

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 10, 1987

The seventeenth meeting of the Business and Industry Committee met on Tuesday, February 10, 1987, in Room 410 of the Capitol at 10 a.m. The meeting was called to order by Chairman Allen C. Kolstad.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 80: Rep. Jan Brown, House District 46, Helena, chief sponsor of the bill, said the bill would exempt newspaper carriers and free-lance correspondents from workers' compensation coverage. She noted that the bill had been introduced in the 1985 session but was killed in the House after being carried through the Senate. She feels the language of the bill has been cleaned up this time and that it is a very straightforward bill. She then introduced Les Loble, the primary proponent of the bill.

PROPOSERS: Les Loble, representing Lee Enterprises, Inc., asked for support of the committee for HB 80 and a recommendation that this bill be concurred in. He then introduced those in attendance in support of the bill and noted that some of those introduced would be testifying and would answer questions from the committee. (EXHIBIT 1)

Dave Byerly, General Manager of the Lewistown News Argus stated they were a 5,000 circulation, twice-a-week paper covering central Montana and felt that he spoke for many weekly papers in Montana urging support for this bill. He said many of the community papers like theirs reflect the economy of the towns in which they do business. Within the last six months three county seat publishers have come to them asking them to buy their newspapers. To force weekly newspapers to pay workers' compensation on their carriers and correspondents would impose an unnecessary financial burden. He said they have numerous correspondents throughout the county who are paid by the inch for what they write. They also have 23 carriers who deliver their paper in Lewistown, the average age being 12 years. He feels these people are independent contractors and didn't believe workers' compensation was intended to cover these independent contractors. He expressed concern about them being forced to cover their correspondents and carriers and believed the door would then be opened and

they would have to include them under unemployment insurance, withholding for Social Security, etc.

Bruce Smith, Publisher of the Bozeman Daily Chronicle, submitted written testimony in favor of HB 80. (EXHIBIT 2)

Steve Studt, Publisher of the Great Falls Tribune, explained the process of paying their correspondents by the inch basis and said they have 350 carriers, including 120 adults. He believes these are independent contractors who buy the newspaper at wholesale and resell at retail prices. His paper provides an insurance program which the carriers can purchase for 24-hour coverage, or the newspaper will purchase a policy that will cover the youngster while he/she is on the route if the carrier declines to purchase the 24-hour coverage. He urged the committee's support of HB 80.

Carl Rexroad, Managing Editor of the Billings Gazette explained their use of correspondents on a free-lance basis and said he saw them as resources upon which to draw in the community as their staff is not large enough to cover all the area. All of these people work on their own time, under no constraints and submit their writings or photographs to the paper on a purchase basis which is either accepted or rejected. He said there is no rationale why these people should not receive an exemption from workers' compensation.

George W. Moore, Executive Director of the Montana Press Association, representing 68 weekly and 11 daily newspapers in Montana, appeared in support of HB 80. (EXHIBIT 3)

OPPONENTS: Hiram Shaw, Workers' Compensation Division, Department of Labor and Industry, explained that carriers are not now excluded from coverage. In the event of an injury, the insurer would be liable and most newspapers are covered by private insurance companies rather than the state fund. The rates are \$1.93 per hundred for foot carriers and \$5.92 per hundred for bicycle or motor vehicle carriers. No carriers have been granted independent contract status as this has not been established by law. He distributed an example of the results of the determination of an independent contractor status from the Highway Division's Legal Counsel denying that status and stated that the Governor's Advisory Council thoroughly studied independent contractor laws and

did not recognize this particular type of exemption.
(EXHIBIT 4)

DISCUSSION OF HOUSE BILL NO. 80: Chairman Kolstad called for questions from the committee.

Sen. McLane asked Mr. Smith if he had said the carriers were covered by some type of insurance. Mr. Smith replied that they explain to the carrier and his/her parents that they may purchase 24-hour coverage, or if they decline that offer, the paper buys a policy that will cover the carriers while he/she is on the route. Sen. McLane then asked if this was a common practice with all papers. Mr. Smith answered that all the daily newspapers do this and that the cost is about \$3 per month.

Chairman Kolstad asked what the advantage would be if the carrier purchased his coverage through the newspaper and Mr. Smith said in this way the carrier would have 24-hour coverage rather than just while they were on the route.

In answer to a question from Sen. Williams, Mr. Shaw repeated the rates for workers' compensation coverage. Mr. Shaw said that some papers testified they don't cover their carriers and he believes that they have not paid the premium for those carriers. However, if they were injured, they would still be covered as employees. Therefore, the insurer is either foregoing or ignoring that premium. Sen. Williams asked what the penalty was for not paying the premium. Mr. Shaw said there is no penalty for not collecting the premium if the insurer decides he doesn't want to; however, it doesn't remove the insurer from that liability. That is up to the insurer. Sen. Williams then asked if there would not be an audit until there was a claim made by one of the carriers. Mr. Shaw stated that would probably be the case - until the claim occurred, the insurer may not audit.

Chairman Kolstad asked Mr. Shaw if he had a problem with considering carriers as independent contractors. He noted that the Division's position is that at the present time they are not independent contractors and if they applied for that status based on what they know about their function, they probably would be considered employees rather than independent contractors. He further stated that it is, of course, up to the legislature to decide whether they should be excluded or not. The Division's position is based on whether or not someone behaves as an independent contractor. The exemption is given to

independent contractors to save them the trouble of getting annual exemption. However, in the case of newspaper carriers, they typically don't behave as independent contractors.

Sen. Williams asked Mr. Shaw if there had been any claims submitted by carriers or correspondents against workers' compensation. He replied that there have been some claims such as Carlson v. The Billings Gazette, which was a Supreme Court decision for the plaintiff. He stated he did not know what the settlement was but did know there was considerable medical expense as the person was riding in a motor vehicle. Sen. Williams asked if, as a result of that, an audit was made of The Billings Gazette history of workers' Compensation to which Mr. Shaw replied that he was not sure.

Sen. McLane noted that he likes his morning paper delivered at 6 a.m. and that perhaps he may have more control over the time a carrier delivers the paper. He felt this would relate to the portion of the bill that states: "...hiring agent has extensive control over the workers performance including the precise time and the manner of delivery..." Mr. Shaw said that, as he understood it, the newspaper generally has control over the limitations of time when those papers are delivered. Beyond that, the consumer may put certain demands on the carrier; but, that aspect is beyond the scope of this particular instance.

Sen. Weeding asked if the \$3 private insurance policy would constitute a private in-lieu-of workers' compensation coverage. Mr. Shaw said he had not looked at one of those policies, but basically, workers' compensation differs in that there is an exclusive remedy which prohibits a carrier from suing the paper for health and wage loss; further, workers' compensation covers unlimited medical costs and a steady wage loss.

