

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Harrington, on February 14, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council

Announcements/Discussion: Chairman Harrington reminded all of the witnesses to sign the visitor's register.

HEARING ON HOUSE BILL 603

Presentation and Opening Statement by Sponsor:

Rep. Bob Raney, District 82, stated the bill is to assist independent gas station operators, small service stations and some distributors with the costs of adhering to the environmental rules and regulations imposed upon them. EPA guidelines require extensive insurance and financial responsibility which is difficult for the small business. Rep. Raney stated HB 603 is to assist the small operators to stay in business and to help clean up the environment. He stated that many small stations in little towns across the state will have to close due to the costs of the EPA standards if they do not receive assistance. This could result in difficulties for travelers who are unable to obtain gasoline for hundreds of miles if the small stations in little communities are forced to terminate their businesses. HB 603 encourages prompt detection and cleanup of releases, assists tank owners and operators with financial assurance requirements, and reimburses those owners and operators for environmental cleanup and third party payments. This is accomplished by the creation of a board to oversee a fund created by a 3/4 cent tax increase on each gallon of gasoline. The board will also establish rules for detection, cleanup and reimbursement.

Testifying Proponents and Who They Represent:

Steve Biskin, President, Montana Petroleum Marketers

Association

Rona Alexander, Director, Petroleum Marketing Association

Chris Kaufman, Montana Environmental Information Center

Pat McKutchen, Helena Insurance Agent

L. G. Lund, Dalkon Distributing

Doug Alexander, Bozeman Petroleum Marketer

Larry Mitchell, Department of Health & Undergraduate
Sciences

John Augustine, Registered Lobbyist for Conoco

Riley Johnson, Automotive Trades of Montana

Proponent Testimony:

Steve Biskin stated HB 603 establishes a petroleum tank release clean up fund which will be used to support a program for corrective action of damages created by releases from petroleum storage tanks. Each gasoline distributor will pay into the fund 3/4 of a cent on each gallon of gasoline he buys. This money will be collected by the Department of Revenue using existing procedures and current personnel. Little additional cost will be required to operate this fund. The fund will continue to build until it reaches the level of \$8,000,000.00. When this occurs, the fee will be discontinued and will not be reinstated unless the fund drops to \$4,000,000.00. The fund will continually earn interest and it is quite likely that once it reaches the eight million dollar level, it may never drop to the four million and the fee may not have to be reinstated at all. Mr. Biskin stated the fund will collect approximately \$3,000,000.00 each year until reaching the \$8,000,000.00 level. He said the governor will appoint a board to oversee and administer the fund and preexisting conditions are not covered under the reimbursement plan. Underground tanks are required to be properly registered and there are requirements by the state at the present time. The release must be accidental and the tank has to have been managed in a proper manner meeting all federal and state guidelines. Tanks excluded from the bill are tanks located at a refinery or terminal, tanks located at an oil and gas production facility, tanks owned by a railroad, tanks belonging to the federal government, farm or residential tanks under 1100 gallons, tanks owned or operated by a person who has been found guilty of improper handling or management of their tanks in the past by a federal or state agency. Costs associated with reimbursement are costs associated with analyzing the leak, contamination and the actual cleanup. Costs associated with the replacement of the tank and replacement of the lines are not covered, no legal costs are covered and the first \$25,000.00 expense in the cleanup is not covered. A two year period is provided in which all expenses would be paid. The \$25,000.00 deductible starts after the two year period. The rationale for this is to encourage people to clean up their underground storage. Mr. Biskin stated it is imperative to help small businesses survive and the EPA standards must be met in order for

retail businesses to operate. The insurance costs for most of the small businesses are prohibitive. Diesel fuel is not included in the tax because it is currently sold on a non-tax basis and the cost of collecting this tax would be prohibitive.

Rona Alexander presented the committee with statistical information concerning the petroleum industry as it related to the bill. (Exhibits 1,2,3,4). She spoke in support of the bill.

Chris Kaufman stated her organization was very concerned with the underground storage tank leakage problem which they consider to be a critical environmental problem. She stated they actively support the cleanup of these leaks and that HB 603 is a good start toward this end.

Pat McKutcheon stated he is an insurance agent who insures many of the petroleum industry people. He stated one of the major concerns is the financial responsibility requirement of the EPA. Mr. McKutcheon stated there needs to be availability and affordability in the insurance required. Only one insurance company in Montana is currently providing pollution coverage and this is very expensive. He stated these are legitimate concerns that need to be addressed and urged support of the bill.

L. G. Lund stated his company supplies petroleum products to 26 Montana dealers and none of them have any pollution insurance. It is not available to them and they could not afford the cost if it were available. Mr. Lund stated these dealers will have to close if there is no method to satisfy this EPA requirement. He stated the premium costs have increased 700% in the last three years. He urged support of the bill.

Doug Alexander spoke in support of the bill. (Exhibit 5).

Larry Mitchell spoke in support of the bill and submitted additional documents that relate to the petroleum industry. (Exhibits 6, 7, 8, and 9).

John Augustine stated this bill is very important to small station operators. He said one underground leak could mean bankruptcy for the small owner/operator. Mr. Augustine stated he was concerned with the inclusion of above ground storage tanks in the bill and also that there was no preemption of cities and towns. He stated any city or town could pass their own bill which could be much more stringent. He felt there should be uniform rules and regulations but he would still support the bill.

