MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

Call to Order: By Bob Pavlovich, on January 5, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 19

Presentation and Opening Statement by Sponsor: Rep. Swysgood, District 73, gave a brief overview of his bill. Rep. Swysgood stated that the section that had the most questions to discuss is Section 32-1-322, MCA.

List of Testifying Proponents and What Group they Represent:

Bill Parker, President & Chief Executive Officer, First Interstate Bank, Great Falls
John Cadby, Montana Bankers Association
Fred Flanders, Commissioner of Financial Institutions, State of Montana

List of Testifying Opponents and What Group They Represent:

Roger Tippy, Independent Bankers Association
Keith Colbo, Montana Independent Bankers Association

Testimony:
John Cadby explained how this bill came about, that a small independent bank in eastern Montana is owned by a family from Minnesota which makes up the board for the bank. The owner called Mr. Cadby and asked him if he could help get rid of the residency requirement because every time the bank is examined by the Commissioner's office it is written up because two-thirds of the directors are not are not residents of Montana.

Mr. Cadby and the Montana Bankers' Association's met with the commissioner; none of them could figure out why the residence requirement was put there in the first place. Second, none of the bank's competing financial institutions have similar requirements.

A lot of the banks have directors from out of state serving on their boards. But, of course, all of them do comply with the law and do have, except the one he mentioned, two-thirds of the directors from Montana.

The primary purpose of the bill is to try to clear up this stock situation. He has been advised that national banks have to by $5,000 worth of whatever the value exists at the time a director goes on a board. Maybe you can change this and just strike the word "par" and leave the $1,000 in if you want. That would probably solve that problem, I would leave that up to Fred Flanders to answer. Technically, most banks violate this law because they have buy-back agreements so that when you serve on a board and you buy stock, you enter into a buy-back agreement with that bank. The bank buys the stock back when the director leaves the board. In essence, the banks are violating the law with this buy-back agreement. So, the director, therefore, does not own the stock in his own right as required by law. I think the simplest thing to do would be to repeal the section and get it out of the way.

See the attached exhibits for further testimony.

Questions From Committee Members: Representatives Thomas, Kilpatrick, Wallin, Hansen, Glaser, Smith, Simon, Bachini, Blotkamp, and Johnson had questions which were answered by Mr. Cadby, Mr. Parker, Mr. Flanders, and Mr. Tippy.

Closing by Sponsor: Rep. Swysgood in closing stated that in the testimony from both sides today that because of the early drafting of this under some of the new rules that we have instituted, that some of the information wasn't available to us that came to light and we all heard that in opening testimony, that if you have problems with the residency requirement that he has no problem with retaining the two-thirds membership for the board of directors. In light of this, my personal opinion is that currently that takes place any way, and that the practice continues. Either way he has no problems retaining the two-thirds residency requirement.

The main thing I think is that the fact that current law requires in some cases a critical financial investment to serve as director doesn't guarantee that that director

necessarily is going to be prudent or whatever, just because there is a monetary value attached to his being able to serve. What it does, is to exclude those that could be qualified but might not have the financial resources to serve in this capacity because of the current law.

DISPOSITION OF HOUSE BILL 19

Discussion: None

ADJOURNMENT

Adjournment At: 10:00 a.m.

BOB PAVLOVICH, Chairman

BP/sp

0403.MIN

HB19

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1/5/89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	X		
DeMARS, GENE			
BACHINI, BOB			
BLOTKAMP, ROB			
HANSEN, STELLA JEAN			
JOHNSON, JOHN			
KILPATRICK, TOM			
McCORMICK, LLOYD "MAC"			
STEPPLER, DON			
GLASER, BILL			
KELLER, VERNON			
NELSON, THOMAS			
SIMON, BRUCE			
SMITH, CLYDE			
THOMAS, FRED			
WALLIN, NORM			
PAUL VERDON			

CS-30

HOUSE BILL #19
TESTIMONY ON BANK DIRECTORS BILL

House Business
and Economic Development Committee

8:00 a.m.
Thursday
January 5, 1989

Mr. Chairman and members of the Committee:

House Bill #19's main goal is to eliminate archaic laws and help level the playing field with competing financial providers in today's unregulated environment. Since drafting the bill, however, we have learned national banks must also have two-thirds of their directors as residents of Montana. Other competing financial providers don't have a similar requirement and we do not think such a requirement is needed. On the other hand, it is not difficult for most banks to have at least two-thirds of their board be residents of Montana if you wish to retain it.

The other section, however, has caused headaches for most state banks and should be repealed even though national bank directors have to invest $1,000. Since 1927, Section 32-1-324 has required all individuals to have one thousand dollars <u>par</u> value of stock in order to serve on the board. In many cases a system bank like First Interstate will only have a par value of a dollar per share, but a market value of say twenty dollars a share thereby requiring the individual to purchase twenty thousand dollars in First Interstate stock before he can serve as a director.

We could change the law to <u>market</u> value but community bank stock does not have a market value and it would be impossible to appraise and enforce.

In addition the $1,000 qualifying stock prevents a bank from placing a low-income or consumer advocate on the board if they

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don't have the money to buy the stock. A bank may want a diversified board to represent all special interests in his community and is restricted by this law.

Also, most state banks use a buy-back agreement with their directors wherein they guarantee to buy back the stock when the director leaves the board. According to section 32-1-324 every director must own the stock in his own right and not pledge it as security for any loan and debt. Technically most state banks are violating the law today.

