, President of First National Bank, White Sulphur Springs, submitted written testimony. Exhibit No. 4.

Ed Jasmin, President, Norwest Bank, Helena, submitted written testimony. Exhibit No. 5.

Robert Reiquam, President, First Banks, Great Falls, submitted written testimony. Exhibit No. 6.

Gary Roe, Budget Administrator, Butte Silver Bow.

#### OPPONENTS

Richard Tamblyn, CPA, Newland, Horn, Crippen & Peck, Butte. Mr. Tamblyn stated he was retained by the Montana Independent Banks Association to study effects of this bill on Butte-Silver Bow. Mr. Tamblyn submitted a copy of the report. Exhibit No. 8.

Rep. William Glaser, House District No. 98, Lockwood. Rep. Glaser stated that there were major tax changes in this bill as a result of the amendment in the Senate. He submitted a fiscal note, that he referred to as the opponent's fiscal note, that he wanted the Committee to use for their deliberation. Exhibit No. 8.

Richard Vincent, Trout Creek. Mr. Vincent stated that there are problems with communications when involved with the big banks that are in a different locality. He commented that the person that makes the decision is never known, or that person never gets to know the people that he is involved with.

John Cavin, President of First Security Bank, Havre. Mr. Cavin submitted two exhibits. He said the first exhibit is a comparison of First National Bank at Fairbanks, a member of First Bank Systems, Citizens Bank of Montana, a member of Bank Montana Systems, First Security Bank of Havre, and their community as it relates to the three commercial financial institutions. He said each individual bank over

the last four years combined with the total community and their market share by percentage is shown in the report.

Mr. Cavin presented his next exhibit which showed the total deposits in his community which remained relatively stable showing a slight increase about equal to the growth in the total assets. Exhibit Nos. 9 and 10.

Tom Scott, Chairman of the Board of First Interstate Bank System of Montana. Mr. Scott stated he would address some of the tax implications of the bill that may have been mitigated by the amendment that was introduced. He said the Committee should look at the amendment and the implications of this bill and the real beneficiaries.

Roger Tippy, representing the Independent Bankers' Association. Mr. Tippy stated that this bill has hidden tax effects, and when all the camouflage is taken off, it is to be realized that this will be a great loss to the local government. He said the bill states an exception to the general rule in corporation taxes that operating losses being carried forward do not survive a merger, except in the case of bank mergers. He added, with the underlying phrase, except in the case of bank mergers, they are saying that their loss carried forward will survive the merger.

Gene Buxcel, Executive Vice President, Garfield County Bank in Jordan. Mr. Buxcel stated that the local economy decides whether there is going to be good banking or poor banking. He said the financial service is going to depend on the economy and not on what the banks do.

George Anderson, CPA, Helena, submitted written testimony. Exhibit No. 11.

#### QUESTIONS

Rep. Swysgood asked Mr. Anderson to explain what the amendment would do to the tax situation. Mr. Anderson stated that there is no doubt that the long range effect of Senate Bill No. 198 would be revenue neutral. He said in the short range there is a possibility that there could be differences between various taxes and jurisdictions. He referred to his exhibit with an illustration of tax computation.

Rep. Swysgood asked Senator Thayer on page 17, line 8 through 16, regarding the operating loss reductions, if the amendment addresses this section of it. Senator Thayer responded that in the Senate when they dealt with the tax issue, there was no intent to cover up anything.

Rep. Hansen asked why this amendment was not included in the bill originally. Senator Thayer responded because questions had arisen since the bill came across from the Senate that it was going to have some immediate impacts to some communities, and he wasn't aware that that was going to happen at the time, and he didn't want that to happen, so the amendments were prepared. He said there was no intention to have any tax effect for the banks at all, and that it was designed originally to be revenue neutral, and this amendment insures that.

Rep. Grinde asked Mr. Jasmin to comment on mergers, and if it would help the agricultural people. Mr. Jasmin responded that the bill alone wasn't going to help the agricultural picture, just like the bill alone isn't going to help the economic picture.

Rep. Brandewie asked Mr. Jasmin if he had realized, when the bill was drafted, that there would be any tax implications for the banks, and when had he realized there would be favorable tax consequences for banks. Mr. Jasmin stated that the tax motivation was never a part of the bill.

Rep. Brandewie stated that the amendment on line 8 is directly focused on arriving at a favorable tax situation, which will allow them to carry forward losses after the merger, and that someone in the Senate had to know that that was a tax consequence to the state. Senator Thayer responded that the issue never came up.

Rep. Pavlovich asked if Gary Roe from Butte-Silver Bow wanted to give his presentation as he had not had time to give it. Gary Roe, Budget Administrator, Butte-Silver County. Mr. Roe stated that they express its cautious support of Senate Bill No. 198 provided that there be no revenue losses for the county or the school district. He said it was their understanding that the intent of the amendment would guarantee that for four years. They believe that there are some economic development benefits to be gained by it through increased loan capacity and the concepts that have been discussed.

#### CLOSING

Senator Thayer stated this shouldn't be an issue of the big versus the little banks, because both are needed. He said this bill gives them the opportunity to grow and survive in the present economy. There are about 40 banks on the verge of going under, and some banks have already been rated because their assets are so low. He said it is apparent that this legislature will have to deal with major issues of tax reform, the liability crises, and bank reform, and this

gives an opportunity to address the last issue which is important to the people of Montana.

SENATE BILL NO. 374 - Banking Board to Issue Certificates Without Hearing When Bank Closed, Assets Moved, sponsored by Senator Ted Neuman, Senate District No. 21, Cascade County. Senator Neuman stated this bill would allow the state banking commissioner to provide an emergency charter in cases where a bank fails and under rules that they will enumerate.

#### PROPOSERS

Mike Grove, President, White Sulphur Springs. Mr. Grove stated they looked at the different issues, and found that it was a statewide problem that affected the banks, and found there was no law on the books to prepare for a bank failure of a state bank.

#### OPPOSERS

None.

#### QUESTIONS

Rep. Driscoll asked Mr. Grove why a bank would choose to be a state bank instead of a federal bank. Mr. Grove responded there were separate state and national laws that govern banks. He said the national laws are set by the U. S. government through the Treasury Department, the state laws are set by the legislature here, and there are different lending limits and different rules.

#### CLOSING

Senator Neuman stated that the bill is simple and straightforward and is a valuable tool that is needed.

#### EXECUTIVE ACTION

##### ACTION ON SENATE BILL NO. 374

Rep. Swysgood moved that Senate Bill No. 374 BE CONCURRED IN. The motion carried unanimously.

SENATE BILL NO. 222 - Establish Motor Carrier Traffic Bureau Within Department of Commerce, sponsored by Senator William Farrell, Senate District No. 31, Missoula. Senator Farrell stated that he realized in 1985 and the special sessions, that when it is time for the state of Montana to transport their goods and commodities, there is no system to allow the people that live in the state to bid on some of the transportation to get a chance to haul the

material purchased out of state. He said this bill proposes to ask the vendors, when they submit a bid on a product to the state of Montana, to include in the bid the cost of transportation to Montana, and also without the transportation. He added that that would allow the Department of Administration to separate the transportation cost from the bid price and allow the contractors within the state to bid on that transportation.

#### PROPOSERS

Ben Havdahl, representing the Montana Motor Carriers Association. Mr. Havdahl stated this is a unique idea, and will benefit Montana truckers at this time and save the state money.

#### OPPOSERS

None.

#### QUESTIONS

Rep. Smith asked Mr. Fogarty to explain the fiscal note. Mr. Fogarty responded that the \$79 million that is projected that the state agencies could save as a result of this program is a low estimate. He said the savings to the state agencies is going to be \$200,000, rather than \$79,000 that is projected. He commented that the whole principal of the program is basically that when the Department of Administration lets a bid for a purchase, the vendor will give a separate bid for the commodity and one that includes transportation costs. The Montana truckers would then have the opportunity to bid on that, he added.

Rep. Smith asked Dave Ash, Deputy Director, Department of Administration, to comment on their position on the bill. Mr. Ash commented that they do not disagree with the concept of the bill, but there are some problems. He said at the present a state agency requisitions goods and the transportation services through the Purchasing Division, and the vendor is awarded the contract and those goods are delivered to the agency, and the agency pays the vendor. He added that under this bill the transportation services are bid separately by the Department of Commerce and the concerns with that process are that there will be two different departments handling what is now a single transaction, and there will be some loss of coordination due to that situation, and some inefficiencies. He said that now there is one payment under this transaction, and with this bill there would be three separate accounting transactions.



He said another concern was that it was difficult to bill a state agency for any compliance function.

Rep. Simon asked Senator Farrell to explain why the Department of Commerce should be involved when the Department of Administration is the agency that is responsible for the purchasing. Senator Farrell responded that the transportation system was not an easy system to learn.

#### CLOSING

Senator Farrell made no further comments.

#### EXECUTIVE ACTION

##### ACTION ON SENATE BILL NO. 222

Rep. Driscoll moved that Senate Bill No. 222 BE CONCURRED IN. The motion carried unanimously.

##### ACTION ON SENATE BILL NO. 118

Rep. Glaser moved that Senate Bill NO. 118 BE CONCURRED IN.

Rep. Glaser moved the amendments. The motion carried unanimously. See Standing Committee Report.

Rep. Grinde commented that this was good legislation because the worker is always getting blamed for the fraud that goes on and this bill will take care of both the employer and the employee and put some enforcement in it. He said, under this bill, the employer is also liable in that he has to start reporting all the people that work under him. He added that this is a good compromise situation where both the employer and the employee are both going to be liable if there is an intentional problem.

Rep. Glaser moved that Senate Bill No. 118 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

##### ACTION ON SENATE BILL NO. 59

Rep. Glaser commented that the Department has a policy to where it is an automatic extension for 2 years and they can request a subsequent 2 years. He said it appears that the Department has solved the problems that caused the bill in the beginning, and the subcommittee recommended that the bill be tabled.

Rep. Glaser moved that Senate Bill No. 59 BE TABLED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 99

Rep. Grinde commented that the bill is impossible to administer and has a lot of flaws. He said he has talked to Senator Galt about his concerns, and he intends to work on the bill himself over the interim.

Rep. Bachini moved that Senate Bill No. 99 BE TABLED. The motion carried with Rep. Grinde opposed.

ACTION ON SENATE BILL NO. 52

Rep. Pavlovich moved that Senate Bill No. 52 BE TABLED. The motion carried with Reps. Driscoll, Nisbet, Bachini, McCormick, Cohen and Hansen opposed.

ACTION ON HOUSE BILL NO. 862

Rep. Cohen commented that he is troubled by the fact that one subcommittee in Appropriations took money away from the Department of Commerce, and then another subcommittee chairman tells this committee that coal tax money could be used to replace the general fund money that was removed.

Rep. Swysgood commented the educational trust fund increases after July this year from 6% to 37 1/2%, therefore the educational trust fund is, in essence, after July 1, 1987, receiving about 16% more money than it is now, even with the 15% taken off.

Rep. Brandewie commented that this is a policy decision that they are trying to make, and agrees with Rep. Vincent that the state needs jobs now, and maybe the young people that are being educated in Montana will have the opportunity to stay in Montana.

Rep. Pavlovich moved that House Bill No. 862 DO PASS. The motion carried unanimously.

ADJOURNED

The meeting adjourned at 11:30 a.m.



REP. LES KITSELMAN, Chairman

## DAILY ROLL CALL

BUSINESS &amp; LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 17, 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

MARCH 17

19 37

## BUSINESS AND LABOR

Mr. Speaker: We, the committee on

report

### SENATE BILL NO. 118

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. LES KITSPELMAN

Chairman

#### AMENDMENTS AS FOLLOWS:

1) Title, line 7

Following: "EMPLOYER:"

Insert: "CREATE THE CRIMINAL OFFENSE OF EMPLOYER MISCONDUCT; IMPOSE PENALTIES FOR THE COMMISSION OF EMPLOYER MISCONDUCT; PROVIDING AN IMMEDIATE EFFECTIVE DATE;"

2) Page 2, line 6

Following: line 7

Insert: "NEW SECTION. Section 2. Employer misconduct.

(1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for his employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to, undercounting the amount of payroll or the number of his employees; or

(c) refuses to pay premiums that he is obligated to pay under compensation plan No. 1, as provided in Title 39, chapter 71, part 12, or compensation plan No. 2, as provided in Title 39, chapter 71, part 13.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for any term not to exceed 10 years, or both."

Renumber: subsequent section

3) Page 2

Following: line 11

Insert: "NEW SECTION. Section 4. Codification instruc-

tion. Section 2 is intended to be codified as an integral part of Title 45, chapter 7, and the provisions of Title 45, chapter 7, apply to section 2.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval."

Rep. Glaser will sponsor

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# STANDING COMMITTEE REPORT

MARCH 17

19 87

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

report SENATE BILL NO. 222

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. LES KITSELMAN

Chairman

  
Rep. Driscoll will sponsor

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# STANDING COMMITTEE REPORT

MARCH 17

19 87

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

report SENATE BILL NO. 374

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. LES KITSelman

Chairman

  
Rep. Swysgood to sponsor

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# STANDING COMMITTEE REPORT

MARCH 17

19 37

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

report HOUSE BILL NO. 962

☐ 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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INTERSTATE BANKING  
AND  
INTERSTATE DEPOSIT TAKING

by

A. J. (JACK) KING

Chairman, Valley Bank of Kalispell

before

House of Representatives

Committee on

Business and Labor

Regarding

SB **291**

March 17, 1987



## INTERSTATE DEPOSIT TAKING

### AND THE

### STATE OF MONTANA

BEGINNING IN 1865 WITH THE NATIONAL BANK ACT AND CONTINUING THROUGH THE MCFADDEN ACT OF 1927, THE GLASS-STEAGEL ACT OF 1933 AND THE DOUGLAS AMENDMENT OF 1956 - CONGRESS HAS WORKED HARD TO PROVIDE OUR COUNTRY WITH A BANKING SYSTEM WHICH WILL PROVIDE OUR PEOPLE WITH THREE EXTREMELY IMPORTANT FACITS OF COMMERCIAL AND FINANCIAL PROTECTION. TO CONGRESS IT WAS IN THE INTEREST OF THIS COUNTRY TO PROVIDE A OVERALL BANKING PLAN.