Riley Johnson stated his organization represents the small station owners and they are presently faced with a critical problem in the matter of the required insurance. He stated

they could not buy the insurance at all. He said his organization supported the bill but requested that the committee take a very close look at the \$25,000.00 deductible since this would be prohibitive to many small owner/operators. He asked that the committee consider amending the bill to eliminate this requirement.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Patterson asked Rep. Raney about Section 4, Page 10 of the bill which lists the exemptions but does not include the State of Montana and asked if they should not be included. Rep. Raney asked why the state should be exempted. Rep. Patterson responded that the state tanks are owned by the Highway Department and the state certainly has the ability to buy insurance. Mr. Biskin responded at Rep. Raney's request. He stated the state and counties had been considered but the EPA requires that the counties have a similar level of coverage and the state does pay the fuel tax and therefore it was considered appropriate to include them but if the committee wished to change this, he would have no objection.

Rep. Ream asked Mr. Mitchell regarding the \$8,000,000.00 cap on the fund and asked if it was correct that Mr. Mitchell had indicated it would be some time before this amount would be reached. Mr. Mitchell replied that was true. He indicated there would be a lot of leaks discovered in the first few years of the program that will require investigation and/or remedial action. Rep. Ream then asked Mr. Biskin if he cared to respond. Mr. Biskin replied that the expenditures for the first year will probably be larger than three million. He stated the bill has provisions for this which involve allowing the board to guarantee to the owner, a payment at a later date even if funds are not currently available. The owner could then acquire a loan from a bank on this guarantee. The Legislature can also loan money to the fund for a period of time, no more than what would be collected in 24 months so funds would be available with an interest payment.

Rep. Ellison asked Mr. Biskin to briefly outline the EPA preventive measures that are currently in effect. Mr. Biskin replied there is a financial responsibility requirement of one million dollars. Also, there are new requirements for the installation and the maintenance of the tanks. Tanks must be protected or made from a material that will not corrode and leak detection equipment is also required. Lines must also be wrapped so there will be no

corrosion and automatic shut-off on the equipment in the event of a leak is required. These are all being phased in over a period of time.

Closing by Sponsor: Rep. Raney stated 24 states have enacted similar legislation. The bill does not cover the cost of any equipment, piping, or tank replacement or removal. This is for the environmental degradation and the third party responsibility due to environmental contamination. This can be considered a conservationist's bill and a small business owner's bill. Rep. Raney stated a significant number of small businesses will close, especially in the rural areas, without this legislation.

DISPOSITION OF HOUSE BILL 603

Motion: None

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: None. Action will be taken in executive session at a later date.

HEARING ON HOUSE BILL 588

Presentation and Opening Statement by Sponsor:

Rep. William Menahan, District 76, stated the bill was an act to revise the fee in lieu of the tax on motorboats. Under the present law, canoes with motors have been taxed excessively. Rep. Menahan stated that on page 4 of the bill, an amendment was needed to exclude jet boats. Rep. Menahan stated there would be a free year for those who had excessive fees last year if they can present their receipt for payment.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Menahan made no further statement.

DISPOSITION OF HOUSE BILL 588

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Chairman Harrington stated he will put HB 588 into a subcommittee with other bills on this same subject.

HEARING ON HOUSE BILL 76

Presentation and Opening Statement by Sponsor:

Rep. Francis Bardanoue, District 16, stated that all corporations in Montana pay a corporation license. He stated that if a company becomes bankrupt, they should not be able to collect a refund on the corporation license. Rep. Bardanoue said the insurance companies are the only corporations in Montana that have a built-in refund. To eliminate this would be a major step toward balancing the budget. Rep. Bardanoue stated opponents to the bill will have a good argument in that it could be considered unconstitutional due to the violation of a contract argument.

Testifying Proponents and Who They Represent:

Tanya Ask, Montana Insurance Department

Proponent Testimony:

Tanya Ask spoke in support of the bill. (Exhibit 10).

Testifying Opponents and Who They Represent:

Patrick Driscoll, Helena Attorney
Tom Hopgood, Health Insurance Association of Montana
Steve Browning, State Farm Insurance
Mike Mulroney, Attorney, Helena
Larry Ackey, Montana Association of Life Underwriters
Peter Sullivan, Concerned Citizen

Opponent Testimony:

Patrick Driscoll spoke in opposition to the bill. (Exhibit 11).

Tom Hopgood said the state is responsible to the people of Montana to insure the financial viability of the insurance companies doing business in the state. When there is a bankruptcy of one of the insurance companies, part of that responsibility is to provide the policyholders the benefit of their policy. Mr. Hopgood stated it is not the responsibility of other insurance companies to pay for one that is mismanaged and becomes bankrupt. He urged the company to consider where the responsibility lies in this type of situation.

Steve Browning said his company is not in the business of regulating other insurance companies. He stated the legislature established the tax to help in the case of insolvency. He urged a do not pass on the bill.

Larry Ackey stated the basic premise of the bill was in error. He said the guaranty association insures policyholders against bankruptcy by insurance companies. Mr. Ackey stated that if the bill is passed, there will no doubt be numerous lawsuits and the removal of the tax offset will cause premium cost increases. He said there will be reduced availability of insurance. He stated the bill would be bad for the consumers and urged a do not pass.

Peter Sullivan stated there will be insurance companies that will withdraw from the state if the bill is passed resulting in less competition in the insurance business and this would be bad for the consumers. He urged a do not pass.

Questions From Committee Members: Rep. Good asked Tanya Ask why Andrea Bennett had previously stated this bill was very bad legislation. Why did she change her mind. Ms. Ask stated that is correct but since that time, it had been decided this was an incorrect position and that they should support this legislation.