Sen. Thayer asked Mr. Shaw if he had been present when the Advisory Council discussed the exemption section. He replied he had been present for a portion of the time. Sen. Thayer then stated that the Council didn't feel it was their prerogative to deal with individual exemptions. Therefore, they dealt quite extensively with the law itself but did not deal with minor changes in the law.

Sen Williams asked Mr. Moore or a representative of The Billings Gazette to comment on the Carlson v. The Billings

Gazette decision. Mr. Loble said he thought it was one of the most bizarre cases that had ever come out of the Montana Supreme Court. The case involved a motor carrier whose live-in girlfriend was helping him deliver papers on his route. She was hurt in a motor vehicle accident while she was doing this for him, and the case went to the Supreme Court who said she had been injured while employed for The Billings Gazette. She was awarded damages as if she were a regular employee covered by employer's insurance carrier. Mr. Loble explained that it is just this sort of case which makes a business very concerned about not having a particular class of workers specifically exempt.

Sen. Williams asked what the settlement was, and Mr. Loble answered that he did not know the figures, but assumed that the medical expenses were probably quite extensive.

Sen. Williams also wanted to know if there was an audit of the Workers' Compensation situation involving The Billings Gazette, and no one knew for certain.

Mr. Loble stated that he would like to point out that the rate quoted for the state workers' compensation didn't sound very high. But when you consider \$1.95 for foot carriers and \$5.19 for bicycle and motor vehicle carriers per \$100 of payroll per month, not to mention the free lance correspondents who could be required to be covered if this bill does not pass, it is a considerable amount. There are many newspapers that are having a hard economical time as it is.

Sen. Walker asked if someone could in effect sue for compensation from Workers' Comp. if an employer was not paying the premiums. Mr. Rexroad explained that many of those things are not clear. If working persons are definitely considered independent contractors, they should be exempt from coverage under a businesses insurance, but who the independent contractors consist of has not been made clear in the statutes. He stated that it was their opinion that all of these persons they are asking exempt status for, are indeed independent contractors. At the moment, it all boils down to which judge you get if you happen to get involved in a lawsuit, and what his definition of independent contractor is. He stated that this had been a growing concern of theirs for some time.

Sen. Williams asked if he had understood it correctly that an employer does not have to pay the premium, but an

employee can go to the state and claim workers' comp and be paid because there is no agreement as to who is exempt. Mr. Loble stated that if he falls under the classification of independent contractor, then he is not covered. Otherwise he may be, and that is the purpose of this bill.

Williams then wanted to know if The Billings Gazette was paying when the claim cited was filed and when the person received the settlement. Mr. Loble answered that they were not and that they are not now paying.

Sen. Williams wanted to know how it is decided to do an audit concerning a workers' comp case. Do they wait until a claim is filed and they find out no premium is paid, or what? He remarked that that may have something to do with the fact that the program is over a million dollars in the hole. He stated that perhaps the state ought to sell out to a private company.

Mr. Wayne Schile, The Billings Gazette, interjected that with regard to the usual claims, such as a carrier slipping on the ice, etc., all businesses have those kinds of things happen and have all had some claims. He stated that a few weeks ago they had that happen and a carrier was injured on the route. The insurance which they subscribe to paid the claim and if one were to check, there has been no trouble with getting those types of things paid for. Most of the kids are doubly insured through the schools and their parents coverage and probably already have more coverage than is necessary. Further, they do not feel that they are in violation of any laws by not paying premiums for the carriers, because they regard them as independent contractors, and even if they aren't, individual coverage is offered to the carriers. He stated that he has been in contact with publishers in at least five other states and none of the others force them to come under worker's comp, and he is concerned about claims that may be paid without the insurers paying the premiums. Another reason for not having them covered under the workers' comp is the huge turnover you have with over 900 carriers.

There being no further questions, Rep. Brown closed the hearing on HB 80 by stating that it is very evident that this bill is needed. It will clarify that the carriers are independent contractors and as such will be exempt from coverage under the Workers' Comp. A carrier will not be able to go and try to file a claim and he will know from the outset that he is not covered.

CONSIDERATION OF HOUSE BILL 310: Rep. Les. Kitselman, House District 95, Billings, is the chief sponsor of this bill. In his absence, Mr. H. S. "Sonny" Hanson, Billings, Montana Technical Council, presented opening remarks regarding the bill. He stated that it deals with the standardization of the selection procedure for awarding architectural, engineering and land surveying services under public contract. The contracts will be awarded based upon the qualifications and competence of the professionals involved. The bill also provides for emergencies necessitating immediate execution of the work and provides for an immediate effective date. Mr. Hanson noted that design professionals throughout the state have been informed regarding HB 310 and all understand its workings.

PROPOSERS: Mr. James B. Carpita, Corvallis, Representing Consulting Engineers Council of Montana, stood in support of the bill and distributed pamphlets for the information of the committee. He also submitted written testimony. (EXHIBITS 5, 6, 7, 8, & 9)

Mr. Jim Cummings, Great Falls, also representing the CECM testified on behalf of the bill. He stated that he had worked with the City of Great Falls in adopting a standard procedure for selection of design professionals. They based their procedure on one better known as the Brooks bill which has been use since 1972. He noted that all federal agencies use it. In dealing with state agencies he has realized that every state agency has a different selection process which he feels is very time consuming and confusing. He urged the support of the committee for HB 310 and then submitted a letter in support of the bill prepared by Stewart Pearson, City Engineer, City of Great Falls. (EXHIBIT 10)

Mr. Phil Porrini, Helena, representing the American Society of Civil Engineers, rose in support of HB 310 and submitted written testimony. (EXHIBIT 11)

Mr. Martin W. Crennen, Helena, representing the Montana Chapter of the American Institute of Architects, submitted written testimony in support of the bill. (EXHIBIT 12)

OPPOSERS: There were no opponents to HB 310.

DISCUSSION OF HOUSE BILL NO. 310: Chairman Kolstad called for questions from the committee. Sen. Williams asked Mr. Hanson what prompted this bill and Mr. Hanson replied that

it would allow a clear standardization of the selection procedures when it comes to design professionals. This is an advantage in many cases because when professional services are purchased, the cheapest bid is not always the best and that should not be the final qualification upon which those selections are made. This will give agencies the leeway to select the best qualified bidder who offers a reasonable bid. Sen. Williams then wanted to know what would happen in the case of the land surveyor. He noted that there are two kinds and both are certified, but one works a lot cheaper than the other. Would this keep any land surveyors that are now certified from being qualified bidders? Mr. Hanson answered, "no".