1. A PLAN WHICH WOULD PROTECT THE SAFELY AND SOUNDNESS OF THE SYSTEM.
2. A PLAN WHICH WOULD ASSURE THE AVAILABILITY OF FINANCING FOR OUR COUNTRIES MAJOR FIRMS AND WORLD TRADE.
3. A PLAN WHICH WOULD VIRTUALLY ASSURE THE AVAILABILITY OF CREDIT SERVICES FOR THE THOUSANDS OF SMALLER COMMUNITIES AND RURAL AREAS THROUGHOUT THIS LAND.

BRIEFLY, THE MCFADDEN ACT RESTRICTS NATIONAL BANKS TO BRANCHES WITHIN THE SAME MUNICIPALITY AS THE BANKS MAIN OFFICE - SO LONG AS LAWS ALSO RESTRICT STATE CHARTERED BANKS.

THE MCFADDEN ACT IS VIEWED AS A MOVE TO PROTECT STATES AND THE SYSTEM FROM THE RISKS OF CONCENTRATION AND POWER WHICH CAN OCCUR THROUGH A BRANCH SYSTEM WITH A CORRESPONDING LOSS OF COMPETITIVE CONSUMER PROTECTION.

THE GLASS-STEAGEL ACT DEVELOPED OUT OF CONGRESSIONAL INDIGNATION OF NATIONAL BANKS IN FOSTERING PREPANIC SPECULATION OF THE 1920'S AND 1930'S, THROUGH THEIR HEAVY INVOLVEMENT MIXING COMMERCE AND BANKING - A DEFINITE MOVE TO PROTECT THE SAFETY AND SOUNDNESS OF THE SYSTEM.

AGAIN IN 1956, WE HAVE THE PASSAGE OF THE DOUGLAS AMENDMENT TO THE BANK HOLDING COMPANY ACT PROHIBITING THE FEDERAL RESERVE BOARD FROM APPROVING AN ACQUISITION BY A BANK HOLDING COMPANY - OR A NON-BANK SUBSIDIARY OF A BANK HOLDING COMPANY - OUTSIDE THE HOLDING COMPANIES HOME STATE WITHOUT THAT STATES APPROVAL. THE DOUGLAS AMENDMENT, THEREFORE, WAS A DEFINITE MOVE TO PROVIDE STATES WITH THE OPPORTUNITY AND THE MEANS TO LIMIT BANK ASSET OWNERSHIP CONTROL, CONCENTRATION AND POWER. THE MEANS TO DIRECT THE INVESTMENT OF BANKING ASSETS TO THE CONSUMERS IN COMMUNITIES RESPONSIBLE FOR ORIGINATING THOSE ASSETS.

GENTLEMEN - I SUBMIT SENATE BILL 291 - THE INTERSTATE BANKING BILL - SENATE BILL 198 WHICH YOU HAVE JUST CONCLUDED TAKING TESTIMONY, ARE BOTH DESIGNED TO ELIMINATE AND DEFEAT THE FEDERAL LAWS WHICH, PROPERLY USED, GUARANTEE MONTANA, IT'S CITIZENS AND IT'S COMMUNITIES A COMPETITIVE AND RESPONSIVE BANKING SYSTEM.

BUT LET US EXAMINE THIS PROBLEM A BIT FURTHER. THE PURPOSE OF ANY RECIPICAL INTERSTATE BANKING BILL IS TO ALLOW BANKING ORGANIZATIONS IN TWO OR MORE STATES TO BUY AND SELL BANKS ACROSS STATE LINES. STATES WHICH HAVE LARGE MONEY CENTERS (CITIES) GENERALLY HAVE LARGE POWERFUL BANKING ENTITIES. THEREFORE, IF YOU ARE NEW YORK OR CALIFORNIA, YOU MAY VIEW INTERSTATE BANKING AS MEANS TO "BRING HOME THE BACON". TO EXTRACT THE PROFITS FROM LESS FORTUNATE STATES, WITH THOSE PROFITS ACCRUING TO CORPORATIONS AND CITIZENRY IN YOUR STATE. THEREFORE, BEFORE WE AGREE TO ACCEPT THE PREMISE OF INTERSTATE BANKING WE MUST EXAMINE OUR ABILITY TO BUY BANKS IN OTHER STATES VS. THEIR ABILITY TO BUY IN OUR STATE. HERE IN MONTANA, OUR 169 BANKS, INCLUDING OUT OF STATE HOLDING COMPANY INTERESTS IN MONTANA AS OF JANUARY 1986 HAD ASSETS TOTALING 4.1 BILLION. WASHINGTON HAD 17.6 BILLION OREGON 11.2 BILLION MINNESOTA 63.2 BILLION WYOMING 3.9 BILLION. I HAVE LEFT OUT IDAHO ON PURPOSE SINCE IDAHO HAS SUBCRIBED TO FULL BRANCHING AND INTERSTATE BANKING. IDAHO HAS ALREADY LOST TWO OUT OF THEIR THREE INSTATE MAJOR BANK CORPORATIONS AND IN FACT, ONLY HAS 25 BANKS LEFT, THANKS TO THEIR SYSTEM.

NEVERTHELESS, THE BOTTOM LINE IS - MONTANA DOES NOT HAVE THE INSTATE BANK OWNERSHIP ASSETS TO COMPETE WITH ANYONE IN A BUYING WAR. WE WILL BE SELLERS OF BANKS NOT BUYERS OF BANKS.

PERHAPS IT IS THOUGHT THIS WILL NOT MAKE ANY DIFFERENCE. NOT SO: IN MY COMMUNITY THE COMBINED INCOME OF MY TWO OUT OF STATE OWNED COMPETITORS, FIRST INTERSTATE AND NORWEST, IS SOMETHING IN EXCESS OF 2 MILLION DOLLARS ANNUALLY. I THINK KALISPELL, AND THE FLATHEAD VALLEY AND THE STATE COULD USE THAT INCOME VERY NICELY IF IT WASN'T EARMARKED FOR EXPORT. SB291 AND SB198 COULD EXPAND OUR EXPORT OF BANKING PROFITS APPRECIABLY.

WE ARE HEARING DAILY THAT TO OPEN OUR BORDERS WILL FAVOR OUR COMMUNITIES WITH STRONGER COMPETITIVE ENTITIES. WELL, IF OUR BANKING SYSTEM IS DEEMED TO PROCEED IN THE DIRECTION OF IDAHO I WOULD SUGGEST THAT YOU CONSIDER THE CONSUMER WHEN I ASK THESE QUESTIONS.

1. DOES FIRST BANK WESTSIDE, GREAT FALLS GRANT BETTER RATES - BETTER TERMS THAN FIRST BANK GREAT FALLS?? DOES FIRST BANK MISSOULA GIVE BETTER TERMS ON SAVINGS AND ON LOANS THAN FIRST BANK SOUTHSIDE IN MISSOULA? THE SAME APPLIES TO BILLINGS AND SO ON.
2. IS A BRANCH OF A BANK EVER COMPETITIVE WITH IT'S HOME OFFICE OR A SISTER BRANCH?

TO ME THE ANSWERS TO THESE QUESTIONS ARE **OBYIOUS**. AND, THEN WE HEAR THE BIGGER BANK'S OFFER MORE AND BETTER SERVICES, AND

THEREFORE ARE MORE COMPETITIVE THAN OUR COMMUNITY BANKS.

WELL I AM A PARTNER IN A COMMUNITY BANK. WE COMPETE WITH TWO, ADMITTEDLY WELL MANAGED COMPETITORS IN NORWEST AND FIRST INTERSTATE. TWENTY YEARS AGO WE MOVED THE TINY 1½ MILLION DOLLAR STATE BANK OF SOMERS TO KALISPELL. WE ARE APPROACHING 60 MILLION DOLLARS TODAY, WHICH I DO NOT BELIEVE DEMONSTRATES OUR INABILITY TO COMPETE. IN ADDITION, WE ARE "A" RATED BY SESHUNOFF - A RATING MY COMPETITORS HAVE YET TO ATTAIN.

NEED I SAY - I AM NOT AFRAID OF OUR COMMUNITY BANKS ABILITY TO COMPETE WITH ANYONE. OUR CUSTOMERS DO NOT SEEM TO BE CONCERNED EITHER.

ARE OUR STATE REGULATORY AGENCIES POSITIONED TO DEMAND THAT MONTANA'S CITIZENRY DEPOSIT DOLLARS ARE TO BE REINVESTED IN A PARTICULAR COMMUNITY IN THIS STATE? THE SYSTEM WE CURRENTLY HAVE VIRTUALLY MANDATES, WITHOUT THE NEED OF LAWS, THAT COMMUNITY DEPOSIT DOLLARS BE REINVESTED IN THE PARTICULAR COMMUNITY WHERE THE DEPOSITS ORIGINATED. INTERSTATE DEPOSIT TAKING HAS THE MEANS TO INVEST COMMUNITY DOLLARS WHEREVER IT IS DEEMED MOST PROFITABLE.

NEXT, SHOULD WE OPEN OUR BORDERS TO BUYERS OF BANKS HEADQUARTERED IN OTHER STATES, IS MONTANA PREPARED AND ABLE TO ACCESS THE QUALITY OF CORPORATE BUYERS HEADQUARTERED IN FARAWAY PLACES?

BEN LOVE - CHAIRMAN OF THE MASSIVE TEXAS COMMERCE BANCSHARES OF DALLAS (WHICH INCIDENTLY RECENTLY SOLD OUT OF TEXAS TO AN EVEN LARGER NEW YORK BANK CORP) STATED PUBLICLY A FEW DAYS AGO THAT 40% OF THE NATIONS LARGER BANK HOLDING COMPANIES WERE AT THIS TIME UNDER SOME TYPE OF LETTER OF UNDERSTANDING WITH THE REGULATORS. I AM SURE THIS LIST INCLUDES, BUT IS NOT LIMITED - TO, BANK OF AMERICA, MANUFACTURES HANOVER, TEXAS BANCSHARES, TEXAS COMMERCE BANCSHARES, NORWEST, FIRST BANK SYSTEM, HAWKEYE BANCSHARES OF IOWA AND SO ON.

THEREFORE, ARE OUR STATE REGULATORY BODIES REALLY POSITIONED FOR THIS ADDED RESPONSIBILITY?

FINALLY, WHAT IS THE TRACK RECORD TO DATE - FOR THOSE STATES WHO ARE MOVING TOWARDS INTERSTATE BANKING. WHERE ARE THE WINNERS - WHERE ARE THE LOSERS?

LET'S TAKE WASHINGTON FIRST. A STATE WELL POSITIONED FROM SPOKANE, TO MOVE INTO MONTANA IN THE INTEREST<sup>of</sup> MAKING THE WESTERN PORTION OF OUR STATE A PART OF THEIR INLAND EMPIRE.

WASHINGTON HAS LOST IT'S TWO LARGEST BANKS. SEATTLE FIRST NATIONAL AND RANIER BOTH TO CALIFORNIA. THE BILLION DOLLAR OLD NATIONAL BANK HAS BEEN PURCHASED BY OREGON. FIRST BANK OF MINNESOTA

HAS MADE INROADS. THERE REALLY ISN'T MUCH OF BIGS LEFT TO BUY IN WASHINGTON. TO MY KNOWLEDGE, WASHINGTON BANKERS HAVE YET TO MAKE A PURCHASE. AS I SAID OREGON DID PURCHASE A BANK IN WASHINGTON. ON THE OTHER HAND, OREGON LOST SIX OF THEIR FINEST BANKS. ARIZONA IS STILL HOLDING ON FRANTICALLY TO VALLEY BANK, HOWEVER, VIRTUALLY EVERY OTHER BANK OF ANY CONSEQUENCE HAS BEEN SOLD TO CALIFORNIA OR NEW YORK.

EVEN FLORIDA, WHOSE GOVERNOR TOOK A LEADERSHIP POSITION IN THE INTERSTATE BANKING QUESTION, HAS NOW RECOGNIZED THAT HE WAS LARGELY RESPONSIBLE FOR LOSING MUCH OF FLORIDA'S BANK OWNERSHIP TO OUT OF STATE INTERESTS WHILE GAINING VERY LITTLE IF ANYTHING IN RETURN. GOVERNOR Graham IS NOW SENATOR Graham. SERVING ON THE U. S. SENATE BANKING COMMITTEE AND WORKING HARD WITH SENATOR PROXMIRE TO CLOSE THE NON BANK LOOPHOLE HOPING TO PREVENT FURTHER OUT OF STATE ENTRY OF BANKING INTERESTS INTO FLORIDA.

TO SUMMARIZE QUICKLY, CONGRESS HAS PROVIDED THE MEANS FOR STATES TO PROTECT THEIR BANKING INTERESTS FROM STATES WITH BETTER ACCESS TO THE MONEY MARKETS. IN DOING SO CONGRESS RECOGNIZED THAT BANKING IS DIFFERENT AND SMALLER COMMUNITIES NEED THE MEANS TO ASSURE THEMSELVES OF THE AVAILABILITY OF CREDIT AT COMPETITIVE PRICES.

WE HAVE DEMONSTRATED THAT MONTANA IS VIRTUALLY IN A NO-WIN SITUATION WITH RECIPICAL INTERSTATE BANKING, AND WE DO NOT HAVE A SYSTEM IN PLACE WHICH CAN ASSURE MONTANA THAT ONLY THOSE HOLDING COMPANIES WILL ENTER MONTANA WHICH HAVE OUR STATE AND OUR COMMUNITIES BEST INTERESTS AT HEART.

NEITHER DO WE HAVE THE CAPABILITIES TO LIMIT ENTRY TO THOSE SYSTEMS WHICH SURVIVE ON ~~SAFE~~ <sup>Through Interstate Banking and Branching</sup> BANKING PRACTICES. WE HAVE DEMONSTRATED THAT MONTANA WILL GRANT FINANCIAL CONCENTRATION AND POWER TO OUT OF STATE INTERESTS.

AND YES, THE FINAL LOSER WILL BE THE MONTANA CONSUMER AS COMPETITIVE BANKING DETERIORATES AND RATES ARE SET IN FAR AWAY PLACES BY UNINTERESTED PEOPLE. AND, NEED I ADD, MONTANA WILL LOSE THE CIRCULATION OF PROFIT DOLLARS FROM OUR MANY BANKS THAT ARE STILL MONTANA OWNED AND OPERATED - BY MONTANAS.