Rep. Driscoll stated if he had a \$10,000.00 life insurance policy with Life of Montana that he purchased ten years ago, what would he receive from the guaranty fund. Ms. Ask replied that the purpose of the guaranty fund is to assure that the rights of the individual under their particular policy remain in force. Ms. Ask stated that if the policy were continued or if Rep. Driscoll died, the guaranty fund would stand behind the policy and pay the death benefits to his beneficiary or if the policy was cashed, the fund would see that the cash value of the policy was paid. Rep. Driscoll then asked what happens to the \$31,000,000.00 of Montana Life money to which Ms. Ask replied the

\$31,000,00.00 is the result of the eventual insolvency of Life of Montana. She stated she did not know what happened to the assets of the company but clearly, the assets were not sufficient to meet the company obligations.

Rep. Patterson asked Ms. Ask if the bill were passed, court action would probably result. What would happen to the dollars in the general fund, would they be collected or would collections be stopped. Ms. Ask stated she did not know but would guess fund could be paid under protest. Rep. Patterson then asked who would defend the state's position, the state auditor's office or the attorney general's office. Ms. Ask replied she was not certain but in the past, she had worked in conjunction with the Tort Claims Division of the Department of Administration.

Rep. Good asked Mr. Mulroney what would happen to policyholders of Life of Montana if challenge is made to HB 76 in court. Mr. Mulroney replied there would have to be application made to the Insurance Commissioner for a moratorium on payments to surrender values or for policyholder benefits. Rep. Good then asked how many people were involved. Mr. Mulroney replied approximately 11,000.

Rep. Ream asked Ms. Ask if it would not be the contested part of the money that would be held back. Ms. Ask replied that would be her assumption. She stated there was a difference between the premium tax and the offset but she did not have the exact figures on the premium tax. She stated she would assume 13 to 15 million dollars. Ms. Ask said the overall figure for all companies is 25 million dollars.

Rep. Gilbert asked Rep. Bardanoue if he did not want the general fund to be kept whole with the premium offset taxes. Rep. Bardanoue replied that was correct. Rep. Gilbert then suggested a two word amendment in the bill. This would involve inserting "and the premium tax offset" on lines 5 and 6 and the insurance companies would pay their 2 1/2 percent into the general fund and the insurance companies will take their own risks in the case of bankruptcy. Rep. Bardanoue replied should depositors in banks not have the protection of the FDIC insurance. Rep. Gilbert stated he was not talking about banks. Rep. Bardanoue replied it was the same thing. Rep. Gilbert asked if banks received a tax credit for the FDIC funds. Rep. Bardanoue replied no they did not and that is why he was arguing against the offset guaranty.

Rep. Driscoll stated the general fund was really the guaranty fund. Mr. Pat Driscoll replied this was not quite accurate. He stated it was a combination of the general fund and the insurer's assessments to the guaranty fund.

Rep. Ream stated to Rep. Bardanoue the premium tax is

assessed, then the offset is a deduction against that tax. Why is this unconstitutional? Rep. Bardanouve replied that under the present system of allowing deductions for corporation license fees, this is not proper procedure. Rep. Ream then asked Mr. Driscoll if it is unconstitutional to remove the deductibility then it must have been unconstitutional to impose it. Mr. Driscoll replied that the supreme court has not said that the legislature cannot exercise its taxing power but it did say that where there is an agreement as there is here, the court will not allow the impairment of a contract unless it involves a reasonable public service. He stated the court defined reasonable as circumstances unforeseen at the time of the agreement. Mr. Driscoll there were no circumstances in the present law that were unforeseen.

Closing by Sponsor: Rep. Bardanouve stated that Andrea Bennett is the best insurance commissioner the state has ever had and he hoped the committee would consider her position on this bill. He urged the committee to carefully consider the bill and stated the consumers will have to pay higher taxes if the bill is not passed. He thanked the committee for their time and urged their careful consideration.

DISPOSITION OF HOUSE BILL 76

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: None. HB 76 will be considered in executive session at a later date.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 236 HEARD ON FEBRUARY 3:

MOTION: DO PASS by Rep. Driscoll.

DISCUSSION: Chairman Harrington stated the bill was previously amended by the committee.

Rep. Raney asked if the 7.5% is money currently going to the Education Trust Fund and not to any other area. Rep. Driscoll responded that this money is not dedicated until 1991 and it would then be 7.6%. Rep. Raney then asked where the 7.5% was

going now to which Rep. Ellison responded it was going to the general fund after July 1, 1989.

Rep. Gilbert stated this was taking money that is needed for other things. The alternative is to raise taxes. He opposed the bill.

HB 236, on a roll call vote of 9 to 8, DO PASS AS AMENDED motion carried.

DISPOSITION OF HOUSE BILL 161 HEARD ON JANUARY 24:

MOTION: Chairman Harrington stated there were amendments on the bill. Rep. Cohen made a DO NOT PASS motion on the bill.

DISCUSSION: Rep. Giacometto stated as he understood the law, if a person is living in a house on property that has been rezoned commercial, the owner does not have to pay commercial property taxes.

Rep. Cohen stated, referring to previous testimony on the bill, that the person involved was not living on the property and this was undeveloped land with commercial zoning. He stated this man's property is in Kalispell is directly across from the city airport and therefore very valuable. He stated this was the worst kind of legislation since it was designed for one area and one specific person.

Rep. Rehberg disagreed stating this was good legislation since the person mentioned did not want to develop the property and the owner should not be penalized in this situation. He stated housing should be differentiated from commercial enterprises. This needs to be addressed. He said the owner should pay residential taxes until such time as the land is actually developed.

Rep. Hoffman stated taxes should be based on use of the property, not on location or potential development possibilities.