Sen. Walker wanted it clarified whether the decisions would now be based almost exclusively on the qualifications or if the price would still be a factor. Mr. Hanson answered that according to the bill, the price would still be taken into consideration and it would have to be deemed reasonable.

Sen. Neuman asked Mr. Hanson what would happen to the young architect, professional or new firm just starting out and whether they would be able to compete under this system. Mr. Hanson answered that all of them could submit their qualifications and all would compete with each other. If there were a small project, a small two person firm might be selected over a bigger firm. The option would be up to the selection committee. If it were felt that a firm from New York could give better service, then that firm might be chosen. The design professionals do not see that as a problem. It will give agencies the option to shop around and pass the work around. Many times the new firms or professionals are considered the up-and-coming firms of the future and would have a better chance than an older firm. Sen. Neuman still felt the guy with 25 years experience would always have the edge. Mr. Cummings interjected that he didn't feel an agency would want to hire a brand new firm or professional to do a huge, terribly complex project, but they could always be given more consideration for jobs not quite so complex while they were gaining experience. He stated that he had gone out of state and worked for four years to gain some experience and that is what many people do. He stressed that this bill allows those selection committees the flexibility to select all different types of bidders.

Sen. Thayer asked if the \$5,000 figure in the bill (which refers to the cases when an agency may directly negotiate

with a professional for such services if the fees are estimated not to exceed that figure) would cause a problem for the City of Great Falls whose adopted procedures allow a \$10,000 limit. Mr. Carpita answered that they do not see that as a problem.

Sen. Weeding stated that he was searching for the need for the bill as it seemed to him that it contained pretty general things that any prudent board would do without written guidelines. Mr. Carpita answered that it is a set of general guidelines because many times you have a group who are not used to doing this type of selection process and it gives them something to follow. He noted that the Great Falls one gives no detail; also, larger firms have a much greater advantage when only the lowest bid is considered for a contract.

Sen. Thayer asked Mr. Carpita how long ago the \$5,000 limit was put into the law and wondered if a \$10,000 limit would be more realistic. Mr. Carpita replied that he wasn't sure how long ago it was, but he would have no problem with raising it to \$10,000. Mr. Hanson noted that it is not in the law now, but would be with passage of HB 310.

Sen. Williams wanted to know if someone would be cut out by the establishment of this procedure and how it might affect rural areas. Mr. Hanson answered that anyone who is listed by the state would be able to be considered. If a building board or a school wanted a listed professional, they could refer to this list. The school districts were in favor of the expansion of the field from which to choose.

Chairman Kolstad asked what would constitute an emergency and Mr. Hanson answered something such as if the state had a boiler stack which had to be fixed immediately, or such as when the explosion happened at the state prison.

Sen. Walker wanted to know what the protection would be if something went wrong in one of those emergency cases with the \$5,000 limit, and Mr. Hanson replied that there would be the usual protection of the law and the prosecution of that law.

Sen. Weeding asked how the new requirements would filter down to the school levels and how they would be made aware of the new process. Mr. Hanson explained that the schools may already have a selection process, but the intent is to

prepare something and pass that out to all entities so that they will know.

Sen. Williams wanted to know how the selections would be made under the \$5,000 (or \$10,000) limit situation and Mr. Cummings explained that the bill states that an agency MAY encourage firms to submit annually a statement of qualifications and performance data. Those firms will then be evaluated together with other firms interested in submitting bids regarding the proposed project. The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required.

The hearing was closed on House Bill No. 310.

EXECUTIVE ACTION ON HOUSE BILL NO. 68: Due to numerous problems with this bill it was brought back into the committee for further consideration. A MOTION by Sen. Cecil Weeding that HB 68 BE RECONSIDERED was Seconded by Sen. Darryl Meyer and PASSED UNANIMOUSLY.

A MOTION by Sen. Darryl Meyer that the AMENDMENT TO HB 68 BE ADOPTED was Seconded by Sen. Weeding and PASSED UNANIMOUSLY.

Sen. Gene Thayer moved that THE STATEMENT OF INTENT FOR HB 68 BE ADOPTED. The Motion was Seconded by Sen. Paul Boylan and PASSED UNANIMOUSLY.

Sen. Cecil Weeding made the MOTION that HB 68 BE CONCURRED IN AS AMENDED. The MOTION was Seconded by Sen. Tom Hager and PASSED UNANIMOUSLY.

The next meeting of the committee was announced by Chairman Kolstad to be held on Wednesday, February 11, 1987.

All business being completed for the day, the meeting was adjourned by Chairman Kolstad at 11:57 a.m.



SENATOR ALLEN C. KOLSTAD, CHAIRMAN

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/10/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

2/10/87

Business & Industry

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Lester H. Lowle, IV DATE: 2/10/87

ADDRESS: Box 176 Helena SENATE BUSINESS & INDUSTRY

PHONE: 20070

EXHIBIT NO. 1

2/10/87

BILL NO. HB 80

REPRESENTING WHOM? Lee Enterprises, Inc

APPEARING ON WHICH PROPOSAL: HB 80

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Statement attached.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 10, 1987

Statement in Support of HB 80 by Jan Brown

Mr. Chairman, members of the committee, my name is Lester H. Loble, II. I represent Lee Enterprises, Inc. I am asking your support for HB 80 and a recommendation that this bill be concurred in.

HB 80 exempts newspaper carriers and free-lance correspondents from workers' compensation coverage. Last session the Senate passed a bill deleting the requirement that carriers and free-lance correspondents apply for an exemption as an independent contractor. The implied assumption behind the Senate bill was that these two employments are performed by independent contractors. That assumption is correct. In HB 80 we ask that it be made express rather than leave the assumption unstated.

Carriers truly are independent contractors: they buy their papers at wholesale and sell them at retail. They deduct their expenses such as rubber bands, plastic covers, hiring of substitutes when they are sick or on vacation, and keep what is left--their profit. They each individually service their customers and are responsible for collection of moneys owed them.

For many youngsters, this is their earliest first-hand experience with the free enterprise system. Many adults in this room--including members of this committee, no doubt--had experience with this example of how an independent contractor and independent business person operates.

There are 2,200 carriers contracting with Montana papers, 129 here in Helena, 731 in Billings, 470 in Great Falls, mostly boys and

girls in the 12-15 age bracket. Each carrier has a substitute; if we include moms, dads, brothers and sisters who are occasionally pressed into service there could easily be 10,000 people delivering papers at one time or another during a year.