YES, INTERSTATE BANKING AND BRANCHING ARE GREAT FOR THOSE WHO HAVE - FOR THOSE NOT SO FORTUNATE - INTERSTATE BANKING CAN ONLY PROVIDE THE MEANS OF HAVING LESS.

AS MONTANA'S STATESMEN AND WOMEN, I URGE YOU TO VOTE IN OPOSITION TO SENATE BILLS 291 AND 198.



Amend SB 291, 3rd reading bill, as follows:

3/17- Tippy Amendment  
DATE 3/17/99  
SB 291

1. P. 3, line 8

Following: line 7

Insert: NEW SECTION. Section 2. Acquisition of failed in-state financial institution by out-of-state financial institution - approval of department. (1) An out-of-state financial institution located in a reciprocal state may directly or indirectly acquire or acquire control of an in-state financial institution for which the federal deposit insurance corporation has been appointed the receiver, if the federal deposit insurance corporation has requested bids from in-state financial institutions for the assets and liabilities of the institution and determined that none of the bids received has met the minimum bid requirements set by the corporation.

(2) The department shall approve the acquisition if it determines that the acquiring institution (a) is financially sound according to commonly accepted standards of financial institutions examination, and (b) will maintain the primary capital of the acquired institution at a level of seven percent or more of the total assets of the acquired institution.

Renumber following sections.

2. P. 3, line 24

Following: "institution"

Insert: "(i)"

3. P. 4, line 1

Following: "examination"

Insert: "; (ii) will maintain the primary capital of the acquired institution at a level of seven percent or more of the total assets of the acquired institution; and (iii) will not control more than eight percent of the total resources of all banks in this state."

4. Page 4, line 24

Following: "[section 2]"

Strike: "or"

Insert: "through"

5. Page 4, line 25

Following: line 24

Strike: "3"

Insert: "4"

6. Page 5, line 9

Following: "through"

Strike: "4"

Insert: "5"

7. Page 5, line 13

Following: line 12

Insert: NEW SECTION. Effective dates. Sections 3 and 4 of this act are effective October 1, 1989.

8. Title, p. 1, line 7

Following: "COMMERCE"

Insert: "providing a delayed effective date for certain

Roger requests  
adoption of  
his section 2 only  
and strike  
remainder of  
it.  
otherwise,  
adopt all  
of the  
amendments

STATEMENT BY SENATOR GENE THAYER  
(Senate District 19)  
IN SUPPORT OF SB 198  
HOUSE COMMITTEE ON BUSINESS & LABOR  
March 17, 1987

Mr. Chairman and Members of the Committee, I want to speak in support of my bill, SB 198. This bill does three things:

First, it allows banks to merge and consolidate, a reform needed to encourage more flexible use of bank capital and to pave the way for economic growth;

Second, it authorizes independent banks to establish up to two branch banks throughout the state;

Third, it allows emergency branch banking for failing banks in one-bank towns.

This bill has caused quite a stir in the state's banking community. We are engaged today in a debate about banking in Montana. Let me tell you what this debate is really about. It is about the survival of our banks. About the preservation of Montana's financial systems. About shaping our state's economy to compete world-wide in the 21st Century. In short, about preparing for the future.

It is not a debate about large versus small. Not about alien foreign money powers versus friendly little communities. Not about big banks gobbling up little banks.

To repeat, this debate is about the basic survival of our state's banking system. To survive, we must adapt to changing conditions in the region, in the nation, and in the world. That is what this debate is really about. If we lose sight of that, we will lose an important opportunity.

Bank Survival

Banks in Montana have been very sick lately. In November 1983, the First National Bank of Browning failed, and no bank emerged to take its place. Last May, the Bank of Columbia Falls failed. Several months ago, my local newspaper reported that the earnings for the first six months of 1986 for Montana's 169 banks fell nearly 50 percent. Nationally, Montana's banks ranked among the worst in the nation in the percentage of non-performing loans to total loans.

There is an old saying that those who forget history are doomed to repeat it. We should all recall that 60 years ago every town in Montana used to have a bank before the Depression closed them.

In 1920, Montana had 431 banks. But by 1943, only 110 banks survived. Think about it for a minute. Over 300 banks closed over a 20-year period! That could happen again if we don't prepare for it. And that gets us back to the basic issue: survival. What can you do to help our banking system survive?

Currently, Montana has 169 banks. We need to take all steps necessary to insure that these banks remain vital elements of our local communities.

### Solutions

Government studies confirm that our banks and our banking laws are a problem. Last summer, the FDIC Chairman observed that "states should liberalize overly-restrictive branching laws so that weak banks will be merged or otherwise acquired by healthier institutions."

A few months later, the Western Governors' Association reported that capital formation is vitally needed for economic growth and encouraged passage of branch banking to form that capital.

Governor Schwinden's Economic Transition Task Force recommended last December that Montana should modernize its banking laws by allowing branch banking and permitting merger and consolidation of banks.

Before this legislative session began, I believed that the difficult economic times would require each of us, as legislators, to critically re-examine old myths and ideologies. That is what my bill will require us to do.

Montana is one of three remaining states in the nation that still requires unit banking and prohibits branch banking. There is an old slogan that "if it ain't broke, don't fix it." Judging from the expected number of bank failures that we will see in Montana in 1987, Montana's banking system is about to go broke, and it really needs fixing.

### Taxes

I want to bring to your attention a defect in my bill, which I would ask this Committee to correct. It was not my intention that this bill affect the level of taxes paid by banks to local governments. This issue was not considered by the Senate Business and Industry Committee when we acted on SB 198.

A question on this issue ~~was~~ raised immediately prior to the bill being debated on the Senate floor. We checked with George Anderson, CPA, who will testify today, and learned that the long-term revenue impacts of this bill were negligible.

However, since that time, we have examined more carefully the short-term revenue impacts to local governments, and these impacts could be significant. That is why I suggest a change should be made to the bill to eliminate adverse revenue impacts.

Mr. Anderson will testify after me on the subject of why and how these revenue impacts might come about. For my part, I want to assure the Committee that it is not my intention to "short change" any local government by the passage of this bill.

I, therefore, am proposing an amendment to the bill whereby, for the four tax years following consolidation, taxes paid by consolidating banks to their local governments would be the same as if consolidation had not occurred.

I picked the four-year period for three reasons. First, the central purpose of the legislation is to improve the stability and flexibility of banks in our state and that should mean a return to profitability and increases in tax revenues in the very near future. Second, the amendment would require the banks to keep duplicate books, an expensive and complicated undertaking that should not be required any longer than necessary. Third, the next general session of the Legislature will be held before the four-year period expires. This should allow the next Legislature the opportunity to examine the need for extending further the four-year period or eliminate it altogether.

At this time, I would like to distribute a draft of the amendment. I would only ask the Committee, if it deems necessary to request a fiscal note on SB 198, that the fiscal note be prepared on the basis that my amendment is added to the bill.

### Equal Protection

Let me make one brief additional point before I finish my introductory remarks. It has been charged that SB 198 would violate the constitutional requirement for equal protection. The opponents argue that SB 198 would grant branching powers to independent banks but not to other kinds of banks. They are correct, however, they overlook the fact that the bill gives the latter banks the power to expand through merger. That is a fair trade--indeed, a rational basis--for providing increasing flexibility to our banking system. As noted at the outset of my remarks, flexibility is the purpose of this bill, and that is the rational basis for granting additional powers to independent banks. The legislation balances these powers by granting holding company banks the ability to merge.

### Closing Thoughts

One final comment that I cannot resist making as I look at this audience and think about how my bank merger bill fared last session. This legislation is often considered a battle among bankers--sort of a private family feud.

There may be a feud going on here, but I do not choose to be a part of it, and I hope you won't either.

Fashioning legislation to save our banking system and to reposition it for the future is not a task to be decided by a popularity contest among bankers. It is an important policy function that will affect all of your constituents--not just your home town banker. Please consider that thought as you listen to the testimony on this bill.

I believe that SB 198 is a step toward the future of bringing Montana's economy into the 21st century, and I urge you to join me in supporting it.

FILED 4  
DATE 3-17-87  
SB SB 198

STATEMENT BY MIKE GROVE IN SUPPORT OF SB 198

HOUSE COMMITTEE ON BUSINESS AND LABOR

MARCH 17, 1987

Mr. Chairman and members of the committee,

My name is Mike Grove, President of the First National Bank of White Sulphur Springs, Montana which is an Independent Bank. I also serve as Chairman of the Agricultural Debt Sub-Committee, for the Governors Council on economic development.

I first want to speak to you from the point of view, and for the people and businesses of our great state.

The Governors council on economic development looked into the Agricultural debt situation. We heard numerous testimonies from Farmers, Ranchers, Businessmen, Lenders and Regulators. It quickly became apparent that our agricultural economic situation is a problem that includes all Montanans. It is a social problem and creates financial pressure on all businesses, including banks. Our state had no bank failures since the 1940's until 1983. The last bank that failed before 1983 was in our county. It was in the town of Martinsdale, which is now a skeleton of a community, with it's people required to drive 30 miles for the banking services.

Since 1983 two banks have failed, one of which left the town of Browning with no banking services. In 1981 there were 10 bank failures in the United States. Increasing each year to 1986 when 138 banks failed, and this year, 38 have already failed to triple the ratings of 1986. In 1986 26 banks failed in Texas, 16 in Oklahoma 10 in Kansas, and 9 in Iowa and Missouri. All of these states have recently adopted some form of Banking legislation. In the majority of the bank failures in 1987, the banks which failed were able to re-open as branches and banking services remained available in those communities.

The most recent banking statistics available to me, are as of September 30, 1986. It shows that 20% of the banks in this state with the lowest rating possible. Montana rates 4th highest in non-performing loans which stand now at 6% of outstanding. We stand 5th highest in net loan loss percentage, and rank 45th as far as profit ability.

The Governors Council for Economic Development made part of it's recommendation that there should be a change in our banking laws, to allow for a failed bank situation. We also recommended that there should be put in place legislation to allow the failed bank immediate chartering as a new state regulated bank. When the bank recently failed in Columbia Falls, it was a state chartered bank.  
( continued on page 2 )

( continued from page 1 )

However it re-opened under a National Bank Charter, because our state laws do not allow for emergency state chartering. Both of these recommendations are included on Senate bill 198.

As I pointed out earlier, we have real problems with the condition of our banking system and in order to minimize any negative impact on our communities, we need these laws in place and we need them now.

Let me now speak to you as an Independent Banker. The issue of unit banking versus branch banking has long been a controversial issue among the banking fraternity in Montana. There was no branching allowed in the United States until 1909, when the state of California adopted a law permitting statewide branch banking. Montana is now one of only three states that have some sort of permissible branching legislation. Further none of these three states have ever allowed branching and have decided to return to unit banking.

I feel it is time to change and modernize our banking laws. The economic growth of the state and it's people is directly related to the health of it's financial institutions. A most important benefit of the removal of barriers to bank expansion is improved safety and soundness of the banking system. Diversification expands available sources of deposits, it provides a broader and more stable funding base, it also allows banks to diversify their loan portfolios. This diversification makes banks less dependent on isolated local economic conditions, which would be especially important for Montana banks located in areas dependent upon narrowing economic sectors, such as agriculture or energy or both.

In addition to strengthening the banking system branching would be especially beneficial to consumers and small businesses through increased competition. It is widely recognized that free entry into a market is an important component in maintaining competition. Increasing the number of potential banking offices would create an atmosphere of good competition, which would enhance the quality and convenience of banking services. ~~Our~~ demands are not met by existing banks, newly eligible entrants would likely seek the business by meeting that demand. Where there are no bank offices now, we could see some created.

Senate Bill 198 would allow Independent Banks, or banks owned by one bank holding companies to branch into communities that do not have any banking services now, or into communities which do. Both would bring people more banking convenience and competition which is good. Banks owned by multi-bank holding companies could not branch, but could merge in an effort to become more efficient, which is also good.

Montana is in a period of economic transition. Our banking system must be changed to encourage diversification and innovation, and branch banking would lead to a stronger financial base for the future development of our great state. I truly believe that this bill would protect the economic base of our small communities, and serve to enhance economic development which I know is a goal we are all committed to.

I believe that Senate Bill 198 is a step towards the future of bringing Montana's economy into the 21st century and I urge you to join me in supporting it.

Thank You



Testimony for the House Business and Labor Committee  
March 17, 1987

EXHIBIT 5  
DATE 3/17/87  
SB SB 198

Mr. Chairman, members of the Committee, for the record I am Ed Jasmin, president and CEO of Norwest Bank Helena. I appreciate the opportunity to appear before you on behalf of S.B. 198.

Last month I listened to testimony on this bill before the Senate Business and Industry Committee. The opponents' arguments then centered around "roots" and "concentration." Our system banks were pictured as big outsiders -- "the Minnesota Twins" -- which is a cute ploy but let's look at the facts.

My bank has been serving the Helena community since 1898. Our banking roots are 72 years deeper than any Helena independent bank. I am a native of Helena and my family has been here since the 1880s. My boss, Buck Moore, is a native of Two Dot and a graduate of MSU and a former member of the Montana Board of Regents. Earl Johnson, my counterpart at First Bank, is a native of Lewistown. There are more than 500 Montanans employed by Norwest. They can call us Twins, Bobcats, Grizzlies, Saints or Yellowjackets. The name isn't important. What is, is that we all have a deep love for and a commitment to this State.

Along with "roots" the opponents raised the alarm that we are big or could get bigger. The "big is bad" syndrome is one of the negative business signals this State is saddled with. Our struggling economy needs big companies as well as smaller companies. The same is true for banks. I'm disappointed that the opponents might suggest otherwise and join the chorus of other no-growth lobbying interests.

Another argument used in the Senate hearing was the effect that this bill might have on concentration of bank resources in the state. We pointed out that in the 1930s, First Bank and Norwest systems had 56% of total resources in Montana compared to only 36% now. The opponents failed to mention that there are 55 towns in Montana that are now served by just one bank. These are independent banks, doing a good job for their communities. But if concentration and monopoly are real issues, you should be concerned with the total monopoly in each of those communities.

All of these issues, of course, were smoke screens which tried to mask the real reason for their opposition and fell short.