Rep. Ellison agreed with Rep. Rehberg.

Rep. Cohen stated the previous proponent to the bill is a man he knows personally. He stated his property is 50 acres with a house in one small corner of the property. Improvements have been made to the property such as sewer lines. He said the value of this property has increased and the man is holding it as an investment. The increased value of the property is due to actions of the city of Kalispell who have zoned this area for commercial industrial use. Rep. Cohen stated if the man wanted to take the house and one acre of the property and keep this as residential, that would be fine but not the entire fifty acre property.

Rep. O'Keefe stated he agreed in some respects with Rep. Rehberg but he was concerned regarding the Kalispell property owner stating the owner's property is appraised at \$155,000.00 and he has this on the market for \$275,000.00 and wants this to be appraised at \$52,000.00. He stated this was totally inequitable.

Rep. Rehberg made a substitute motion to DO PASS ON THE AMENDMENTS.

Rep. Rehberg stated that the property owner, in his testimony, talked about 1.9 acres, not fifty and the land has not as yet been sold for the market price. The amendments provide a rollback period of three years so if the land is sold, then the taxes would still be paid at the commercial rate.

Rep. Giacometto asked if this addressed the property rezoning.

Rep. Rehberg stated that under the subdivision and planning procedure, if the land is divided, it will then be zoned commercial and this bill would not apply. Rep. Giacometto then asked if he owned forty acres, had the property for many years, the city grew up around it, but there was no house on the property and no development had been done, would he have to pay commercial or residential taxes. Rep. Rehberg replied he could not answer that. Rep. Giacometto then asked would it be better to leave the bill as stating "zoned" rather than the amendment which states "use." Rep. Gilbert replied that with over twenty acres of land, it would be taxed as agriculture under the Montana Greenbelt Law.

Rep. Driscoll made the motion TO DIVIDE amendment 3 on page 1, line 19, changing "zoned" to "used" and SEGREGATE this from the other amendments. Dave Bohyer stated it would be necessary to include number 4 and the title. Rep. Hoffman seconded the motion.

The committee voted on the remaining amendments 2, 5, 6, and 7. Motion CARRIED by a unanimous voice vote.

Rep. Driscoll spoke against changing "zoned" to "used" in Amendment 3. He stated there are zoning commissions to handle this area and there would be problems with residents who state they are using the property as residential although it has been zoned commercial.

The committee voted to DO NOT ADOPT the segregated part of the amendments. The motion CARRIED by a unanimous voice vote.

The committee returned to the MOTION DO PASS AS AMENDED.

Rep. Raney stated no other property owners have complained about the current law except one Kalispell man and he was concerned that this bill was not really necessary. Chairman Harrington concurred.

Rep. Patterson stated the reason no one in the Billings area had complained was because of a severe economic crises and as a result, there was no economic growth in the area to be concerned with zoning.

The motion to DO PASS AS AMENDED was defeated by a 11 to 7 vote. Rep. Raney made the motion to reverse the vote. The motion was CARRIED by unanimous vote and HB 161 was a DO NOT PASS AS AMENDED.

DISPOSITION OF HOUSE BILL 359 HEARD ON FEBRUARY 7:

MOTION: DO PASS by Rep. Giacometto.

DISCUSSION: Rep. Raney stated he felt the tax on sand and gravel was unfair.

Rep. Gilbert stated the bill exempted sand and gravel from the mineral tax and this was a concern for him. He also stated that some of the worst blights in the state were old gravel pits. He said these should be cleaned up.

Rep. Hanson commented that there was a lot of gravel used and hauled in her area and a lot of the old gravel pits have been reclaimed.

The motion to DO PASS failed on a 15 to 3 roll call vote.

Rep. Driscoll made the motion to TABLE THE BILL. Motion carried by a 16 to 2 voice vote. Rep. Ellison and Rep. Gilbert voted no.

DISPOSITION OF HOUSE BILL 266 HEARD ON FEBRUARY 1:

MOTION: DO PASS by Rep. Cohen.

DISCUSSION: Rep. Good proposed an amendment raising the tax to 3 cents. Rep. Cohen stated this was too much money and he objected to the amendment.

Rep. Hanson moved the amendment.

Rep. Raney stated he agreed but he was afraid it would kill the bill.

The amendment FAILED by a voice vote. Rep. Good and Rep. Ream voted for the amendment.

The motion to DO PASS FAILED by a 9 to 9 roll call vote.

Rep. Gilbert made the motion to TABLE the bill. The motion was carried on a voice vote of 13 to 5. Reps. Giacometto, Raney, Good, Ream and O'Keefe voted no.

ADJOURNMENT

Adjournment At: 11:00 a.m.



REP. DAN HARRINGTON, Chairman

DH/lj

3815.min

DAILY ROLL CALL

TAXATION

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date February 14, 1989

| NAME | PRESENT | ABSENT | EXCUSED |
|---------------------------|---------|--------|---------|
| Harrington, Dan, Chairman | ✓ | | |
| Ream, Bob, Vice Chairman | ✓ | | |
| Cohen, Ben | ✓ | | |
| Driscoll, Jerry | ✓ | | |
| Eliott, Jim | ✓ | | |
| Koehnke, Francis | ✓ | | |
| O'Keefe, Mark | ✓ | | |
| Raney, Bob | ✓ | | |
| Schye, Ted | ✓ | | |
| Stang, Barry | ✓ | | |
| Ellison, Orval | ✓ | | |
| Giacometto, Leo | ✓ | | |
| Gilbert, Bob | ✓ | | |
| Good, Susan | ✓ | | |
| Hanson, Marian | ✓ | | |
| Hoffman, Robert | ✓ | | |
| Patterson, John | ✓ | | |
| Rehberg, Dennis | ✓ | | |
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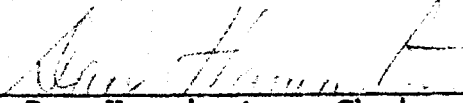
12:40 pm
3/28/89
jd

STANDING COMMITTEE REPORT

February 27, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that HOUSE BILL 236 (first reading copy -- white) do pass as amended.