Until very recently, the question of workers' compensation coverage was never even considered. It was "obvious" that carriers were not covered. The Montana Supreme Court has changed all that. Its expansive view of the reach of the workers' compensation laws has expanded the State Plan into bankruptcy. The Administration has a thick bill revamping the law and which attempts to reverse those court decisions. Prudence dictates that the law be crystal-clear for private business as well as for the state.

Contrary to what you will hear from the AFL/CIO: workers' compensation coverage is not now provided. Accordingly, this bill will not decrease current costs of operation of newspapers. It will forestall the possibility of increased costs being imposed on the papers--in the case of the Montana dailies about \$200,000.00 per year. Nor is this a Lee Enterprises relief bill. This bill affects all weeklies and all dailies--as you will see from witnesses in a moment.

This bill was amended in the House committee so that it requires written acknowledgment by both the free-lance correspondent and by the carrier that workers' compensation coverage is not provided. If the carrier is a minor then an adult or guardian must so acknowledge. In other words the free-lance correspondents and the carriers know exactly what the conditions of their

contracts are. This is the only exemption in the workers' compensation law which provides this protection.

Other states have "protected" carriers by mandating coverage. When the cost of fringes for full-time adult employees are imposed for the services of part-time youngsters, economics drive the kids out. You can go to other states and watch residential delivery of papers, but don't look for 14 year old boys and girls on their bikes. Watch for the pickup with the automatic newspaper thrower. The driver loads up the catapult with 50-60 papers and drives down the middle of the street firing them left and right in the general direction of the subscriber's homes. The papers contract with "Newspaper Delivery, Incorporated" and let it (or them) worry about workers' compensation coverage and other payroll add-ons. The kids lose the money-making opportunity.

Consider some of these statistics: Between 1980 and 1986 the number of daily newspapers in the United States and Canada using the "little merchant" system decreased by 22.3%. Newspapers using the little merchant system note that carrier turnover ranges from 50% to 100% annually but newspapers shifting to adult carriers showed dramatic drops. For example some showed no turnover in two years. Others show a weekly turnover dropping from 7.4% to 2.2%. Circulation managers say that adults are more reliable than youths. Adults require ^{fewer} district managers to supervise them and fewer people in the circulation office to handle complaints and other support duties. In Toronto, for example, The Globe and Mail reduced its district managers from 80 to 21 when it switched to adults and complaints dropped from

4,000 a week to 900 a week. The Columbus Dispatch found that kids could average 60 papers a day but adults 250 to 300 papers a day. In other words only 25% as many adults were needed as kids.

The lesson to be learned here is that there are enough economic forces already operating in the newspaper industry to switch from kids to adults. Additional ones should not be added.

The case for the free-lance correspondent exemption is also strong. Montana's 11 dailies have between 125 and 150 correspondents; the weeklies 500-700. Many of these are homemakers selling their writing and photographic services to several sources; often in more than one state. There is no set standard of payment for those people throughout the industry, which would add another administrative nightmare to the entire process unless they have exempt status.

We request a "BE CONCURRED IN" recommendation ^{from} ~~for~~ the Committee.

Thank you.

NAME :

DATE: 2/10/87

ADDRESS :

SENATE BUSINESS & INDUSTRY

EXHIBIT NO

DATE _____

PHONE :

BILL NO

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 10, 1987

Statment by Bruce K. Smith, publisher of the Bozeman Daily Chronicle, in support of HB80

I am asking members of the committee to support and give a do pass recommendation to HB 80.

When a young boy or girl is contracted by the newspaper for a delivery route, they are given the opportunity to purchase accident insurance that covers them not only while they are delivering newspapers, but will provide protection for them 24 hours per day.

The plan the Chronicle has is designed especially for youngsters acting as newspaper carriers and gives them an opportunity to learn about the value of having their own insurance program at an affordably low weekly or monthly premium.

The plan pays benefits for all types of accidents as well as a disability benefit if the accident prevents the carrier from delivering the newspapers. It provides 24-hour coverage, not just "on route" coverage. In addition, the policy insures the substitute while they are on the route. It also has accidental death and dismemberment benefits.

Should the carrier decline the insurance, the newspaper purchases a policy that will cover the youngster while he/she is on the route. The benefits are the same except for the fact that the policy costs the carrier nothing, the entire premium is paid by the newspaper. All newspaper carriers have insurance protection whould they be injured whild delivering newspapers.

The independent contractor status of newspaper carriers is being gradually eroded away by governmental agencies. They assume newspapers are taking advantage of young people who deliver their product. This is simply not true. When a youngster is contracted to deliver newspapers a representative of the newspaper will sit down with him/her and their parents, go over the contract with them before they sign it. In addition the newspaper will give constant support and encouragement while the carrier is on the route.

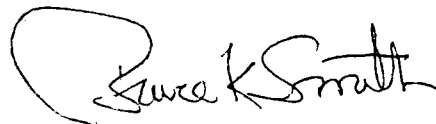
Most carriers receive about 30% of the subscription price for each one of their subscribers. The Bozeman Chronicle has several carriers and families who have had the same route for years. I know one carrier who has been delivering newspapers for the last five years and now is a junior

in high school. In addition to providing spending money, the newspaper route makes it possible for him to buy all his own clothing, he has even purchased a car with the money he has earned from his newspaper route.

Should newspapers not gain the exemption they seek from workers compensation fund, it will affect how they deal with their carriers and force them to begin looking for alternate delivery methods.

I started delivering newspapers when I was 11 years old, all of my children have had newspaper routes, I think it is a valuable experience for young people.

I urge you to support this bill and give it a do pass recommendation.

A handwritten signature in dark ink, appearing to read "Bruce K. Smith". The signature is written in a cursive style with a large, looping initial "B".

NAME: George W. Moore DATE: 2/10/87

ADDRESS: 1900 N. Main, Suite 5

PHONE: 443-2850

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2/10/87

REPRESENTING WHOM? MT - Press Assn.

BILL NO. HB 80

APPEARING ON WHICH PROPOSAL: HB 80

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony of George W. Moore on HB 80, Feb. 10, 1987, Senate Business and Industry Committee.

MISTER CHAIRMAN, MEMBERS OF THE COMMITTEE.

FOR THE RECORD, MY NAME IS GEORGE W. MOORE, AND I'M EXECUTIVE DIRECTOR OF THE MONTANA PRESS ASSOCIATION, WHICH REPRESENTS 68 WEEKLY NEWSPAPERS AND ALL 11 DAILY NEWSPAPERS IN THE STATE OF MONTANA.

I APPEAR BEFORE YOU TODAY IN SUPPORT OF HOUSE BILL 80 AS AMENDED.

I'D LIKE TO BEGIN BY EXPANDING A LITTLE ON WHY WE SEEK THIS ADDITION TO THE WORKERS' COMPENSATION ACT.