If branching itself were the villain, or if merger and consolidation were bad, then why do our laws presently allow savings and loan association and credit unions to do both? Recently Home Federal Savings and Loan here in Helena merged with Western Federal Savings and Loan in Missoula. I did not hear one negative comment about that merger. American Federal Savings and Loan has branches in several cities and is presently constructing a large branch on the north edge of our downtown. Again, no one seems to be up in arms about this. Their customers are happy they are providing facilities for more convenience.

Why won't the opponents be straightforward and tell you the real reason for their strong objection is that this bill might lead to more competition? They are desperately trying to prevent this by maintaining archaic banking laws.

We like good competition. It sharpens our resolve to offer the best products possible to our customers. If we're not serving the needs of our customers, we deserve to lose their business. Let the marketplace decide the best providers.

Banking all over the country is changing rapidly. Through the 1950s banks competed mostly with other banks. Then came savings and loans and credit unions...and now our competitors include Sears, K-Mart, Merrill Lynch, Edward D. Jones and national banking concerns like CitiBank and Bank of America.

I don't have to tell you how desperately we need economic development in Montana. INC. Magazine's latest rating has Montana 47th for its perceived business climate.

It's interesting to read the October 1986 issue of INC and learn what is happening with the leaders in the poll, like Arizona and Georgia. In the short synopsis of each of these states, one of the positive factors noted was their banking structure. I am not suggesting that a change in banking laws would turn our economy around, but it's one of the major items that needs to be addressed.

I attended the Economic Seminar in Butte this summer and heard Dr. David Birch scold us for acting like a third world nation. In his opinion we try to build a fence around Montana and ignore the fact that today we participate not only in a national economy, but a global economy.

He said that Montanans continually fight internal civil wars to protect turfdom while the rest of the country moves forward and leaves Montana behind. This bill is certainly one of the civil wars. In fact it may be the 10th legislative battle of this particular war. It won't go away because of ongoing changes nationally in the financial industry.

In the last decade all but three states have revised their banking laws to permit either branching or some form of interstate banking. One of the other holdouts with Montana is also at the bottom of INC.'s business climate indicator.

Following the Birch Conference the Governor appointed a 15 member task force to make recommendations to him for improving our business climate. You've received copies of this report which contains many of the issues you are addressing in this session. The report also recommends modernizing our banking laws.

Banking reform was also a recommendation from the Western Governors' Conference in its meeting in Texas last fall. The same reform and this bill in particular has been endorsed by the editorial boards of five leading Montana newspapers.

I hope you will accept the recommendation of the Governor's Economic Transition Task Force by giving this bill a "do pass" recommendation so we can end this civil war and get on with improving our economy for the good of all Montana.

During the Senate debate on this bill, Senator Esther Bengston, who banks at Worden, addressed her Senate colleagues and said she had been lobbied by both sides, she had wrestled with all of the emotional issues and finally decided to support the bill because deep down in her heart she had to do what was best for the long term good of our State.

I hope you will do likewise.

HOUSE BUSINESS AND LABOR COMMITTEE  
March 17, 1987

TESTIMONY ON SB 198 (The Bank Merger/Consolidation/Limited Branching/  
Emergency Power Bill)  
by: Robert L. Reiquam, President, First Banks Great Falls

Chairman Kitselman and distinguished members of the Committee:

Change is about us on all sides! You people, as our state's elected policy makers, see and know about it most of all. The business I am in and from which I have earned my living for 22 years, has undergone tremendous change from Federal deregulation, from competitive factors, and from changes in the economy.

Yet here in Montana, we remain shackled to antiquated bank structure laws that negatively restrict banks' ability to serve their customers and to help develop Montana's sagging economy. Nearly every other state has seen the need for change, and their legislatures have repealed old laws or passed new ones similar to this Act we are talking about today. Because of our inability to convince past legislators of the need to let banks organize on business decisions, we have restricted our customers, short-changed our shareholders, and hampered our state's development.

Now these customers don't stand idly by. Change in communications, transportation and other technology have let them obtain financial services from other places. These are places like department stores, brokerage houses, and banks like Citi Corp in New York City. Do these new-found organizations pay taxes in Montana, put Montanans on their payroll, contribute dollars to worthwhile projects, encourage their employees to participate in community and local government activities? You can bet your sweet life they don't!

We are all concerned about the stability of Montana's financial institutions. The PCAs are just a fraction of what they were five years ago. Several credit unions have merged, and thus survived. Some savings and loan associations have folded, others have changed their structure, and the news media tells of the trouble with their insurance fund.

In 1981, there were only 3 banks in Montana that did not have a net operating profit, and two of those were just freshly chartered. How many in 1986 operated at a net loss? I don't know the number, but in Great Falls, which has 7 full service commercial banks, only 2 had net operating profits last year. And Great Falls' economy is reported to be stronger than many areas of the state.

Provisions of SB 198 will allow merger or consolidation of banks in rural areas where population declines will no longer support a bank with administrative burden and no loan pouch. Business people still need deposit facilities, safety deposit boxes and a host of other services. Such a unit, with direct connections to another full service bank, could serve these communities very well.

Your responsibility on this committee and in the entire legislature is awesome. You have the power to vote to change laws written under obsolete conditions. Or you can let emotional pleading and fear tactics prevail and see further erosion of our banks' capacity to serve Montana's consumers. Many of the very people opposing SB 198 will be the first to utilize provisions to save their organization or to merge with others to expand. It has happened in every other state where bank structure laws have changed, and why won't the same positive effects happen in Montana?

Norwest, First Bank System, Montana Bancsystem, Bank of Montana System are proponents of this bill. These companies, with thousands of shareholders in Montana, are net providers of capital into the state. Indeed, in the past three years, these companies have injected nearly \$25 million into the capital structure of our Montana banks. Many of these banks would not have survived without this injection of capital. Now it is time to let these companies have the benefits that can come from mergers and consolidation.

From 1968 until 1983, I was in Miles City. From 1974 until moving to Great Falls in 1983, I was President of First Bank Miles City. In those 8 years, there was never a time that we did not participate more loans out than we had coming in. This was capital coming into the community in the form of loans that were larger than we could handle, or at times our loan demand was greater than our deposits.

Affiliation with a Minneapolis capital source allowed us to serve our customers very well. Don't let the opponents of SB 198 tell you the Act will cause a drain on Montana capital. The exact opposite is true.

In conclusion, Montana needs SB 198 to let our banks compete on a need and service basis. We need sound, progressive financial institutions with stable capital sources. We are way behind the times. We're debating our internal bank structure laws, while other states are advertising interstate banking!

Remember, as opponents tell you they will be gobbled up by out-of-state giants, it simply isn't true. SB 198 will have no effect on any Montana financial institution unless the stockholders want it to. Before any bank can be bought or sold, there must be a willing buyer and a willing seller. All you are doing by passing this legislation is allowing this basic economic factor to happen.

One final point. I am an agricultural banker and proud of it! First Bank System stands behind no one in providing loans to farmers in Montana. Indeed, the committee should be aware of the fact that the bank holding company banks in Montana loan a majority of agricultural funds to our farmers. I am distributing a table on this subject for you to examine.

Thank you for considering the merits of SB 198 and for your positive support of this necessary legislation.



EXHIBIT 1  
DATE 3/17/87  
HB SB 198

MONTANA INDEPENDENT BANKERS

REPORT ON SENATE BILL 198

MARCH 11, 1987

NEWLAND, HORN, CRIPPEN & PECK, P.C.  
Certified Public Accountants

Butte, Montana 59701  
Dillon, Montana 59725  
Deer Lodge, Montana 59722

**MONTANA INDEPENDENT BANKERS**

**REPORT ON SENATE BILL 198**

**MARCH 11, 1987**

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John F. Burns  
Richard L. Tamblyn

March 11, 1987

Montana Independent Bankers

2030 11th Ave, Suite 22

Helena, Montana 59601

Dear Sirs:

This report is the result of our study of Senate Bill 198 as it relates to potential lost corporation tax revenues for Butte-Silver Bow and the School Districts within Butte-Silver Bow.

In accordance with Sections 15-21-701 and 702, M.C.A., the Department of Revenue must transmit 80% of the corporation license tax revenue received from Banks and Savings & Loans to the county in which the business is located. For the years 1985, 1984 and 1983, Butte-Silver Bow has received \$358,453, \$219,730 and \$102,478 respectively, from the Department of Revenue's compliance with these aforementioned statutes. These amounts were obtained from the Butte-Silver Bow Treasurer. The 1986 information is not available, since the corporation license tax returns for 1986 have not been filed. If Senate Bill 198 would pass and become law, Butte-Silver Bow would most certainly lose a major portion of this revenue. A loss of this nature would be devastating to our local government and school systems. Of the total received by Butte-Silver Bow, \$232,990, \$142,820, \$66,600, has gone to the School Districts, respectively, for 1985, 1984 and 1983.

The Banks and Savings & Loans in Butte-Silver Bow are:

- (1) Norwest Bank;
- (2) First-Bank-Butte;
- (3) First Citizens Bank;
- (4) Miners Bank;
- (5) Montana Bank;
- (6) Prudential Federal Savings and Loan; and
- (7) American Federal Savings & Loan.

Based on information received from the Butte-Silver Bow Treasurer, corporation license tax revenue has been received from taxes paid by the following banks and savings and loans as listed below:

	<u>1985</u>	<u>1984</u>	<u>1983</u>
First Citizens Bank	\$ 24.40	\$ 24.40	\$ 40.00
American Federal Savings	8,516.91	1,096.84	1,018.08
First Bank - Butte	235,228.80	100,149.58	21,924.98
Miners Bank	2,391.20	2,532.80	8,928.00
Norwest Bank	66,742.69	64,649.73	49,372.39
Montana Bank	45,548.80	51,234.00	21,152.00
Prudential Federal Savings	<u>0.00</u>	<u>42.40</u>	<u>42.40</u>
	<u>\$358,452.80</u>	<u>\$219,729.75</u>	<u>\$102,477.85</u>

If Senate Bill 198 is passed, Butte-Silver Bow would lose a significant portion of this much needed revenue. A discussion of the losses follows:

Norwest has five banks in Montana in the 100 to 499 million dollar asset size. These banks are (1) Norwest Bank of Kalispell; (2) Norwest Bank of Helena; (3) Norwest Bank of Anaconda, Butte; (4) Norwest Bank of Great Falls; and (5) Norwest Bank of Billings. Sheshunoff publishes figures of income or (loss) and has accumu-

lated this information from reports released by the Federal Reserve Bank Board. Sheshunoff's September 30, 1986 report, which would be the banks earnings or (losses) through the third quarter, showed the following income and (loss) for Norwest Banks:

1. Norwest Bank - Billings	(\$4,535,000)
2. Norwest Bank - Great Falls	(\$ 886,000)
3. Norwest Bank - Anaconda, Butte	\$ 859,000
4. Norwest Bank - Helena	\$ 671,000
5. Norwest Bank - Kalispell	\$ 802,000

It is quite evident that if Senate Bill 198 passes the surviving corporation will have a loss. If that occurs no tax will be paid by Norwest because the huge losses in Billings will be offset against the profits in Anaconda, Butte, Helena and Kalispell. Therefore, based on this data and the amount of state corporation taxes paid to Butte-Silver Bow for Norwest, which was \$66,743 for the 1985 tax year would be entirely lost. This is further substantiated by the fact that year-to-date profits of Norwest Bank of Anaconda, Butte, through September 30, 1986 are very comparable to 1985 income figures.

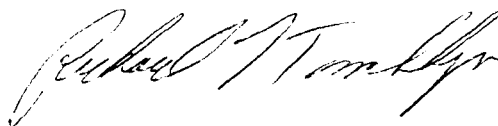
First Bank has six banks in Montana in the 100 to 499 million dollar assets size. These banks are (1) First Bank Western of Missoula; (2) First National Bank of Great Falls; (3) First National Bank of Bozeman; (4) First National Bank of Helena; (5) First Bank-Butte; and (6) First Bank of Billings. Sheshunoff's September 30, 1986 report showed the following income and (loss) figures:

1. First Bank Western-Missoula	\$1,448,000
2. First National Bank of Great Falls	\$ 788,000
3. First National Bank of Bozeman	( \$ 274,000)
4. First National Bank of Helena	\$ 945,000
5. First Bank-Butte	\$1,061,000
6. First Bank of Billings	(\$4,680,000)

As with the Norwest Banks, it is quite obvious that the surviving corporation will have a loss. If this occurs no tax will be paid by the First Bank System since the losses in Billings will offset any profits in Great Falls, Helena, Butte and Missoula. When comparisons are made between the 1985 net income figures and the first nine months of 1986 for First Bank-Butte, a reduction is evident. Sheshunoff reported net income of \$2,312,000 for 1985 and \$1,061,000 for the first nine months of 1986. For tax year 1985, Butte-Silver Bow received \$235,230 from the First Bank System. Based on these reduced income figures, Butte-Silver Bow will receive approximately \$143,900 for the 1986 tax year if Senate Bill #198 is defeated. This is calculated by annualizing the \$1,061,000 and applying that figure to the prior years data. If Senate Bill 198 passes, Butte-Silver Bow would receive nothing.

In summary, if Senate Bill 198 passes, Butte-Silver Bow would lose an estimated \$210,650 per year, based on 1986 data from lost revenue from Norwest and First Bank Systems banks. As stated earlier, our local government and School Systems cannot suffer this loss.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard L. Tamblyn".

Richard L. Tamblyn, C.P.A.

There is hereby submitted a Sponsor's Fiscal Note for: SB 198 third reading Version: \_\_\_\_\_

## DESCRIPTION OF PROPOSED LEGISLATION:

This bill would permit banks owned by a common holding company to be merged into a single corporation, and would also allow limited forms of branch banking.

## ASSUMPTIONS:

1. The two largest bank networks (FirstBanks and Norwest) will each merge all of their banks into single corporations prior to December 31, 1987.
2. Net operating losses carried forward from prior years will be fully utilized on corporation license tax returns filed in 1988 and 1989.
3. Net operating losses will continue at some banks in each system in 1987 and 1988, but reduced to half the levels of these losses in 1985 and 1986.
4. Profitable banks in each system will continue to operate in 1987 and 1988 at the same approximate profit levels they posted in 1985 and 1986.
5. The two systems, with 37% of all bank deposits in the state, would under existing law pay about 30% of all corporation license taxes projected (in HJR 41) to be paid by financial institutions in the next biennium.