Signed: 
Dan Harrington, Chairman

And, that such amendments read:

1. Page 1, line 9.

Following: line 8

Insert: "WHEREAS, the legislature has placed revenue received from the coal severance tax into the education trust fund to provide for the future funding for education; and

WHEREAS, the 1987 legislature appropriated most of the money that was in the education trust fund at the time; and

WHEREAS, a constitutional allocation of coal severance tax revenue to the public school fund may not be appropriated by future legislatures; and

WHEREAS, such an allocation should not affect the funding of other recipients of coal severance tax revenue; and

WHEREAS, if this constitutional referendum is adopted by the people of Montana, amendments to the statutory distribution of coal severance tax revenue will be necessary to ensure that this bill is revenue neutral to agencies currently receiving coal severance tax revenue.

8:00 a.m.
2/15/89
jw

STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that HOUSE BILL 161 (first reading copy -- white) do NOT pass as amended

Signed: _____

Dan Harrington, Chairman

And, that such amendments read:

1. Title, line 9.

Following: line 8

Strike: "REDUCING THE ROLLBACK PERIOD TO 3 YEARS;"

2. Page 1, line 19.

Strike: "zoned"

Insert: "used"

3. Page 4, line 7.

Following: "in"

Strike: "three"

Insert: "five"

4. Page 4, line 9.

Following: "the first"

Strike: "3"

Insert: "5"

EXHIBIT 1

DATE 2/14/89

E-89-51

HB 603

Rep. B. A. Roney

PETROLEUM MARKETERS ASSOCIATION OF AMERICA

PMAA SURVEY RESULTS:

**THE IMPACT OF FEDERAL UNDERGROUND PETROLEUM
STORAGE TANK REGULATIONS ON THE NATION'S
SERVICE STATION POPULATION**

JANUARY, 1989



1120 VERMONT AVENUE, NW • SUITE 1130 • WASHINGTON, DC 20005 • (202) 331-1198

TABLE 1: 1988 UNDERGROUND TANK SURVEY
EXPECTED STATION CLOSURES,
BY STATE

Rep. Bob Roney

| State | Number of Respondents | Total Stations Expected to Close | %Stations in Population Areas <10,000 | %Stations in Population Areas 10,000-49,999 | %Stations in Population Areas 50,000+ |
|-------------------|--------------------------|---|---|---|---|
| al | 56 | 467 | 72.81 | 19.06 | 8.14 |
| az | 11 | 14 | 50.00 | 14.29 | 35.71 |
| ca | 105 | 312 | 33.01 | 28.53 | 38.46 |
| co | 45 | 158 | 60.76 | 14.56 | 24.68 |
| fl | 56 | 127 | 44.09 | 18.11 | 37.80 |
| ga | 31 | 243 | 52.26 | 27.57 | 20.16 |
| ia | 233 | 278 | 82.01 | 9.35 | 8.63 |
| id | 5 | 14 | 50.00 | 50.00 | 0.00 |
| il | 249 | 619 | 70.60 | 15.83 | 13.57 |
| in | 86 | 347 | 62.25 | 18.16 | 19.60 |
| ioma ¹ | 21 | 52 | 50.00 | 9.62 | 40.38 |
| ks | 76 | 101 | 79.21 | 11.88 | 8.91 |
| mi | 126 | 238 | 72.69 | 13.87 | 13.45 |
| mo | 74 | 208 | 68.75 | 15.38 | 15.87 |
| ms | 22 | 177 | 72.32 | 22.60 | 5.08 |
| mt | 27 | 56 | 37.50 | 60.71 | 1.79 |
| nc | 127 | 839 | 55.30 | 30.99 | 13.71 |
| ne | 127 | 335 | 78.81 | 21.19 | 0.00 |
| nm | 20 | 57 | 38.60 | 45.61 | 15.79 |
| ny | 46 | 124 | 62.90 | 15.32 | 21.77 |
| oh | 82 | 500 | * | 63.60 | * |
| ok | 35 | 124 | 63.71 | 25.81 | 10.48 |
| pa | 95 | 429 | 70.63 | 15.38 | 13.99 |
| sc | 60 | 331 | 59.52 | 25.08 | 15.41 |
| tn | 45 | 379 | 65.17 | 27.18 | 7.65 |
| ut | 11 | 21 | 80.95 | 4.76 | 14.29 |
| wa | 37 | 84 | 64.29 | 10.71 | 25.00 |
| west ² | 23 | 49 | 42.86 | 32.65 | 24.49 |
| wi | 162 | 273 | 75.82 | 14.65 | 9.52 |
| wv | 17 | 53 | 54.72 | 32.08 | 13.21 |
| wy | 18 | 88 | 71.59 | 18.18 | 10.23 |
| *** Total *** | 2128 | 7097 | 61.21 | 24.87 | 13.91 |

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma, nh, me²west = ut, id, mt, nv