WE ARE MOTIVATED, SAD TO SAY, PRIMARILY BY FEAR ... FEAR THAT SOMEWHERE DOWN THE ROAD, PERHAPS WITHIN THE NEXT TWO YEARS, SOME GOVERNMENT ADMINISTRATOR OR SOME JUDGE SOMEWHERE WILL SUDDENLY DECIDE FOR NO GOOD REASON THAT NEWSPAPER CARRIERS AND FREE-LANCE CORRESPONDENTS HAVE SOMEHOW MAGICALLY BEEN TRANSFORMED INTO EMPLOYEES TO BE COVERED BY WORKERS' COMPENSATION.

SUCH A CHANGE WOULD CREATE PROFOUND DISRUPTION WITHIN OUR INDUSTRY, FROM THE SMALLEST WEEKLY NEWSPAPER TO THE LARGEST DAILY NEWSPAPER ... AND IT COULD EVEN FORCE SOME OF OUR SMALLER NEWSPAPERS -- ESPECIALLY OUR WEEKLY NEWSPAPERS -- TO CLOSE THEIR DOORS FOREVER.

I DON'T WANT TO SEE THAT HAPPEN, AND I'M SURE YOU DON'T, EITHER.

ALL WE ARE SEEKING, THEN, IS A RESONABLE ASSURANCE THAT WHAT IS LAWFUL BUSINESS CONDUCT TODAY WILL REMAIN LAWFUL BUSINESS CONDUCT FOR THE FORESEEABLE FUTURE.

I'D LIKE, NOW, TO HIGHLIGHT SOME ASPECTS OF THE RELATIONSHIP BETWEEN OUR NEWSPAPERS AND THESE INDEPENDENT CONTRACTORS.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 2-10-87
BILL NO. H.B. 80

IN THE FIRST PLACE, HOUSE BILL 80 AS AMENDED PROVIDES FOR THE CARRIERS AND FREE-LANCE CORRESPONDENTS TO ACKNOWLEDGE IN WRITING THAT THEY ARE NOT COVERED BY WORKERS' COMPENSATION.

AND IN THE SECOND PLACE -- AND HERE I'M THINKING PRIMARLY ABOUT YOUNG NEWSPAPER CARRIERS -- WE PRESENTLY AND WILL IN THE FUTURE INVOLVE THE PARENTS IN THE WORK RELATIONSHIP.

WE NOW REQUIRE THE PARENTS TO CO-SIGN THE CARRIER CONTRACTS, AND SO THEY'RE WELL AWARE OF THE TERMS OF THE CONTRACT. AND FURTHERMORE, THE PARENTS ARE CONSTANTLY AWARE OF THE WORKING SITUATION BY VIRTUE OF THEIR DAY-TO-DAY CONTACT WITH THEIR YOUNG CARRIER ... THEIR YOUNG BUSINESS PERSON, IF YOU WILL.

GIVEN THAT RELATIONSHIP, IT STRIKES US AS SOMEWHAT INAPPROPRIATE THAT A LOWER-ECHELON STATE ADMINISTRATOR MIGHT COME ALONG IN A YEAR OR TWO AND INJECT HIMSELF AND THE STATE INTO THE WORKING RELATIONSHIP ... A RELATIONSHIP THAT HAS NOT ONLY THE APPROVAL, BUT ALSO THE ENDORSEMENT, OF THE PARENTS.

IN CONCLUSION, WE ASK THAT REASON PREVAIL IN THIS INSTANCE AND THAT YOU APPROVE HOUSE BILL 80 AS AMENDED.

THANK YOU.

George W. Moore
Executive Director

February 10, 1987

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2-10-87

BILL NO. H.B. 80

January 28, 1987

INTEROFFICE MEMORANDUM

TO: MIKE WELSH, Uninsured Employers' Fund Supervisor
KAREN DOIG, Claims Investigator

FROM: STEVEN J. SHAPIRO, Chief Legal Counsel *JS*

RE: Sabrina Graham -- Spokesman Review

This is in response to your inquiry of January 5, 1987, as to the basis of my dissent from your determination that Sabrina Graham is an independent contractor.

From the information available, the following appears:

Independently Established:

There is no information indicating that Ms. Graham was independently established in some trade, occupation, profession, or business. As far as I see, she delivered the Spokesman Review for Cowles Publishing Company only and did not provide newspaper delivery service, or any other delivery service for any other hiring agents.

Right of Control:

It appears that the hiring agent had extensive control over the worker's performance including the precise time and manner of delivery.

Right to Fire:

It appears that the hiring agent had an absolute right to terminate the work relationship without incurring liability, except for services already performed.

Investment in Knowledge or Equipment:

The only equipment really required was the car supplied by Ms. Graham. Any vending machines for newspapers which she serviced were supplied by the newspaper. As we know, the supplier of equipment alone does not necessarily establish the nature of the work relationship.

In considering all of the factors together, it is my feeling that these factors weigh more heavily toward the establishment of an employment relationship rather than an independent contractor relationship.

SJS/gp
DWC-1409t

NAME: JAMES B. CARPITA DATE: 2/10/87

ADDRESS: 715 HONEY HOUSE, CORVALLIS, MT SENATE BUSINESS & INDUSTRY
EVENT NO. 5

PHONE: 961-3925

DATE 2/10/87

BILL NO. HB 310

REPRESENTING WHOM? CONSULTING ENGINEERS COUNCIL OF MONTANA

APPEARING ON WHICH PROPOSAL: HB 310

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

COMMENTS: SEE ^{T+} READING SUBMITTED TO COMMITTEE
attache to it

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 10, 1987

HOUSE BILL NO. 310

PRESENTED TO THE SENATE BUSINESS AND INDUSTRY COMMITTEE

BY

JAMES B. CARPITA, P.E.,

REPRESENTING THE

CONSULTING ENGINEERS COUNCIL OF MONTANA

House Bill No. 310 will provide all levels of government with a standard selection procedure for awarding architectural, engineering, and land surveying service contracts based upon qualifications and competence of the professionals involved.

The selection procedure outlined in the bill is based upon the American Bar Association's "Model Procurement Code for State and Local Governments". The State of Montana has already adopted a major portion of the ABA's model code. As stated in the model code, the primary reasons for using the qualification-based, negotiated selection procedure is the "lack of definite scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm". The attached pamphlet "*Procurement of Professional Design Services*" was prepared by the Interprofessional Council on Environmental Design to further explain the ABA model code and the advantages of using negotiated procurement procedures based upon qualifications.