## FISCAL IMPACT:

FY88

FY89

	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund	\$1,088,000	\$762,000	(\$326,000)	\$1,275,000	\$1,037,000	(\$238,000)
Distributions to local government	\$4,354,000	\$3,050,000	(\$1,304,000)	\$5,099,000	\$4,138,000	(\$961,000)
Total--corporation license tax	\$5,442,000	\$3,812,000	(\$1,630,000)	\$6,375,000	\$5,175,000	(\$1,200,000)

EXHIBIT 8  
DATE 3/17/87  
SB SB 198Rep. Alasca's  
Opposition Fiscal NotePRIMARY SPONSOR  
Fiscal Note for: \_\_\_\_\_ DATE \_\_\_\_\_  
Version: \_\_\_\_\_

## MONTANA LEGISLATURE

## SPONSOR FISCAL NOTE WORKSHEET

AUTHORITY: Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Completed worksheets are due in the Speaker's \_\_\_\_\_ President's \_\_\_\_\_ office on or before \_\_\_\_\_ with the completed worksheets.

TO: \_\_\_\_\_ Sponsor \_\_\_\_\_

This Sponsor Fiscal Note estimate and statement are requested for:

S.B. \_\_\_\_\_

H.B. \_\_\_\_\_

As Originally Introduced Bill

Second Reading (yellow) Copy

Third Reading (blue) Copy

Salmon Reference Copy

Ivory Final Reference Copy

Senate Amendments (pink)

House Amendments (green)

Other, as described \_\_\_\_\_

1. Estimated Effect on Revenue and/or Expenditures	First Fiscal Year of Next Biennium FY - 88			Second Fiscal Year of Next Biennium FY - 89		
	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law	Estimated Increase (Decrease)	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law	Estimated Increase (Decrease)
A. Effect on Revenue by Source: (List in Detail)						
Corporation license tax on financial institutions	5,442,000	3,812,000	(1,630,000)	6,375,000	5,175,000	(1,200,000)
TOTAL REVENUE						
B. Effect on Expenditures by Category:						
Personal Services						
Operating Expenses						
Capital Outlay						
Local Assistance, Grants Benefits & Claims						
TOTAL EXPENDITURES						
NET EFFECT (A LESS B)						
C. Fund Information:						
General Fund	1,088,000	762,000	(326,000)	1,275,000	1,037,000	(238,000)
earmarked Special Revenue Fund						
Fed & Private Special Revenue						
Capital Project Fund						
Proprietary Fund						
Other (describe) local gov	4,354,000	3,050,000	(1,304,000)	5,099,000	4,138,000	(961,000)



## SPONSOR FISCAL NOTE WORKSHEET

II. ASSUMPTIONS USED IN OBTAINING ESTIMATES:  
(Please list clearly and in detail; use extra sheets if necessary.)  
List assumptions made due to the derivation of the fiscal note. Certain costs associated with the proposed legislation can be absorbed without additional funds.  
Indicate this as an assumption. If no dollar estimates have been presented, list reasons in this space.

- (1) The two largest bank networks (First Banks and Norwest) will merge each of their banks into single corporations prior to December 31, 1987.
- (2) Net operating losses carried forward from prior years will be fully utilized on tax returns filed in 1988 for calendar year 1987 and 1989 for calendar year 1988.
- (3) Net operating losses will continue at some banks within each system in 1987 and 1988, but reduced to half the level of these losses in 1985 and 1986.
- (4) Profitable banks in each system will continue to operate in 1987 and 1988 at the same approximate profit levels they posted in 1985 and 1986.
- (5) The two systems, with 37% of all bank deposits in the state, would under existing law pay about 30% of all corporation license taxes projected to be paid by financial institutions in the next biennium.

III. DERIVATION OF ESTIMATES:  
Show basic calculations or provide a brief description of the techniques used to obtain estimates; also, cite sources of basic data used for projections.

First Banks reported net income in 12 banks (excluding the banks it is now selling) of \$8.6 million in calendar year 1985 and \$-0.1 million through the first nine months of 1986 (Sheshunoff & Co. reports). This represents positive income of \$16.9 million at 8 banks offset by losses of \$8.4 million at 4 banks. The assumptions dictate that operating losses carried forward through a merger would reduce the system's net income by \$3.8 million for 1987 and by \$3.8 million in 1988. The assumptions posit losses at Havre, Miles City, Livingston, and Billings diminishing from \$7.6 million in 1986 (projected) to \$3.8 million in 1987 and 1988.

The Norwest system reported negative net income in both 1985 and the first nine months of 1986 (Sheshunoff & Co. reports). This represents positive income of \$6.4 million from Butte-Anaconda, Helena, and Kalispell more than offset by losses of \$16.1 million at Billings, Dillon, Lewistown, and Great Falls. The assumptions dictate that losses carried forward through a merger would keep the system's income negative even if losses at the four losing banks are cut in half.

IV. AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:  
Provide an estimate of the local impact.

Effect on county or other local revenue: Local governments now receiving revenue from corporation license taxes on profitable First or Norwest banks within their counties (e.g., Silver Bow, Lewis and Clark, Missoula, Flathead) would lose all this revenue as long as past and present operating losses elsewhere in each bank network are equal to or greater than net income at the profitable banks. Once a network became profitable overall, local governments with the more profitable banks would lose revenue to local governments with the less profitable banks of a system.

V. LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:  
Use this space to describe any potentially significant effects the proposed legislation might have on expenditures and/or revenues for subsequent fiscal years, give quantitative estimates whenever possible.

VI. TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:  
Explain.

Person Who Prepared Estimates:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title or Organization)

\_\_\_\_\_  
(Date)

Speaker's Office or President's Office:

Date Received \_\_\_\_\_

Date Given to Sponsor \_\_\_\_\_

\_\_\_\_\_  
(Phone No.)

EXHIBIT 6DATE 3-27-87SB CB 1977  
*J. Sub.*

EXHIBIT I: TOTAL BANK ASSETS AS OF 12/31 HAVRE MONTANA  
\$'s IN 000's  
PERCENTS ARE OF THE TOTAL COMMUNITY

	FNB	CITIZENS	FSB	COMMUNITY	FNB	CITIZENS
12/31/82	83,674	52,109	22,508	158,291	52.86%	32.92%
12/31/83	89,387	55,375	28,799	173,561	51.50%	31.91%
12/31/84	83,162	56,299	25,870	165,331	50.30%	34.05%
12/31/85	81,856	52,565	26,243	160,664	50.95%	32.72%
12/31/86	81,518	53,782	25,766	161,066	50.61%	33.39%
CHANGE	<u>(2,156)</u>	<u>1,673</u>	<u>3,258</u>	<u>2,775</u>		
	=====	=====	=====	=====		

EXHIBIT II: TOTAL BANK DEPOSITS AS OF 12/31 HAVRE MONTANA  
 \$'S in 000's  
 PERCENTS ARE OF THE TOTAL COMMUNITY

	FNB	CITIZENS	FSB	COMMUNITY	FNB	CITIZENS	FSB
12/31/82	67,812	46,224	20,312	134,348	50.47%	34.41%	15.12%
12/31/83	77,464	47,089	26,700	151,253	51.21%	31.13%	17.65%
12/31/84	74,663	46,613	23,855	145,131	51.45%	32.12%	16.44%
12/31/85	67,946	43,749	23,097	134,792	50.41%	32.46%	17.14%
12/31/86	68,185	45,606	22,811	136,602	49.92%	33.39%	16.70%
CHANGE	----- 373 -----	----- (618) -----	----- 2,499 -----	----- 2,254 -----			

EXHIBIT III: TOTAL BANK LOANS AS OF 12/31 HAVRE MONTANA  
 \$'s in 000's  
 PERCENTAGES ARE OF THE TOTAL COMMUNITY

	FNB	CITIZENS	FSB	COMMUNITY	FNB	CITIZENS	FSB
12/31/82	57,852	28,776	15,309	101,937	56.75%	28.23%	15.02%
12/31/83	57,726	18,598	19,817	96,141	60.04%	19.34%	20.61%
12/31/84	37,802	29,834	19,570	87,206	43.35%	34.21%	22.44%
12/31/85	31,062	24,830	17,712	73,604	42.20%	33.73%	24.06%
12/31/86	26,301	19,240	19,560	65,101	40.40%	29.55%	30.05%
CHANGE	----- (31,551) -----	----- (9,536) -----	----- 4,251 -----	----- (36,836) -----			
% CHANGE	-54.54%	-33.14%	27.77%	-36.14%			

EXHIBIT IV: LOAN/DEPOSIT RATIO AS OF 12/31 HAVRE MONTANA

	FNB	CITIZENS	FSB	COMMUNITY
12/31/82	85.31%	62.25%	75.37%	75.88%
12/31/83	74.52%	39.50%	74.22%	63.56%
12/31/84	50.63%	64.00%	82.04%	60.09%
12/31/85	45.72%	56.76%	76.69%	54.61%
12/31/86	38.57%	42.19%	85.75%	47.66%

EXHIBIT 1-  
DATE 3/19/86  
SB SB 1986  
*John Doe*

MONTANA BANKING STATISTICS  
Agricultural Loans  
Bancpen Reports  
1986, 2nd Quarter

	<u>Total Loans to Farmers (000)</u>
NORWEST	65,097
FIRST INTERSTATE	86,810
FIRST BANK SYSTEM	152,962
BANK OF MONTANA SYSTEM	17,207
MONTANA BANK SYSTEM	27,785
WESTERN MONETARY, INC.	15,181
YELLOWSTONE BANKS	19,391
EVERGREEN	346
INTERMOUNTAIN BANKS	98
CITIZENS DEVELOPMENT, CO.	2,439
GUARANTY DEVELOPMENT, CO.	6,767
 TOTAL MBHC's	 394,083
REGIONAL MBHC's (First Bank, Norwest, First Int.)	304,869
INDEPENDENT BANKS	336,673
TOTAL MARKET	730,756

EXHIBIT 11  
DATE 3/17/87  
HB 1-18  
March 17, 1987

TAX EFFECT OF SENATE BILL 198  
George D. Anderson, C.P.A.

Senate Bill 198 is designed to be revenue neutral in the long run. However, the bill as originally written could cause differences in tax in the various jurisdictions in the short run.

Therefore, the sponsors of SB 198 have proposed an amendment which will leave the computation for corporation license tax exactly as it is now for the four tax years after it goes into affect. By doing this, the operating losses of any one bank in a merged group will have no affect on any other merged bank's taxable income during those four tax periods. Also, upon the merger or consolidation of any group of banks, any carryforward losses that a bank in the group generated prior to merger is lost forever.

The illustration attached hereto demonstrates what the outcome would be of merging five banks, three of which were profitable and two of which were unprofitable in 1986. It was necessary, of course, to assume what the operating results of the banks would be for 1987 and later periods. Operating results for 1986 have been determined and no change can be affected in the tax payable by the banks for that year unless there is a loss in 1987.

If the group of banks in the illustration merged as of January 1, 1988, they would compute and pay corporation license tax for 1987 under the present law. In 1988, the merged banks' corporation license tax would be computed based on separate accounting exactly as they are now with one basic exception, the loss carryover that might have been available to an individual bank prior to the merger or consolidation would not be available after the merger (see BIL bank in illustration). The remaining operating loss carryforward of that bank from 1986 (\$3,000) would not be available to the bank after December 31, 1987. This will result in additional tax revenues to certain taxing jurisdictions if banks merge that have carryover losses.

In the fifth tax year of the merger or consolidation, the bank's income would be netted together for all banks and the resulting tax would be apportioned to the various taxing jurisdictions based on the ratio of the bank's deposits in that jurisdiction to deposits in all the merged banks. This would result in all jurisdictions receiving some of the tax revenues whether their bank made a taxable profit or not.

If SB 198 is enacted and banks that are able to do so under the law merge, then beginning with the fifth tax year, the revenue in the taxing jurisdictions will level out and be more stable over the long run. The profits of the merged banks would be spread over all of the taxing jurisdictions rather than having some receive nothing and others receive a large windfall. Profits can change from time to time and the winners now will become losers and vice versa if the law remains as it is now.

SENATE BILL 198  
ILLUSTRATION OF TAX COMPUTATION

XYZ Banks

	<u>BIL</u>	<u>HLN</u>	<u>BTE</u>	<u>MSL</u>	<u>GTF</u>
<u>Under Present Law</u>					
1986 Taxable					
Income	\$(5,000.00)	\$ 8,000.00	\$12,000.00	\$ 2,000.00	\$(2,000.00)
Tax Paid 5/87	\$ 50.00	\$ 540.00	\$ 810.00	\$ 135.00	\$ 50.00
Assumed 1987					
Taxable					
Income	\$ 2,000.00	\$ 9,000.00	\$10,000.00	\$ 1,500.00	\$ 4,000.00
(1) Tax Paid					
5/88	\$ 50.00	\$ 607.50	\$ 675.00	\$ 101.25	\$ 135.00

If Merged, All Above Banks As Of 1/1/88

Assumed 1988					
Taxable					
Income	\$ 6,000.00	\$10,000.00	\$ 7,000.00	\$ 3,000.00	\$(1,000.00)
(2) Tax Paid					
5/89	\$ 405.00	\$ 675.00	\$ 472.50	\$ 202.50	\$ 50.00
Assumed 1989					
Taxable					
Income	\$10,000.00	\$ 8,000.00	\$10,000.00	\$(5,000.00)	\$(3,000.00)
(3) Tax Paid					
5/90	\$ 675.00	\$ 540.00	\$ 675.00	\$ 50.00	\$ 50.00
<u>Total For 4 Periods 1986, 87, 88 and 89</u>					
SB 198	\$ 1,180.00	\$ 2,362.50	\$ 2,632.50	\$ 336.25	\$ 285.00
Law Remains					
Same	\$ 977.50	\$ 2,362.50	\$ 2,632.00	\$ 251.25	\$ 200.00

- (1) Assume that entire 1986 loss was carried forward to 1987 (no carry-back).
- (2) The remaining \$3,000 loss on BIL would be lost forever. The \$1,000 loss on GTF could be carried over to the fifth tax year of the merged banks if not utilized in the next three years.
- (3) The \$5,000 loss on the MSL bank could be carried back to 1988 and \$152.50 would be refunded. The \$3,000 loss on the GTF bank would be carried forward and could be used by the merged banks in the fifth year if not used in the next two years.