TABLE 2:1988 UNDERGROUND TANK SURVEY
NUMBER OF COMMERCIAL TANKS EXPECTED
TO CLOSE, BY STATE

EXHIBIT 2
DATE 2/14/89
HB 603
Rep. Bob Koney

| ATE | Number of Respondents | Estimated Commercial Tanks Supplied | Commercial Tanks Expected to Close | % of Commercial Tanks Expected to Close |
|-------------------|--------------------------|---|---------------------------------------|---|
| al | 56 | 1009 | 683 | 67.69 |
| az | 11 | 1161 | * | * |
| ca | 105 | 13202 | 6569 | 49.76 |
| co | 45 | 729 | 460 | 63.10 |
| fl | 56 | 2008 | 1210 | 60.26 |
| ga | 31 | 757 | 368 | 48.61 |
| ia | 233 | 2399 | 872 | 36.35 |
| id | 5 | 145 | 55 | 37.93 |
| il | 249 | * | 3749 | * |
| in | 86 | 1905 | 1131 | 59.37 |
| ioma ¹ | 21 | 796 | 279 | 35.05 |
| ks | 76 | 655 | 359 | 54.81 |
| mi | 126 | 4204 | 2451 | 58.30 |
| mo | 74 | 374 | 237 | 63.37 |
| ms | 22 | 212 | 159 | 75.00 |
| mt | 27 | 600 | 437 | 72.83 |
| nc | 127 | 2036 | 1154 | 56.68 |
| ne | 127 | 551 | * | * |
| nm | 20 | 176 | 135 | 76.70 |
| ny | 46 | 7049 | 1697 | 24.07 |
| oh | 82 | * | 1707 | * |
| ok | 35 | 339 | 252 | 74.34 |
| pa | 95 | 2713 | 1278 | 47.11 |
| sc | 60 | 671 | 345 | 51.42 |
| tn | 45 | 676 | 439 | 64.94 |
| ut | 11 | 309 | 178 | 57.61 |
| wa | 37 | 3251 | 798 | 24.55 |
| west ² | 23 | 1925 | 444 | 23.06 |
| wi | 162 | 2744 | 1836 | 66.91 |
| wv | 17 | 339 | 149 | 43.95 |
| wy | 18 | 460 | 281 | 61.09 |
| *** Total *** | 2128 | 53395 | 29750 | 46.93** |

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma nh, me

²west = ut, id, mt, nv

**Based on complete responses only

EXHIBIT 3
 DATE 2/14/89
 HB 603
Rep. Brl Roney

TABLE 3:1988 UNDERGROUND TANK SURVEY
 MARKETER EXPENDITURES ON
 TANK UPGRADES AND REPLACEMENTS
 1986-1988 AND PLANNED 1989

| STATE | Number of Respondents | UST Expenses Last 3 Years | UST Expenses Planned 1989 |
|-------------------|--------------------------|------------------------------|------------------------------|
| al | 56 | 3052500 | 2200000 |
| az | 11 | 560000 | 400000 |
| ca | 105 | 5340000 | 5442500 |
| co | 45 | 1472500 | 1805000 |
| fl | 56 | 3602500 | 3782500 |
| ga | 31 | 1575000 | 1695000 |
| ia | 233 | 4650000 | 4385000 |
| id | 5 | 145000 | 82500 |
| il | 249 | 6300000 | 6352500 |
| in | 86 | 4162500 | 3415000 |
| ioma ¹ | 21 | 1512500 | 1605000 |
| ks | 76 | 1255000 | 1622500 |
| mi | 126 | 5367500 | 4775000 |
| mo | 74 | 2457500 | 1890000 |
| ms | 22 | 795000 | 800000 |
| mt | 27 | 715000 | 832500 |
| nc | 127 | 6152500 | 6707500 |
| ne | 127 | * | * |
| nm | 20 | 717500 | 982500 |
| ny | 46 | 2940000 | 2477500 |
| oh | 82 | 4530000 | 4530000 |
| ok | 35 | 1035000 | 1120000 |
| pa | 95 | 3390000 | 3445000 |
| sc | 60 | 2042500 | 2280000 |
| tn | 45 | 2122500 | 1985000 |
| ut | 11 | 392500 | 605000 |
| wa | 37 | 885000 | 1192500 |
| west ² | 23 | 737500 | 727500 |
| wi | 162 | 4615000 | 4082500 |
| wv | 17 | 750000 | 700000 |
| wy | 18 | 827500 | 1025000 |
| *** Total *** | 2128 | 74100000 | 72945000 |

*Incomplete/Insufficient data;excluded from averages
 1ioma=vt,ri,ma,nh,me
 2west=ut,id,mt,nv

TABLE 4: 1988 UNDERGROUND TANK SURVEY
Pollution Liability Insurance
Coverage, by State