The 48th Legislature authorized the formation of a State Building Construction Advisory Council. This council was established to determine if the existing construction policies and procedures effectively satisfy the needs of the State. In reviewing the design professional selection procedures, the Council unanimously voted to continue the Department of

Administration's qualification-based selection procedure. Similarly, the Department of Natural Resources and Conservation has reprinted the attached booklet "Model Competitive Procurement Procedure" for distribution to local government, public service and institutional entities.

Prior to this 50th Legislative Session, the Consulting Engineers Council of Montana distributed to each Representative and Senator a Summary of Points supporting qualification-based procurement of professional services. That summary noted that 29 other states have adopted similar procurement legislation. (See attached map). In fact, the State of Montana does have laws on the books that do exempt architects, engineers and land surveyors from bidding for State contracts. Governor Schwinden has issued a Management Memorandum to all State Department Heads which requires the use of qualification-based selection procedures. In addition, Montana's school districts are also required to use this type of procurement procedure for architectural services. Copies of the applicable sections of Montana laws are attached for your ready reference.

In discussing House Bill No. 310 with the various Associations representing the public section contracting profession services, certain amendments were discussed. House Bill No. 310, as amended by the House, was reviewed by Mr. Bruce Moerer with the Montana School Board Association. The MSBA found no objections to this Bill as amended.

Further, Mr. Gordon Morris with the Montana Association of Counties has reviewed the amended Bill and supports its passage.

The Consulting Engineers Council of Montana urges this
Committee to recommend passage of HB310 as amended.

\JC\HB310

(2) The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions thereto in accordance with the provisions of section 12 of The Enabling Act.

History: (1) En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2) En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 2-10-87

BILL NO. H.B. 310

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from:

- (a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;
- (b) supervising construction as provided in 18-2-105(6); or
- (c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed \$25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202. Architecture, Title 37, ch. 65.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Cross-References

Appointment of architect, 18-3-102.

(2) rules
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Part 1
General Provisions SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5
DATE 2-10-87

stana property for

1. lease with option to purchase. When authorized by a vote of the members of each house of the legislature, the department of administration shall have the authority, as part of the long-range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

Cross-References

Long-range building program bonds, Title 17, General powers and duties of Department of Administration, 18-2-105.
ch. 5, part 4.

18-3-102. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

Cross-References

Appointment of architects and consulting engineers, 18-2-112.

18-3-103. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

Cross-References

Construction contracts — general provisions, Bids required — advertising, 18-2-301.
Title 18, ch. 2, part 1.

18-3-104. Contract provisions. The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of \$50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

Cross-References

Contracts — formation and interpretation, Trustees' Powers Act, Title 72, ch. 21.
Title 28, ch. 2 and 3.

18-3-105. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale

- 18-8-104. Use and selection of private consultants.
18-8-105. Solicitation of bids.
18-8-106. Restriction on former employees.
18-8-107 through 18-8-110 reserved.
18-8-111. Information relating to consultant studies.
18-8-112. Contract in violation void.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 2-10-87

BILL NO. H. B. 310

Part 1
Consultants

18-8-101. Purpose. (1) It is the intent of the legislature that this part be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by this part and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) This part is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This part is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this part have been followed.

History: En. Sec. 1, Ch. 547, L. 1981.

18-8-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

- (a) that are appropriated by the legislature;
- (b) that are generated by statutory functions of the agency; or
- (c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

History: En. Sec. 2, Ch. 547, L. 1981.

18-8-103. Exemptions. This part does not apply to employment of:

- (1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

- (2) physicians, dentists, or other medical, dental, or health-care providers;
 (3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;
 (4) consulting actuaries to the public retirement boards.

History: En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983; amd. Sec. 1, Ch. 21, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: In (1), after "architects" deleted "concerned with the study, design, or construction of state facilities or highways".

Cross-References

Employment of actuary — biennial investigation and valuation, 19-3-305.

Teachers' retirement — actuary, 19-4-203.

18-8-104. Use and selection of private consultants. (1) A state agency may use a private consultant only if:

- (a) there is a substantial need for the consulting services; and
- (b) the state agency cannot adequately perform the consulting services with its own personnel.

(2) In selecting a private consultant, a state agency shall:

- (a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
- (b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

History: En. Sec. 4, Ch. 547, L. 1981.

18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed \$5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

- (a) a notice of invitation for offers of consulting services;
 - (b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;
 - (c) the closing date for receipt of offers of consulting services;
 - (d) the procedures and specifications upon which the agency will award the contract for consulting services; and
 - (e) any other information that the agency believes pertinent.
- (3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

History: En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence in (1), following "central office" deleted "or in

another appropriate division or unit of the agency".

any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100 or more than \$500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208.

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

Cross-References

School fiscal year, 20-1-301.

Lease or purchase of state property for post-secondary vocational-technical center purposes, 20-7-314.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds \$50,000 and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.