AMENDMENT TO SB 198

(1) Page 5, line 5, strike all of the language in subsection (6) and insert:

"(6) Notwithstanding the provisions of 15-31-702, 15-31-113, and 15-31-114(2)(b)(i), in the case of a consolidation or merger of banks under this section, each of the consolidated or merged banks shall maintain separate accounting records on a basis consistent with their records prior to the consolidation or merger. Any net operating loss incurred within the first four tax years after consolidation or merger cannot be used to offset profits in the same period by another of the consolidated or merged banks. Unused net operating losses incurred during that period would be available to reduce taxable income of that consolidated or merged bank after the four tax year period. During the periods ending after the first four tax periods, any current net operating losses incurred by one consolidated or merged bank would be available to offset profits by any other consolidated or merged bank. During the period ending with the first four tax periods, corporation license taxes would be distributed to the counties on the basis of the separate incomes of the merged banks in each county. After the first four tax periods, the taxes would be allocated to the counties on the basis of the deposits in each county as of the end of each taxable year."

(2) Page 14, line 4, insert a new section:

"Section 8. Section 15-31-113, is amended to read:

"15-31-113. Except as provided in 32-1-371(6). Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) No corporation is exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

(3) Renumber all subsequent sections

(4) Page 15, line 13, strike "There" insert: "Except as provided in 32-1-371(6), there"

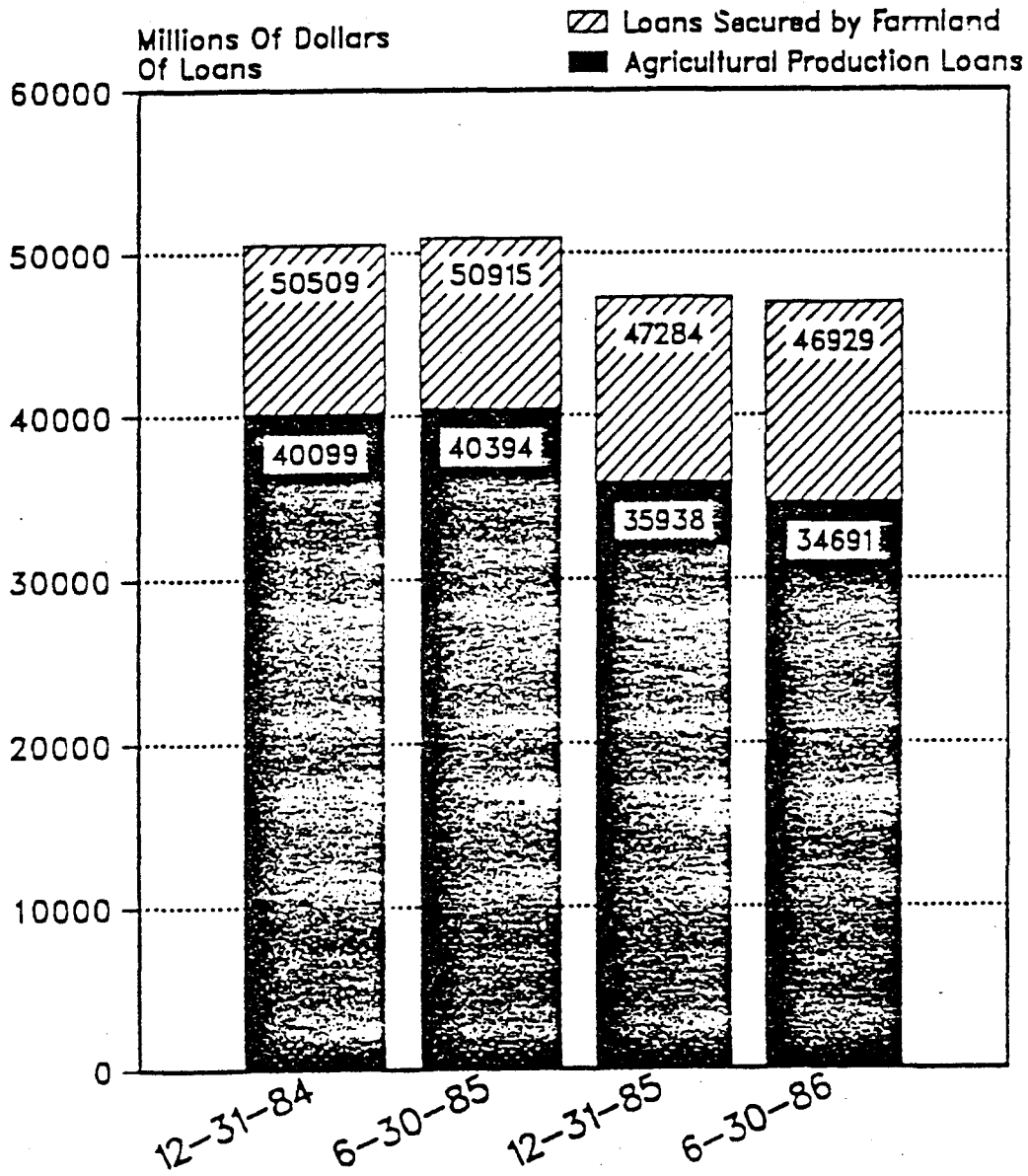


## MAJOR POINTS ON FARM BANK PERFORMANCE DURING THE FIRST HALF OF 1986

- ✓ o While total loans and leases increased steadily at FDIC-insured commercial banks, agriculture-related loans decreased from the end of 1984 to the middle of 1986. Loans to finance agricultural production decreased while loans secured by farmland increased. (See Table I.)
- ✓ o Delinquency and loss rates on agricultural production loans increased substantially from the end of 1984 to the middle of 1986. Similar figures for non-farm-related loans remained fairly stable over the same period. In the first half of 1986, 7.7 percent of farm loans and only 2.8 percent of non-farm loans were nonperforming. Net loss rates were 3.5 and 0.8 percents, respectively. (See Table II.)
- o In the first half of 1986, the six states with the highest delinquency and loss rates on agriculture-related bank loans were California, Colorado, Iowa, Minnesota, Missouri, and South Dakota. (See Table III.)
- o Over half of the farm banks have between \$5 and \$25 million of assets. Over forty percent have between \$25 and \$100 million. The number of farm banks has decreased from 4,909 at the end of 1984 to 4,802 in the middle of 1986. (See Table IV.)
- o Farm bank profitability has dropped dramatically since 1984, showing some improvement in the first half of 1986. The profitability of nonfarm banks of comparable size remained fairly stable over the same period and has been consistently higher than farm bank profitability. For the first half of 1986, the returns on assets and equity were 0.7 and 7.7 percents, respectively, for farm banks. For nonfarm banks, the same figures were 0.9 and 11.0 percents. Capital ratios for both groups have remained stable with farm banks consistently showing higher ratios. At the end of June 1986, farm banks averaged a 9.0 percent capital ratio while the nonfarm bank sample averaged 7.8 percent. (See Table V.)
- o Assets, equity, and loans have grown more slowly at farm banks than at nonfarm banks of similar size since the end of 1984. (See Table VI.)
- o Farm-related loans of both farm banks and similar-sized nonfarm banks have decreased since December of 1984. Farm-related loan portions have also decreased, albeit slightly. Loans secured by farmland have increased in both bank classes, increasing as a fraction of real estate loans in farm banks while decreasing in nonfarm banks. (See Table VII.)
- o The delinquency and loss rates on loans have increased for both farm and nonfarm banks of equivalent size from 1984 to the middle of 1986. In 1986, both rates were about twice as high for farm banks as for comparable nonfarm banks. (See Table VIII.)
- o The number of farm banks losing money decreased to 843 for the first half of 1986 from 882 for 1985. The number of farm banks with more past due or nonaccruing loans than equity capital increased from 208 to 319 over the same period. (See Table IX.)
- o The four states with the most farm banks and farm bank assets are Illinois, Iowa, Kansas, and Minnesota. The four states whose farm banks have the largest portion of the banking business are Iowa, Nebraska, North Dakota, and South Dakota. (See Table X.)
- ✓ o The six states whose farm banks are the most troubled by losses and nonperforming loans are Idaho, Minnesota, Wyoming, and, especially, Colorado and Montana. (See Tables XI and XII.)

CHART I

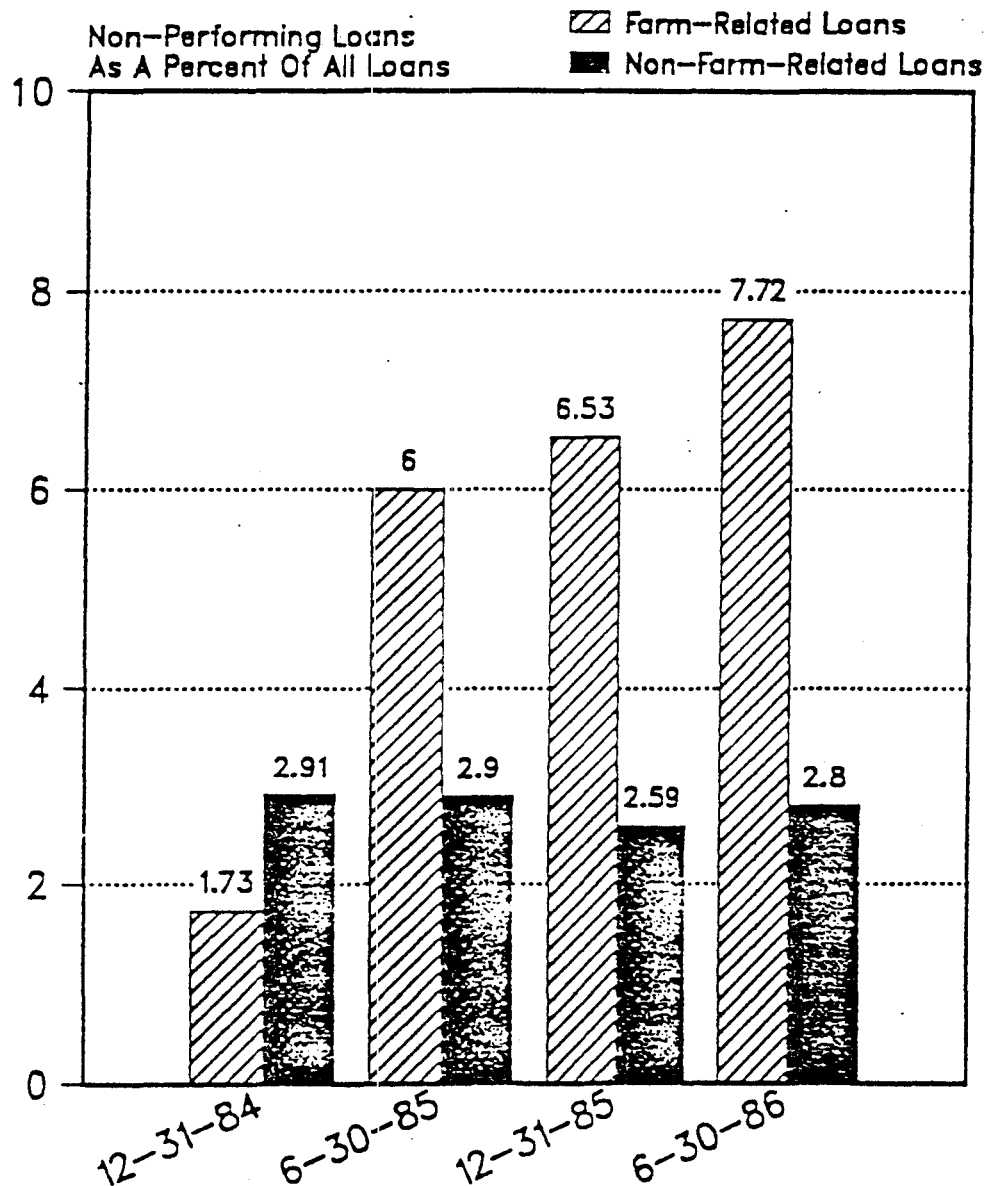
## Agriculture-Related Loans At FDIC-Insured Commercial Banks



Data from Table I.

CHART II

## Delinquency Rates on Farm And Non-Farm Loans At FDIC-Insured Commercial Banks



Data from "All Delinquent Loans" in Table II.

Note: "All delinquent loans" include loans whose payments are ninety or more days overdue and loans which are no longer accruing.

TABLE XII

## PROBLEM LOANS OF FDIC-INSURED FARM BANKS BY STATE

June 30, 1986

State <sup>1</sup>	Number of Farm Banks Losing Money <sup>2</sup>		Banks with More Nonperforming Loans than Capital <sup>3</sup>		Nonperforming Loans at Farm Banks <sup>3</sup> (\$000,000)		Net Loan Losses at Farm Banks (\$000,000)		Nonperforming Loans as a Percent of All Loans <sup>3</sup>		Net Loan Losses as a Pct. of All Loans		Provisions for Loan Losses as a Pct. of All Loans	
	No.	Rank	No.	Rank	Loans	Rank	Loss	Rank	%	Rank	%	Rank	%	Rank
ALAB.	2	24	0	--	13	28	2	29	3.21	24	.48	21	.38	29
ARK.	11	15	2	19	58	18	7	19	3.57	22	.44	23	.58	19
CAL.	1	29	1	24	16	27	3	25	6.32	8	.98	8	.46	26
COL.	23	9	11	10	125	11	22	9	7.32	2	1.28	3	1.25	6
FLA.	1	29	0	--	11	30	2	27	3.04	26	.60	18	.80	18
GA.	4	19	1	24	28	23	4	23	2.38	31	.33	29	.38	28
IDAHO	2	24	3	17	36	21	2	26	6.35	6	.42	25	.53	21
ILL.	62	6	13	8	292	3	53	2	4.16	19	.76	15	.90	14
IND.	16	14	7	13	113	13	17	10	3.16	25	.49	20	.50	22
IOWA	140	1	42	2	412	1	122	1	5.68	12	1.68	1	1.74	1
KANS.	88	3	36	3	220	6	50	5	4.78	16	1.08	5	1.30	4
KENT.	3	21	2	19	59	17	8	15	2.84	28	.39	28	.44	27
LOU.	6	18	7	13	64	16	8	16	6.34	7	.78	13	.83	16
MICH.	6	17	4	16	71	15	6	20	6.02	11	.55	19	.94	13
MINN.	106	2	47	1	322	2	52	4	6.21	10	1.00	7	1.22	7
MISS.	2	24	0	--	25	24	4	22	3.00	27	.46	22	.48	25
MO.	64	5	26	5	226	5	39	8	5.54	15	.95	9	1.16	9
MONT.	23	9	18	6	135	10	13	14	8.08	1	.76	16	1.27	5
NEBR.	82	4	32	4	238	4	53	3	5.59	14	1.24	4	1.46	3
N.M.	2	24	1	24	18	26	2	28	3.56	23	.42	27	.48	24
N.Y.	0	--	0	--	5	33	--	35	2.39	30	.01	35	.27	34
N.C.	1	29	0	--	2	3	--	32	1.23	34	.20	32	.88	15
N.D.	22	12	13	8	125	12	15	12	6.22	9	.77	14	1.09	11
OHIO	4	19	2	19	48	19	4	21	2.38	32	.21	31	.31	31
OKLA.	39	8	15	7	193	8	40	7	6.67	3	1.38	2	1.54	2
OREG.	3	21	2	19	13	29	1	30	4.24	17	.44	24	.32	30
PENN.	0	--	0	--	5	32	--	33	0.99	35	.03	34	.10	35
S.D.	20	13	11	10	108	14	16	11	6.38	5	.92	10	1.12	10
TENN.	3	21	1	24	36	22	7	18	4.17	18	.83	12	.82	17
TEXAS	47	7	11	10	198	7	46	6	3.64	21	.85	11	1.04	12
VIR.	0	--	0	--	7	31	1	31	1.39	33	.21	30	.29	33
WASH.	2	24	2	19	24	25	3	24	5.60	13	.65	17	.55	20
W.VA.	0	--	0	--	2	34	--	34	2.44	29	.17	33	.29	32
WISC.	23	9	5	15	145	9	15	13	4.02	20	.42	26	.49	23
WYOM.	10	16	3	17	46	20	7	17	6.51	4	1.05	6	1.19	8

<sup>1</sup> The states (including Puerto Rico) not included among the thirty-five ranked had less than six farm banks (as defined below).