DATE 2/14/89HB 603Rep. BA Roney

| STATE | 2Marketers with No Pollution Liability Coverage | Insurance Not Available | Insurance Unaffordable | Other |
|-----------------|--|----------------------------|---------------------------|-------|
| al | 46.67 | 9.80 | 54.90 | 35.29 |
| az | 54.55 | 33.33 | 66.67 | 0.00 |
| ca | 43.14 | 47.06 | 50.98 | 1.96 |
| co | 58.14 | 28.57 | 67.86 | 3.57 |
| fl | 37.04 | 30.00 | 50.00 | 20.00 |
| ga | 50.00 | 7.41 | 44.44 | 48.15 |
| ia | 83.62 | 34.54 | 63.40 | 2.06 |
| id | 20.00 | 0.00 | 100.00 | 0.00 |
| il | 53.01 | 29.55 | 70.45 | 0.00 |
| in ¹ | 44.19 | 36.59 | 60.98 | 2.44 |
| ioma | 33.33 | 12.50 | 25.00 | 62.50 |
| ks | 77.78 | 36.84 | 52.63 | 10.53 |
| mi | 21.43 | 37.93 | 58.62 | 3.45 |
| mo | 39.73 | 16.28 | 81.40 | 2.33 |
| ms | 16.67 | 15.79 | 63.16 | 21.05 |
| mt | 48.15 | 53.85 | 46.15 | 0.00 |
| nc | 45.31 | 28.57 | 62.34 | 9.09 |
| ne | 71.31 | * | * | * |
| nm | 60.00 | 30.77 | 69.23 | 0.00 |
| ny | 73.91 | 60.87 | 32.61 | 6.52 |
| oh | 35.37 | * | * | * |
| ok | 75.00 | 40.00 | 60.00 | 0.00 |
| pa | 44.21 | 52.38 | 42.86 | 4.76 |
| sc | 42.37 | 10.34 | 58.62 | 31.03 |
| tn | 51.11 | 20.00 | 70.00 | 10.00 |
| ut | 45.45 | 40.00 | 60.00 | 0.00 |
| wa ² | 32.43 | 50.00 | 33.33 | 16.67 |
| west | 26.09 | 33.33 | 50.00 | 16.67 |
| wi | 44.44 | 40.85 | 59.15 | 0.00 |
| wv | 41.18 | 0.00 | 100.00 | 0.00 |
| wy | 33.33 | 33.33 | 66.67 | 0.00 |
| Average | 51.48 | 32.51 | 59.60 | 7.90 |

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma, nh, me

²west = ut, id, mt, nv

EXXON

EXHIBIT

DATE 2/14/89HB 603*Rep. Bill Roney*

February 14, 1989

STORY DISTRIBUTING CO.300 EAST GRIFFIN DRIVE - P.O. BOX 1201
BOZEMAN, MONTANA 59715

Mr. Chairman, members of the Committee:

For the record, my name is Doug Alexander and I reside in Bozeman, Mont.

I am a petroleum marketer and would be considered as a small to medium sized distributor. I distribute product to retail stores, farm and commercial accounts and to a cardlock facility.

I am here to ask that you vote for HB602. I am also here to explain to you two of the factors that this bill will help to minimize. Those factors are insurance and the financial responsibility requirement dictated by the federal government. I have included with my testimony, a copy of my 1988 and 1989 pollution insurance bill from Federated Insurance, the only company willing to quote insurance for pollution from underground tanks in the state of Montana. Please note that my premium has increased from \$10,800 as of March 1, 1988 to \$18,100 on March 1, 1989. Please note further that the amount of \$18,100 is for a six month period only, so my actual comparable cost is \$36,200, if there are no increases after the six months renewable period. This amounts to a 235% increase. As you may understand, I plan to cancel this portion of my insurance as of 3/1/89. The cost is too prohibitive and totally unreasonable.

Even if the cost was reasonable, the policy does not meet the federal requirements that have been previously outlined in testimony to you. The deductible is \$25,000 and the limits are \$500,000 for each incident with a \$1,000,000 aggregate limit, exactly half of what is needed.

EXHIBIT 2
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I feel that I am representative of most of the petroleum distributors in the State of Montana. I have never had a chargeable underground leak and three of the insured tanks are part of the most modern underground tank installation in the state. In addition to the cost of insurance, the non availability of required insurance as per the federal guidelines, I am also faced with a bank calling the notes on three of my locations that were financed with the condition that I have pollution insurance. I ask for you to vote in favor of HB 602. I would hope that you would find it encouraging that an industry such as ours is willing to adopt a plan that is a burden on our business but helps to solve the environmental and social problem that exists with underground tanks.

| EFFECTIVE DATE | POLICY NO. | REASON FOR THIS MEMO | AMOUNT |
|----------------|------------|--|-----------|
| 3/01/89 | 9081848 | POLLUTION LIABILITY COVER NEW POLICY PREM. | 18,070.00 |
| | | EXHIBIT <u>5</u> | |
| | | DATE <u>2/14/89</u> | |
| | | HB <u>603</u> | |
| | | Rep. <u>BT Roney</u> | |

STORY DISTRIBUTING COMPANY,
A MONTANA CORPORATION
P O BOX 1201
BOZEMAN MT 59715

INSURED'S NAME AND ADDRESS

MEMO

INFORMATION ONLY
THIS AMOUNT WILL BE INCLUDED
IN YOUR NEXT STATEMENT

YOUR ACCOUNT BILL DAY IS 05.

FEDERATED MUTUAL INSURANCE COMPANY
FEDERATED SERVICE INSURANCE COMPANY
HOME OFFICE OWATONNA MN 55060-2401
**FEDERATE
INSURANCE**

AN IMPORTANT NOTICE OF PREMIUM AND COVERAGE CHANGES

FEDERATED MOVES TO STRENGTHEN THE FUTURE OF POLLUTION INSURANCE

We are pleased to present you with the renewal of your Pollution Liability Policy. This letter will outline important changes in this coverage. Please review this letter and your policy to understand what these changes will mean to you.

Federated Insurance is a major insurer of petroleum marketers in the United States. The Company currently insures about 8000 marketers, and a substantial number have pollution insurance with Federated.

Affordability and availability of pollution insurance is a major concern for the petroleum marketer. The petroleum industry has noted an escalation in the number and size of pollution losses. EPA regulations have intensified the interest in pollution insurance, and the absence of many other major insurers of petroleum marketer's pollution exposures has added to the availability problem.

PRICING AND COVERAGE CHANGES

In order to respond more rapidly to the changing conditions affecting the pollution insurance marketplace, your pollution liability policy will now be issued with a 6-month policy period.