SENATE BUSINESS & INDU

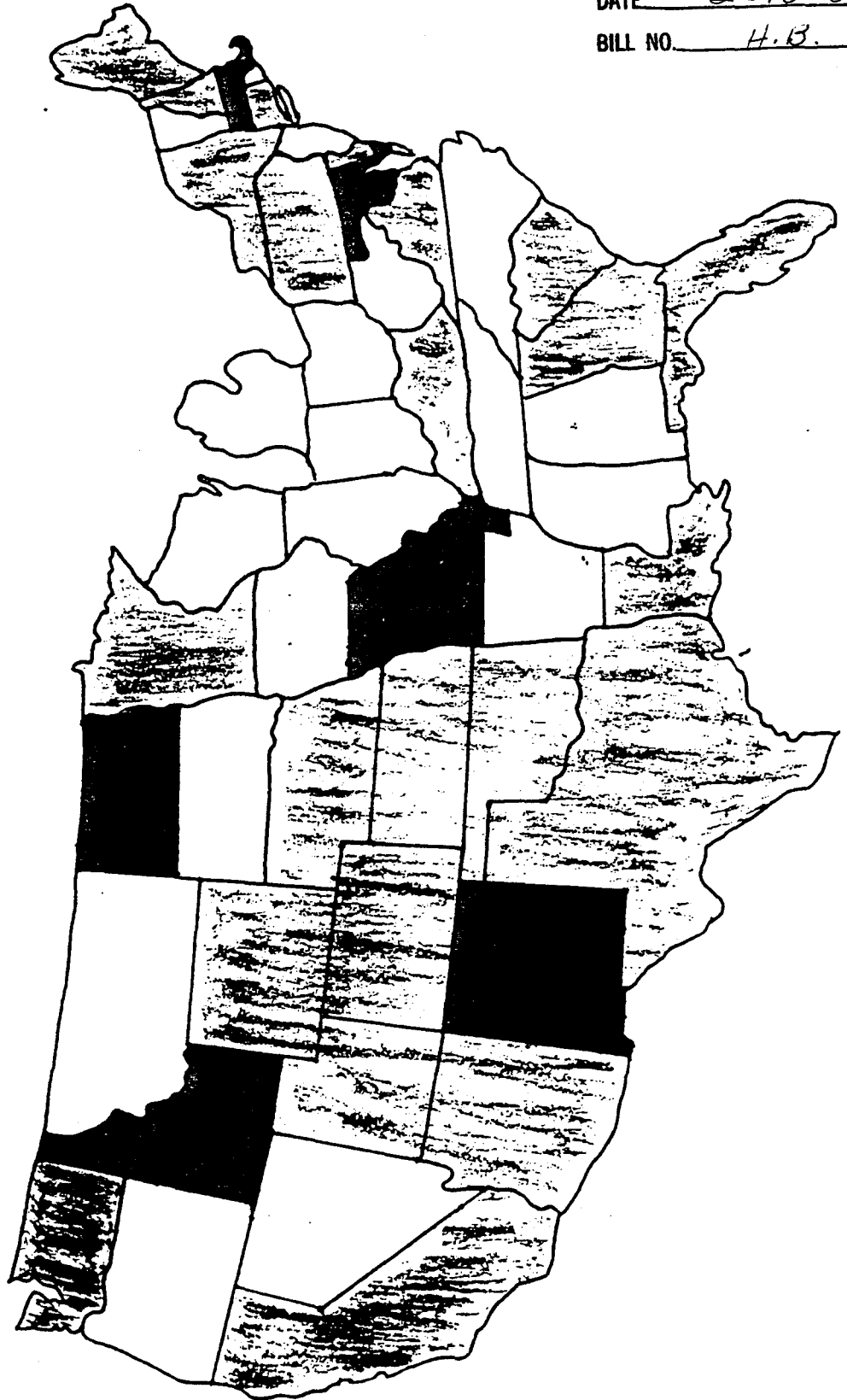
EXHIBIT NO. 5

DATE 2-10-87

BILL NO. 4.B. 310

States passing qualifications-based selection laws since June 1982.

States with qualifications-based selection laws adopted prior to June 1982.



MODEL COMPETITIVE PROCUREMENT PROCEDURE

SENATE BUSINESS & INDUSTRY

EXHIBIT NO.

6

DATE

2/10/87

BILL NO.

HB 310

For Professional
Engineering and
Land Surveying
Services

For Local Government,
Public Service and
Institutional Entities

free from



Energy Division
Capitol Station
Helena, MT 59620

Montana Department of
Natural Resources and Conservation

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 7

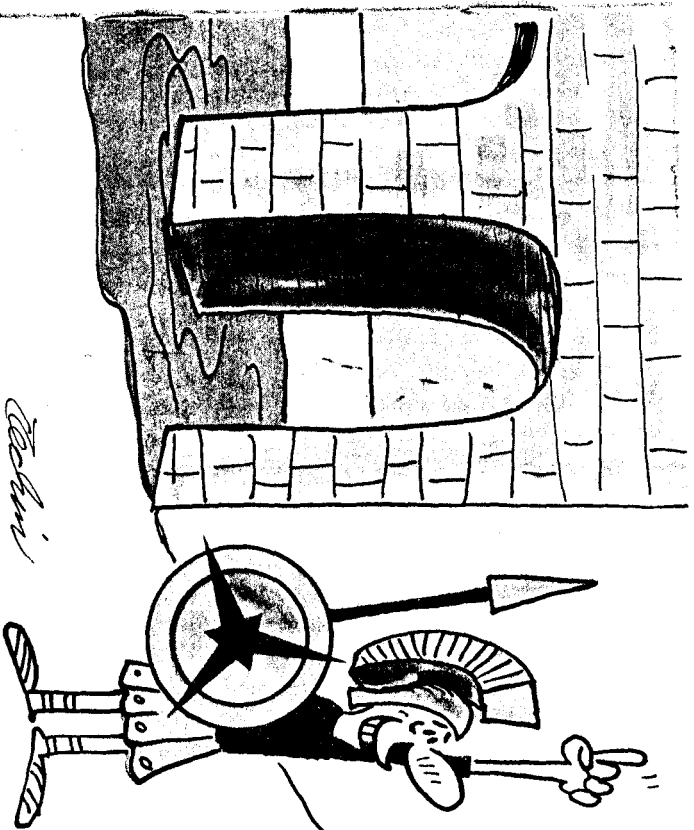
DATE 2/10/87

BILL NO. HB 310

Procurement of Professional Design Services

Interprofessional Council on Environmental Design

1985



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8

DATE

2/10/87

BILL NO.

X18310

THE BRIDGE IS OURS!

A Guide to the Procurement of Engineering Services

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9

DATE 2/10/81

BILL NO. AB 310

A Brief Case for Excellence

**in Procurement of
Architect-Engineer and
Land Surveying Services**

**A VIDEO PROGRAM
ABA Model Procurement Code
For State and Local Governments**

COMMENTS

BY THE CITY OF GREAT FALLS

ON

H.B. #310

POSITION

The City of Great Falls supports and advocates adoption of H.B. #310.

ADVANTAGES OF THE PROPOSED LEGISLATION

This bill is necessary tool for Montanans because 1) it establishes a standard, 2) provides for increased competition and 3) conforms to canons of the respective professions.

By providing this standard, a written procedure for local administrators is available that defines the process on how the local agency is to proceed in obtaining special talent to perform the necessary work. Also, it allows the local agency the necessary flexibility to define how, in what manner and sequence a particular task is accomplished.

Increased competition results from publishing the need of special services. Each provider of services knows that all practitioners in a discipline have been given notice and have the opportunity to compete for the same work. The knowledge of others also having an opportunity for consideration provides the incentive to keep abreast of current technology changes and to manage business operations in a cost effective manner.

The canons of each profession addressed by the bill embrace and endorse the procedure proposed by the bill. Therefore unanimous support from the professions can be expected.

CITY POLICY

The City of Great Falls adopted a policy parallel to the proposed bill in December, 1986, (copy attached) to provide a similar guidance to all City Departments. Too many differing procedures were being utilized in procurement of professional services and the Professional Community was critical of the multitude of procedures. A committee comprised of the major professional groups and the City developed the Policy. Subsequently the City Commission adopted the Policy for implementation.