<sup>2</sup> An FDIC-insured commercial bank is included here as a "farm bank" if more than seventeen percent of its loans and leases are loans to finance agricultural production or other loans to farmers (consolidated bank) or loans secured by farmland (domestic bank offices) and if it has no more than \$500 million of assets.

<sup>3</sup> Nonperforming loans include loans past due ninety or more days and still accruing and nonaccruing loans.

Source: Consolidated Reports of Condition submitted to the Federal Deposit Insurance Corporation on June 30, 1986.

TABLE XI

PROFITABILITY AND STABILITY OF FDIC-INSURED FARM BANKS BY STATE<sup>1,2</sup>

June 30, 1986

State	Return on Assets		Return on Equity		Percent of Farm Banks Losing Money		Capital Ratio		Nonperforming Loan to Capital Ratio <sup>3</sup>		Percent of Farm Banks with More Nonperforming Loans <sup>3</sup> than Capital		Farm-Related Loan Percentage	
	%	Rank	%	Rank	%	Rank	%	Rank	%	Rank	%	Rank	%	Rank
ALAB.	1.54	2	15.19	3	5.26	27	10.17	3	13.04	31	.00	28	24.46	30
ARK.	1.19	10	12.10	12	11.00	23	9.84	6	16.88	25	2.00	25	29.94	17
CAL.	.75	22	10.20	17	14.29	18	7.31	34	59.51	1	14.29	5	23.91	31
COL.	.21	34	2.39	34	24.21	5	8.91	19	47.83	5	11.58	6	37.52	8
FLA.	.98	14	10.28	15	7.14	25	9.50	9	17.50	24	.00	28	24.76	28
GA.	1.36	4	13.83	9	4.60	30	9.85	5	13.48	29	1.15	27	27.72	22
IDAHO	.82	20	9.69	19	16.67	13	8.42	28	48.63	4	25.00	1	41.11	6
ILL.	.74	23	8.35	23	12.35	20	8.89	22	20.41	21	2.59	21	34.37	13
IND.	.89	18	10.33	14	11.03	22	8.58	26	18.08	22	4.83	19	29.58	18
IOWA	.17	35	2.03	35	26.42	1	8.61	25	28.45	16	7.92	15	44.42	5
KANS.	.53	24	5.88	24	19.78	10	8.97	17	24.86	17	8.09	13	45.60	4
KENT.	1.33	5	13.39	10	2.42	31	9.90	4	13.83	28	1.61	26	28.21	20
LOU.	.84	19	8.99	21	14.29	17	9.35	10	36.00	8	16.67	3	27.12	26
MICH.	.33	33	4.58	33	20.00	8	7.12	35	49.72	3	11.43	7	27.64	24
MINN.	.40	31	4.59	32	24.42	4	8.65	24	36.55	7	10.83	9	39.79	7
MISS.	1.27	7	13.85	8	4.65	29	9.14	14	16.76	26	.00	28	32.14	14
MO.	.45	28	5.36	27	19.81	9	8.43	27	30.48	13	8.05	8	35.93	10
MONT.	.37	32	4.66	30	25.27	3	7.98	32	51.81	2	19.78	2	36.99	9
NEBR.	.49	25	5.44	26	21.52	6	9.06	15	28.78	15	8.40	12	56.45	1
N.M.	1.00	13	10.84	13	13.33	19	9.22	12	21.77	19	6.67	18	28.08	21
N.Y.	1.48	3	14.41	5	.00	32	10.26	2	11.42	33	.00	28	27.67	23
N.C.	1.19	11	12.35	11	16.67	12	9.62	7	6.34	35	.00	28	22.09	32
N.D.	.91	16	10.24	16	14.86	16	8.90	21	32.47	12	8.78	11	46.61	3
OHIO	1.24	8	13.93	7	4.76	28	8.90	20	13.90	27	2.38	22	27.48	25
OKLA.	.46	27	4.97	29	18.84	11	9.32	11	32.69	11	7.25	17	34.57	12
OREG.	.42	29	5.16	28	21.43	7	8.17	31	30.27	14	14.29	4	26.04	27
PENN.	1.22	9	14.92	4	.00	32	8.20	29	7.87	34	.00	28	21.19	34
S.D.	.79	21	8.77	22	16.53	14	9.05	16	33.92	9	9.09	10	54.00	2
TENN.	1.27	6	14.17	6	6.25	26	8.96	18	21.70	20	2.08	24	24.64	29
TEXAS	.89	17	9.36	20	14.87	15	9.53	8	17.87	23	3.48	20	31.69	16
VIR.	1.18	12	15.33	2	.00	32	7.71	33	13.28	30	.00	28	21.31	33
WASH.	.48	26	5.85	25	11.11	21	8.17	30	41.93	6	11.11	8	35.55	11
W.VA.	2.10	1	20.32	1	.00	32	10.34	1	12.50	32	.00	28	19.77	35
WISC.	.94	15	10.16	18	9.66	24	9.21	13	23.32	18	2.10	23	31.93	15
WYOM.	.41	30	4.64	31	25.64	2	8.79	23	33.13	10	7.69	16	29.15	19

<sup>1</sup> The states (including Puerto Rico) not included among the thirty-five ranked had less than six farm banks (as defined below).

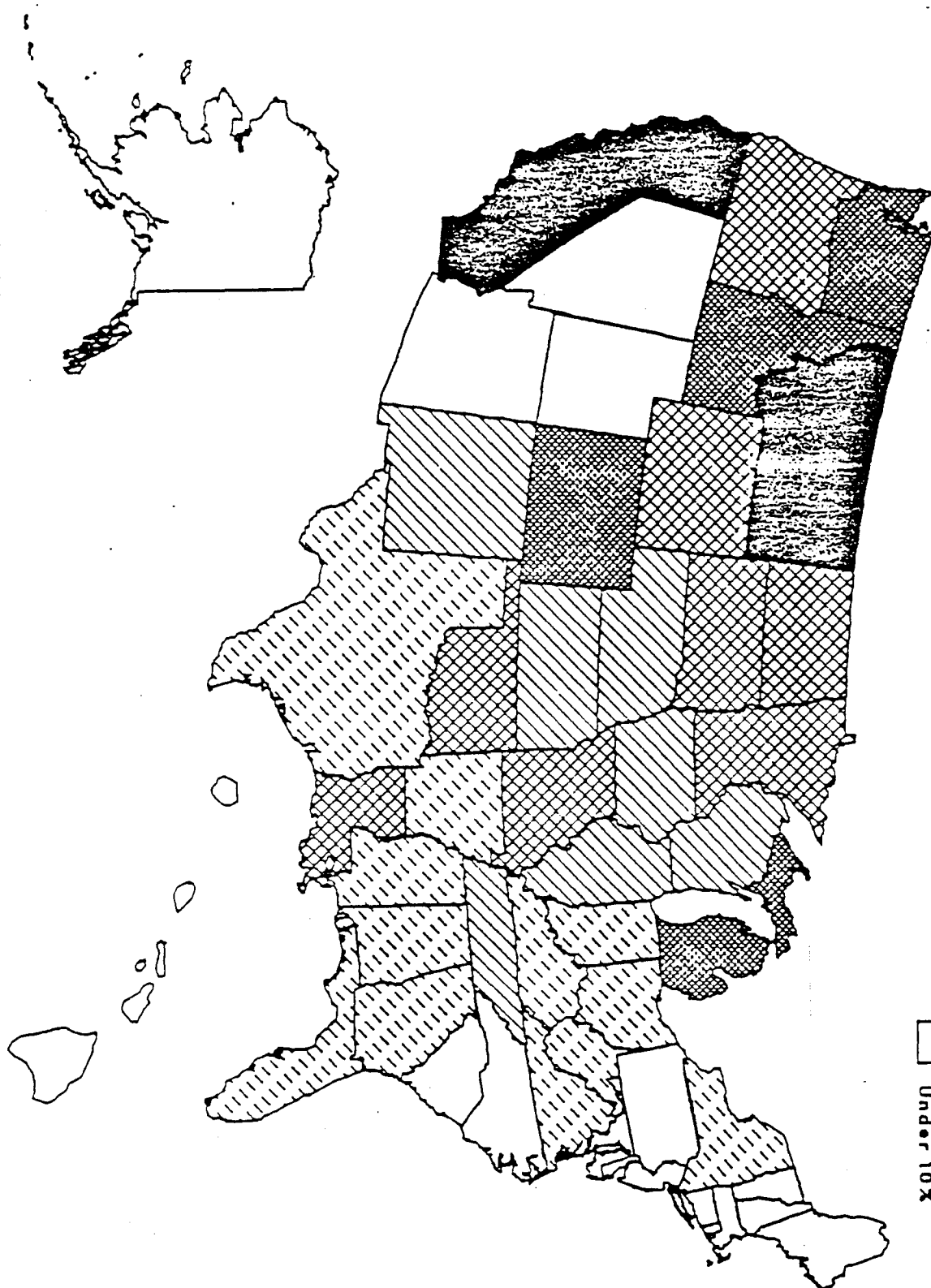
<sup>2</sup> An FDIC-insured commercial bank is included here as a "farm bank" if more than seventeen percent of its loans and leases are loans to finance agricultural production or other loans to farmers (consolidated bank) or loans secured by farmland (domestic bank offices) and if it has no more than \$500 million of assets.

<sup>3</sup> Nonperforming loans include loans past due ninety or more days and still accruing and nonaccruing loans.

Source: Consolidated Reports of Condition submitted to the Federal Deposit Insurance Corporation on June 30, 1986.

CHART VII

# Non-Performing Loans as a Percent of Total Equity Capital at FDIC-Insured Farm Banks



One Texas Center  
505 Barton Springs Road  
Austin, Texas 78704  
(512) 472-2244

## MONTANA BANK EARNINGS DECREASE 80 PERCENT

AUSTIN, TEXAS, February 12, 1987 -- Sheshunoff & Company, Inc., the nation's leading bank information and consulting firm, today reported that combined earnings for all Montana banks fell 80 percent to \$7 million for the first nine months of 1986 when compared with the same period last year. The data was released in Sheshunoff's latest Bank Quarterly Ratings publication.

Montana banks compared unfavorably to a national decrease in earnings of 4.26 percent, from \$14.2 billion to \$13.6 billion. Montana banks ranked forty-seventh in the nation in total earnings.

"The wide variations in earnings performance from state to state indicate that strong local and regional economies go hand in hand with high earnings, while weak economies result in higher amounts of nonperforming loans," said Alex Sheshunoff, President of Sheshunoff & Company, Inc.

Montana's level of nonperforming loans as a percent of total loans was 6.00 as of September 30, 1986. The state ranked forty-eighth in the nation in nonperforming loans, with three states having a higher percentage. On a national scale, nonperforming loans represented 2.9 percent of total loans. Only thirteen of the twenty-seven states east of the Mississippi River reported an increase in nonperforming loans, compared with twenty-three states in the West.

The state with the lowest level of nonperforming loans was New Hampshire with 0.91 percent, while the highest was Alaska with 9.09 percent. Nonperforming loans include nonaccruing loans and loans that are 90 days past due.

Montana banks reported -4.2 percent loan growth for the first nine months of 1986, compared with a national growth rate of 2.9 percent, and 1.65 percent in net charge-offs to average loans against the national rate of 0.67 percent. Total assets decreased by 1.3 percent, compared with a national increase of 2.4 percent.

One bank failed in Montana during all of 1986. In comparison, 145 banks failed nationwide during the year.

## VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. SENATE BILL NO. 374

DATE MARCH 17, 1987

SPONSOR SENATOR TED NEUMAN

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## COMMITTEE

DATE        MARCH 17, 1987

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER  
BUSINESS AND LABOR COMMITTEE

BILL NO. 241

DATE \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Art Wiedeman	1st Ave - 1st Bank		X
Allen R. L.	College Park Road		X
Larry W. Jackson	Flower Hill P.O. Bldg.		X
H. H. Armit	"		X
Tom Wessinger	Bank Ward Village		X
Gordon Deane-Ross	Mountain Ridge, Wisc.		
Art Wied	Mountain Ridge System	✓	
Michael A. Mauer	First Security Bldg. Fl. 1001		X
Clint W. Rouse	Flower Hill, Mont. Ave		X
Pick HART	BANK OF MONT. - HELENA	✓	
John P. B. Wynn	First Fl. Helena	✓	
Jack J. King	Helena		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## BUSINESS AND LABOR

BILL NO. SENATE BILL NO. 198

SPONSOR            SENATOR GENE THAYER

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

CS-33

VISITORS' REGISTER  
BUSINESS AND LABOR COMMITTEE

BILL NO. 188 DATE \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Gene [unclear]	Bellevue [unclear]		X
Art [unclear]	Cut Bank - 1st [unclear]		X
Allen [unclear]	Valley Brook - [unclear]		X
[unclear]	Box 4 [unclear]		X
Dick [unclear]	Marina [unclear]		X
Larry [unclear]	Flathead Park - [unclear]		X
H. H. [unclear]			X
[unclear]	Mountain Base [unclear]		✓
[unclear]	Bank [unclear]		X
[unclear]	MASBO		X
[unclear]	St. [unclear]		
[unclear]	[unclear]		
Michael A. [unclear]	[unclear]		X
Larry [unclear]	[unclear]	X	
[unclear]	[unclear]	X	
[unclear]	[unclear]	X	
[unclear]	[unclear]	✓	
[unclear]	[unclear]		X
Charles G. Stearns	Bellevue	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME \_\_\_\_\_ BILL NO. \_\_\_\_\_

ADDRESS \_\_\_\_\_ DATE \_\_\_\_\_

WHOM DO YOU REPRESENT? \_\_\_\_\_

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*gene allen*  
*meg hudson* Northam Plains Reserve Council  
*Kellogg*

MEETING MINUTES  
WORKERS COMPENSATION SUBCOMMITTEE  
MARCH 17, 1987

The meeting of the Workers' Compensation Subcommittee was called to order at 12:50 on March 17, 1987 in room 312f of the state capitol building by Chairman Bill Glaser.

All members were present.

MEDIATION

(3a:000) Representative Driscoll questioned time limits and whether they worked in the law. He stated that the mediator should be an advocate for the unrepresented claimant. Time limits should be set so that a claimant can get to mediation as soon as possible. Bob Robinson, administrator of WCD, confirmed that this was the intent of the division.

George Wood, executive secretary of the Montana Self Insurers Association, said he strongly supports the mediation section of the act. He pointed out that it would expedite disputed claims and reduce attorney involvement. The lack of dates and time limits was omitted in the act primarily due to the concern that the one who would need the delay would be the injured worker. The insurer would have his information on which he based his denial. But the injured worker may not have and the mediator would have to look up this information for him and therefore some type of flexible time frame in the rules would be much fairer to the injured worker. He supports the mediation section as a unique and desirable addition to the Workers Compensation Act.

(3a:053) Carl Englund, Trial Lawyers Association, explained the mediation process. He said major complaints with the existing system were too much litigation and attorney involvement. In order to limit court cases, options were limited to simplify the system. Also the insurer must be sent a detailed demand with a limited time to respond. This gave the insurer an opportunity to evaluate the case and then resolve the case before the case was ever filed. He said the mediation process set up is fair but should have deadlines in the act. He said a deadline on when the mediator had to get his decision out was also needed. He pointed out that there were a lot of reasons for delays or extensions in terms of getting the case to mediation. He cited examples such as not having medical bills and noted there was a need for flexibility.

Representative Driscoll pointed out that non-binding arbitration was similar to mediation. He agreed there should be

a limit on time in order to write the decision. He questioned whether rebuttal statements would be allowed under this bill.

Mr Englund replied this the first time anyone asked this question. The word mediation was used so the process would be less formal and to eliminate briefs afterwards or arguments. He pointed out that the 30 days for briefs, 30 days for replies, and 30 days for a decision, was too long. He stated there would be a greater chance of lawyer involvement in a formal process.

(3a:148) Bob Jensen, WCD, commented that the time extension should be on the front end of the process when the parties are gathering information. He stated once the mediation conference had been conducted that should be the end of the submission of information. From that point on the mediator would have a limited number of days to issue his recommendation.

Mr Englund said that the claimant would be coming in unrepresented and would be disadvantaged. The claimant needs time to gather records. He pointed out the insurer has the opportunity to delay paying the claimant.

Rep Driscoll pointed out that the insurance company or the state fund would be in a superior position versus the injured worker. He said that the injured worker would be up against professionals and would be in an awkward position trying to gather evidence and prove their case. He said there is no way under this bill that the injured worker would be eligible for an attorney because they will have no money to pay that attorney.

(3a:224) Mr Robinson then discussed sections 58-59. He explained that the advisory council works with the judge that provides powers to the court. He referred to the beginning of section 59 where the stricken language says the judge is not bound by rules of evidence. He said that causes severe problems for people who are defending themselves before the court. He stated this was changed and language added to section 58 giving the judge and the court the power to enforce order and compel obedience to the judgements.

(3a:249) Judge Tim Reardon, WCD, commented on section 58 of SB315 which deals with the court powers. He said that the purpose is to clarify the judges powers. He said it has always been nebulous whether the workers compensation judge had the power to subpoena witnesses. He pointed out that a carrier or self insurer can decline to pay the judgement and earn interest on the money in the bank. He noted the rules

have been advocated by the defense bar and insurers. He noted the claimant may have difficulty complying with the rules of evidence. He pointed out that there had been no unrepresented claimants during the six years he had held the office, but that it was a potential problem.

Judge Reardon discussed the mediation process, the courts involvement, and how the court would be involved after the mediation process has concluded. He stated that the court would have to adopt and amend its current operating rules and procedural rules. He suggested less than 60 days for mediation as being more appropriate.

Judge Reardon said that existing statute provides the workers compensation judge with exclusive jurisdiction over disputes under the act. It is broad, but there has always been a problem trying to identify what constitutes a dispute.

(3a:400) He clarified meaning of the five (5) minute rule. He stated if a claimant calls five minutes before the filing deadline making a demand of the carrier and the carrier says no, they can go court to file the petition. He said this caused problems for some carriers because the claimant's attorney can claim high demands. This increases costs to carriers because they are required to hire attorneys to appear in court. The mediation process should resolve most of this problem. He stated not having attorney involvement is a commendable goal, but in defining dispute specifics are required on the part of the demanding party. In order to satisfy sufficient explanation and documentary evidence the ability to get needed reports was needed. He cited an example that some doctors refused to give patients reports. He said there was a potential to make it necessary to get an attorney. He described the average claimant with a high school education or less, blue collar laborer, not particularly articulate. They are being asked to do a lot and this can scare claimants. He stated that the mediator needed to be careful that a case doesn't pass over to advocacy. He said if the mediator goes too far in helping the claimant the carrier will question his impartiality.

Judge Reardon said defining dispute and how you create one is necessary and has to be done. Right now it is too easy to get into court. The rule making authority is important for the department but he suggested simplicity in writing the rules. He pointed out that the unrepresented claimants have a distrust of the system. He suggested that the rule making be very precise.

(3a:523) Rep Driscoll questioned page 28 of the bill on the attorney fees payable by insurer if they acted



unreasonable in denying liability or terminating benefits and how unreasonable was defined.

(3a:559) Judge Reardon replied that would be judging credibility. He pointed out the current statute has a penalty provision that the judge can, if he concludes that an insurer unreasonably withheld or terminated benefits, impose a 20 percent penalty on past due benefits. However, this is rarely done.

Rep Driscoll further questioned whether attorney fees were paid out of partial settlements or contingency fees. He said that this bill would limit totally permanently disabled workers to \$20,000 if they can prove that they lost money because of the injury and hardly anything for a partial. He pointed out that attorneys would not want to work for contingency fees for injured workers after this bill passes. He added the injured worker would not be able to pay his attorney after such a lengthy time and on limited funds.

(3a:628) Judge Reardon stated the claimant would have to pay attorneys fees on any case that is settled. Attorney fees are awarded independently only if the case goes to court. The \$20,000 mentioned is a potential lump sum maximum to a permanently totally disabled claimant. He said that the attorney would have to be paid out of that unless there was a finding of unreasonable withholding on the insurers part. He pointed out that the court has no authority over lump sums. On liability disputes the finding of unreasonableness by the court will allow the court to assess a fee on an hourly basis, but the claimant is going to pay. He said that the division would have the rule making authority for the maximum contingent fee which would be about 20-25 percent.

(3a:716) Vern Erickson, representing the Montana State Fireman's Association, discussed how firefighters have relied on mediation and fact finding. He stressed the importance in guidelines on timetables. He said that people who have the right to interpret legislative intent have many different opinions on what constitutes intent.

#### SAFETY INCENTIVE

(3b:000) Bob Robinson referred to section 9, page 16, that was added at the division's request. He said that this would provide an opportunity for insurer to provide some incentive.

He elaborated on up front discounts for employers who are actively seeking to reduce injuries on the job and control workers compensation losses. He explained how the system

works with the modification factor penalty. He stated employers complain that there is no incentive because of the modification factor. It has been proposed that the insurer provide a discount up-front so when the employer takes action to reduce injuries it can be realized in his premium. Mr Robinson said that the state fund needs to work with their actuaries to determine the discount percentage and each insurer needs to define what constitutes an acceptable loss control program.

Rep Driscoll questioned whether there would be an incentive for the employer to invest money such as a 10 percent discount if they follow this program.

(3b:130) Mr Robinson replied that this gives the option to the insurer. He said it is up-front and the loss control program would be on paper. The insurer would be bound to provide some kind of discount.

Rep Driscoll said the result would be the reduction of rates if the employer institutes this safety program and would happen faster than the modification factor.

Mr Robinson said the reduction in rates is applied on current premiums rather than waiting for the lag period for the modification factor to come into effect; and goes into effect the next time they have to submit payroll.

(3b:152) Rep Smith responded that the incentive is an excellent tool and a good idea.

#### LIABILITY OF INSURERS

Mr Robinson referred to section 11 and discussed the language. He said one of the main concerns is whether or not the injury was the responsibility of the job, occurred on the job, or an aggravation of a pre-existing condition. He noted employers see this as a major problem and that many injuries covered under the workers compensation insurance policy did not occur on the job. He stated that the interpretation of the court is all they have to say it is possible. He pointed out that lots of injuries happen on the weekend.

(3b:322) Mr Robinson referred to section 2a, b, that define when someone is injured or dies while traveling. The last section refers to the employee who is not eligible for benefits if the use of alcohol or drugs is the sole and exclusive cause of the injury or death. He said that many injuries that are related to alcohol occur as a result of company parties. If the employer is encouraging or requiring participation in an event and there is alcohol used with

the employers knowledge; the individual would not be exempted. He pointed out that the person whose accident is solely and exclusively caused by the use of alcohol would probably not be covered.

#### SUBROGATION

George Woods described the section of the bill that was written as a result of input from employer groups to have relief from the high cost of benefits due to conditions which preexisted the employment. The problem of aggravation of pre-existing conditions by itself is extremely complicated and takes medical input. He stated that any input would be reduced or made non-existent by only needing to prove aggravation by possibility.

(3b:474) Jan VanRyper, WCD, discussed the supreme court decisions that took the position that unless the claimant was made whole the workers compensation insurer was not entitled to subrogation. Constitutional Initiative 30 had been amended to take out the word "full" in front of the language "legal regress". The administration felt it had been the constitutional sanction or permission to go in to try to put the statute back in place. She said the effect would be if the claimant pursued a third party action and settled then the insurer can still subrogate against that amount.

Ms. VanRyper mentioned another issue addressed in sub part b, page 25, line 1. She said that older cases indicate settlement or court awards in a third party action with damages the award is classified as economic damages and non-economic damages. She said that the worker compensation insurer can only subrogate against the economic damages. She said that the problem caused to insurers is the majority of the cases are settled and when the insurers are not a party to the settlement it is easy for the parties to classify most of that money in terms of non-economic damages and thereby preclude the workers compensation insurer from subrogating. She said that is what this language is intended to get around. Unless the insurer is party to the settlement it doesn't matter what you how you classify those damages the insurers can subrogate.

(3b:558) Rep Driscoll said that presently if you don't participate in a third party suit the amount of subrogation rights are reduced. He said that this seems to say that you have full subrogation rights so if the workers compensation fund or a private insurer did not participate in a third party lawsuit they would get all the money.

(3b:569) Ms. VanRyper replied that was not how the statute would be construed. A separate section in the statute defines when the insurer is entitled to 100 percent and when only 50 percent. The two sections of the statute would have to be read in conjunction. The final meaning would be that the insurer if they do not subrogate is entitled to only 50 percent. (see 2c p23 ln10)

Rep Driscoll said this is 50 percent of anything they get and it will stop the division or insurer from participating. If the injured worker takes a third party to court half would go to the insurance without participation. There is no incentive for the insurer to participate.

(3b:609) Ms. VanRyper clarified they would get 50 percent of whatever benefits they paid out not 50 percent of the settlement.

(3b:676) Rep Driscoll questioned why the insurer should get 50 percent without doing anything to earn it. He mentioned that the injured worker always asked for more than they got but that the judge or jury never awarded the entire amount unless they participate. He said that forced the insurance company or the state fund to participate in a third party suit or they would not get any money.

George Wood said the philosophy of subrogation is the employer should be entitled to recover what he had to pay out in compensation as a result of somebody else's wrong. He stated that the subrogation section entitles recovery of 100 percent of paid compensation (4a) He pointed out that the injured worker would recover sufficiently so that an employer or insurer never receives back the total of what he has paid out. He said that this bill makes it more equitable in allowing recovery for the damages for which they are not responsible.

Rep Driscoll commented that under CI-30 damages can't be limited by less than two thirds vote of the legislature. This section takes a two thirds vote in his opinion.

George Wood said there are all damages included in the bill. He said that the reason that this was put in the bill was that full legal regress was gone. He suggested that this may need court interpretation. Subrogation are damages beyond actual damages as perspective and not actual.

Chairman Glaser instructed the staff attorney to look into the matter and report back to the committee.

Jim Murphy, bureau chief of the State Fund, emphasized that even at a 50 percent subrogation the claimant is always

entitled to that one third by the statute and in addition to that the insurer pays their proportionate share of costs.

The meeting was adjourned at 2:25 p.m. (4a:061)

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Bill Glaser, Chairman

bd/dt/3.17 DRAFT

# DAILY ROLL CALL

WORKERS COMPENSATION      SUBCOMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date \_\_\_\_\_

March 17, 87

[illegible]

## COMMITTEE

DATE MARCH 17, 1987

SPONSOR SENATOR WILLIAM FARRELL

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.