Montana law, Section 35-1-401, does not require directors for all other corporations to be share holders of the corporation to serve on their board. This is also true with competing financial providers like credit unions, savings and loans, stock brokers, retailers, etc.

We sought counsel with other banks, the Montana Bankers Association, and the Commissioner of Financial Institutions. Everyone agreed it was an archaic law for which no one can figure out why it was ever required in the first place. Perhaps someone thought years ago a bank director should have qualifying shares of stock to enhance his interest in the bank. Today, however, bank directors are subject to a host of laws with fines and imprisonment, plus they are liable for their actions. Further, a bank director's personal assets are at risk in a multi-million dollar bad faith lawsuit.

This archaic law simply discriminates against state banks, and is a useless nuisance that causes additional administrative headaches and costs which are ultimately passed on to the consumer.

We urge you to approve HB-19.

there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal or to distribute them on the same principle among as many candidates as he shall think fit.

(2) The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor or of a person of unsound mind may be represented and voted by his guardian and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company.

(3) The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if for any reason there is not a quorum present or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting.

(4) All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

Cross-References

Business corporations — quorum of directors — voting requirements, 35-1-405.

Business corporations — closing of transfer books and fixing record date, 35-1-503.

Business corporations — voting list, 35-1-504.

Business corporations — voting of shares, 35-1-506.

Business corporations — articles to control as to shareholder voting requirements, 35-1-507.

Business corporations — voting trust — inspection of agreement, 35-1-508.

32-1-324. Director's shares of stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank or the owning bank holding company as defined in the federal Bank Holding Company Act of 1956, as that act reads on October 1, 1985, owning in his own right shares thereof of the par value of at least $1,000, and every person elected to be a director, who after such election shall cease to be the owner in his own right of the amount of such stock aforesaid or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the department of such sale or hypothecation, and such director may be removed from the office of director by the department, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the department.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209; amd. Sec. 3, Ch. 179, L. 1985.

Cross-References

Sale of securities by officer to bank, 32-1-463.

Removal of directors, officers, or employees, 32-1-468.

Organization of subsidiary trust companies, 32-1-803.

Business corporations — board of directors, [illegible]-401.

32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least quarterly.

Independent Bankers' Opposition to HB19
Point No. 1

This bill undercuts Montana's long-established policies in favor of community-based, locally operated banking and would replace it with remote control bank management. This is not in the public interest. Lending decisions made far away, especially when made in some national financial hub which controls a great many banks, will not be made with the sensitivity to local conditions our present laws assure.

This bill should not be viewed in isolation but together with the merger-and-consolidation bill yet to be introduced. If merger and consolidation passes, the Minnesota Twins will probably coalesce their banks into a single corporation, based in Billings or Great Falls, where each will have a single board of directors making decisions for the 14 First Banks or the 8 Norwest banks. At least those directors would have some awareness of Montana's overall economy. But if that happens and this bill passes, too, the Twins can change all their national charters to state charters and have their boards of directors back in Minneapolis run the respective shows.

A regional banking system based in Minneapolis may be an attractive takeover target for some expanding multinational group of banks. The end result could be a board so remote as to have no clear understanding of even where Montana is.

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Independent Bankers' Opposition to HB19
Point No. 2

The bill would eliminate two well-established features in banking law, found in many states and in federal law.

Stock ownership is a prerequisite to being a director of a state bank in many states. The purposes behind such laws have been described as securing the fidelity of directors in the exercise of their duties (Molner v. South Chicago Savings Bank, 138 F.2d 201), or to protect the public, including depositors, and after that to enable the stockholders to secure a fair return on their investment (Tooker v. Inter-County Title Guaranty, 293 N.Y. 386). In the National Bank Act, Congress requires directors of national banks to own stock of at least $1,000 par value in the bank.

Residence: A number of states require a majority of a bank's directors to be residents of the state (Am. Jur. 2d, Banks, sec. 78). Congress has put a similar requirement in the National Bank Act, that at least two-thirds of the board reside in the state or within a 100-mile radius of the bank (12 U.S. Code sec. 72). The idea behind this requirement is that local directors are more likely to know the trustworthiness of those hired to run the bank and to know the character and ability of those who want to borrow (1st Nat. Bank v. Hawkins, 174 U.S. 364).

HOW CAN A BOARD OF DIRECTORS SITTING IN MINNEAPOLIS, OR IN NEW YORK OR TOKYO, ACT ON LOAN APPLICATIONS AS KNOWLEDGEABLY AS A LOCAL BOARD OF DIRECTORS COULD?

Independent Bankers' Opposition to HB19
Point No. 3:

Here is the section in the National Bank Act which requires every director in a national bank in Montana to own at least $1,000 worth of shares in the bank, and which requires 2/3 of the directors to reside in Montana or within 100 miles of the bank:

§ 72. Qualifications

Every director must, during his whole term of service, be a citizen of the United States, and at least two-thirds of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors. Every director must own in his or her own right. either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) [12 USCS § 1841]. If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) [12 USCS § 1841]. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

(As amended Sept. 17, 1978, P. L. 95-369, § 2, 92 Stat. 608; Mar. 31, 1980, P.L. 96-VII, Part A, § 710, 94 Stat. 189.)

WHY DOES HB19 PROPOSE TO DO AWAY WITH SIMILAR REQUIREMENTS FOR DIRECTORS OF STATE-CHARTERED BANKS?