Submitted by:

Stewart Pearson, City Engineer
January 29, 1987

ARCHITECTS/ENGINEERS SELECTION POLICY

CITY OF GREAT FALLS

DECEMBER 16, 1986

PURPOSE:

To provide for a systematic procurement of Architect/Engineer Services and insure the best qualified talent is obtained to perform services for the public.

CATEGORIES:

Projects are classified according to the criteria of either being less than or more than \$10,000 compensation to the professional. Those projects with less than \$10,000 professional compensation shall be considered minor projects and those projects with more than \$10,000 of professional compensation shall be considered major projects.

ANNUAL FILING:

The City shall at the beginning of each year invite the filing of Standard Federal Government Form 254 from each firm wishing to be considered for major projects. All firms within the City that desire to be placed on the minor projects list should notify Technical Services of the Community Development Department of the classification for placement.

SERVICES PROCUREMENT PROCEDURE:

The Department requiring architecture and engineering services notifies the Community Development Department. Technical Services Division reviews funding and develops work description based on needs and funding. The project is classified as either a Minor or Major project and handled according to the following options.

MINOR PROJECTS

The City policy on Minor Projects is that they will be rotated among the firms that are qualified to perform the work. For purposes of classification the City initially establishes Architects, Engineers/Surveyors as the categories in which each firm can classify itself and only one listing per firm is allowed in the minor project category.

The first qualified firm will be contacted for a proposal, if agreement cannot be reached on compensation, the City will inform the first that negotiations are being discontinued and negotiations with the next qualified firm will begin. The process will continue until an agreement is reached. Firms awarded work will have their listing moved to the bottom of the list and those whose negotiations are discontinued will remain in their present position on the list.

MAJOR PROJECTS

The City Pre-Selection Committee will advertise for Federal Government Standard Form 254/255* and/or a Statement of Interest, as determined necessary, to initially identify all firms to be considered for the project.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 10

DATE 2-10-87

BILL NO. H.B. 310

Background Rating

Evaluation of services offered will be a two part process comprised of a Background and Interview Rating. The Background and Interview Ratings will each contain 50% of the total points of the ranking. The Background element of the ranking will contain, in addition to the Project Needs Criteria, elements for Local Business (LB), Previous Work (PW), and Project Familiarity (PF). The Pre-Selection Committee established the point assignments for the Project Needs Criteria and the LB, PW, and PF. LB can range between zero and fifteen (0 and 15) points whereas PW and PF can range between zero and ten (0 and 10) points. Interested consultants will be issued the Background Rating Criteria and point assignments prior to submittal of the 254/255* forms.

From three (3) to seven (7) firms who will be selected for interview by the Pre-Selection Committee.

Interview Rating

Prior to the interview an outline program, scope of services and proposed budget figure would be provided to the interviewee's along with the evaluation criteria and the points for each of the criteria. Notice will also be given of all interviewee's to all firms to be interviewed.

Proposals

Total scores will be compiled from the background and interview rating to determine the firm ranking. The Department Director will review the ranking and establish a date for a final proposal. Technical Services will negotiate the final proposal and submit the proposal to the Director on the requested date. If a satisfactory proposal cannot be obtained from the top ranked firm, the second ranked firm will be contacted for a proposal.

Adopted: December 16, 1986

* 255 will contain ten (10) years of historical projects instead of five (5) years.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 10

DATE 2-10-87

BILL NO. H.B. 310

NAME :

DATE: 2/10/87

ADDRESS :

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 11

PHONE :

DATE 2/10/87

BILL NO. HB 310

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

Prepared Testimony Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY HB-310

BUSINESS AND INDUSTRY COMMITTEE

MONTANA SENATE

FEBRUARY 10, 1987
10:00 AM

INTRODUCTION by Phil Porrini, President of the Montana Section of the American Society of Civil Engineers.

The Montana Section of the American Society of Civil Engineers (ASCE) supports House Bill 310.

Our technical society is comprised of:
over 400 members,

of which 35 percent are from the public sector (Federal, State and Local governments),

55 percent are from the private sector (Private industry and consultants),

and the remaining 10 percent are retired civil engineers and student members.

ASCE strongly endorses the concept of qualifications based selection of architectural, engineering, land surveying and ~~landscape architectural~~ services.

Thank you for your consideration of this legislation.

testimony.310

**CAMPEAU CRENNEN & KARHU** ARCHITECTS
& PLANNERS

February 10, 1987

HB310 ESTABLISH PUBLIC POLICY FOR A/E SELECTION

Architects who are contracting with the State of Montana are working under a selection procedure that parallels the method described in HB310. We regard this procedure as fair and equitable and the best method of assuring contracting agencies that they are retaining competent professionals because it is based on performance, experience and professional qualifications.

I urge your favorable consideration of this bill.

I represent the Montana Chapter of the American Institute of Architects and am a practicing architect in Helena, Montana.

Martin W. Crennen, AIA
#1 N. Last Chance Gulch
Helena, Montana 59601

STANDING COMMITTEE REPORT

FEBRUARY 10,

7, 67

THE PRESIDENT

MR. JAMES C. HARRIS, JR. - BUSINESS AND INDUSTRY

MR. JAMES C. HARRIS, JR. - BUSINESS AND INDUSTRY

MR. JAMES C. HARRIS, JR. - BUSINESS AND INDUSTRY

MR. JAMES C. HARRIS, JR. - BUSINESS AND INDUSTRY

ADVISING SECURITY PATROLS AND INVESTIGATIVE LAW

Report of the report as follows: That HOUSE BILL

be amended as follows:

1. Page 6, line 11.

Following: "(1)"

Insert: "(a)"

2. Page 7, following line 1.

Insert: "(b) a person:

- (i) employed singly and exclusively by a retail merchant,
- (ii) performing at least some of his work for the retail merchant as a private security guard; and
- (iii) who has received training as a private security guard from the employer or at the employer's direction."

3. Page 14, line 7.

Strike: ", registration."

And as amended,

AS COMPLETED IN

STATEMENT OF INTENT ADOPTED AND ATTACHED

REMARKS

February 18, 1967

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS & INDUSTRY HAVING HAD
UNDER CONSIDERATION HOUSE BILL NO. 68, ATTACH THE
FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

HB BILL NO. 68

A statement of intent is required for this bill because in section 3 it expands the authority of the board of private security patrolmen and investigators to provide for the application of administrative fines and penalties for minor infractions of Title 37, chapter 60, and the supporting rules.

It is the intent of the legislature that the board adopt rules that conform with chapter 60 and other applicable statutes. Administrative fines and penalties for minor infractions of the chapter or of the board's rules must be commensurate with the gravity of the infraction, and the board may not suspend or revoke a license granted under this chapter except upon indisputable evidence of violation of this chapter, other applicable statutes, or the board's rules.