The limits of your policy are now \$500,000 for each pollution incident with a \$1,000,000 aggregate limit.

Newly acquired locations and/or entities will not receive 30 day automatic coverage. Coverage must be specifically requested on each new location. The location must meet underwriting requirements before it will be added for pollution liability coverage.

Commercial General Liability, Garage Liability and Umbrella coverage will have an additional Pollution Exclusion Endorsement attached. This endorsement will further limit any pollution coverage available under these coverages.

Consigned Product Locations, locations in which your interest is the product only, must now be specifically scheduled for Pollution Liability coverage. To be scheduled, a consigned product location must meet all new location requirements. By billing for product at the time delivered, you may eliminate the need to schedule such locations, as this transfers ownership of the product to the operator (customer).

If you wish to maintain pollution coverage on locations or tanks sold to others, you must schedule them for Pollution Liability coverage.

| | | | | | | |
|------------------------------|----------------------|---|--|-----------------|-------------------------------|--------|
| YOUR ACCOUNT NO. 63 817 1 | | YOUR MARKETING REPRESENTATIVE FIRST WEST INC | | DATE 1/05/88 | M 000 05 287 10 15 | |
| EFFECTIVE DATE 3/01/88 | POLICY NO. 610579 | REASON FOR THIS MEMO POLLUTION LIABILITY COVER | | | NEW POLICY PREM. 10,890.00 | AMOUNT |

EXHIBIT 5
DATE 2/14/89
HB 603
Reg. B.A. Roney

MEMO

INFORMATION ONLY
THIS AMOUNT WILL BE INCLUDED
IN YOUR NEXT STATEMENT
YOUR ACCOUNT BILL DAY IS 05.

STORY DISTRIBUTING COMPANY,
A MONTANA CORPORATION
P O BOX 1201
BOZEMAN MT 59715

FEDERATED MUTUAL INSURANCE COMPANY
FEDERATED SERVICE INSURANCE COMPANY
HOME OFFICE: OMAHA, NE 68102
FEDERATED INSURANCE

INSURED'S NAME AND ADDRESS

AN IMPORTANT NOTICE OF PREMIUM AND COVERAGE CHANGES

FEDERATED MOVES TO STRENGTHEN THE FUTURE OF POLLUTION INSURANCE

We are pleased to present you with the renewal of your Pollution Liability Coverage. This letter will outline important changes in this coverage. Please review it and your policy to understand what these changes will mean to you.

Federated Insurance is a major insurer of petroleum marketers in the United States. The company currently insures about 8000 marketers, and a substantial number have pollution insurance with Federated.

Affordability and availability of pollution insurance is a major concern for the petroleum marketer. The petroleum industry has noted an escalation in the number and size of pollution losses. Proposed EPA regulations have intensified the interest in pollution insurance, and the absence of many other major insurers of petroleum marketer's pollution exposures has added to the availability problem.

In keeping with our efforts to maintain the premium for the petroleum marketer's coverage at an affordable level, Federated is implementing refinements in the pricing program. This includes a \$25,000 per incident deductible. Policy limits are \$500,000 for each pollution incident with a \$2,000,000 aggregate limit.

These changes will produce a more equitable pricing structure. It allows the best price to those petroleum marketers who are taking action to control their pollution exposures. We believe these changes are positive steps in keeping pollution insurance affordable and available.

PRICING AND COVERAGE CHANGES

Our new pricing program will impact each insured to a different degree. The impact on your policy will depend on the location, condition and leak detection methods of your facilities.

A \$25,000 deductible will apply to each pollution incident. This new deductible offsets much of the premium increase needed.

YOU MUST CONTINUE TO NOTIFY US OF POLLUTION INCIDENTS. THESE MUST BE REPORTED EVEN THOUGH THE EXPENSES ARE EXPECTED TO BE UNDER \$25,000.

The policy limits of your policy are \$500,000 for each pollution incident with a \$2,000,000 aggregate limit.

(continued on reverse side)

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT 6

DATE 2/14/89

HB 603

Rep. B.T. Roney

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

Prepared Statement - Larry Mitchell, DHES
HB 603 - Petroleum Release Cleanup Fund
February 14, 1989

The cost of cleaning up releases from underground storage tanks is typically beyond the means of most tank owners.

These high costs of investigation and remediation drove Congress to require that tank owners obtain financial responsibility to pay for cleanups no later than October 1990. Montana must adopt financial responsibility regulations equal to federal minimums. EPA recently promulgated federal rules that allow several methods of providing financial responsibility. Most are not available to the majority of tank owners. One method is through the establishment of a state cleanup fund. HB 603 proposes to establish such a fund.

Other states have found that few options exist for tank owners. As of August 1988, 24 states have established or proposed petroleum cleanup funds through a variety of methods with differing levels of coverage. Federal LUST Trust funds are provided to states to pay for enforcement, investigation, emergency response and corrective action under limited circumstances. However all costs are subject to cost recovery from the responsible party. States often find themselves in the no win situation of spending time and public funds litigating to recover cleanup funds from a tank owner who didn't have the money to conduct the cleanup in the first place.

It has been the department's experience that unless a tank owner is insured for pollution liability or is financially sound enough to self insure, cleanups are rarely conducted beyond the investigation phase if at all. The environment and public health and safety is nearly always compromised in deference to the economic reality of the owner's ability to proceed. The existence of a cleanup fund would provide funds to investigate releases and conduct any remedial action necessary to protect the public and the environment.

It is important to recognize that by all estimates, a large number of tank leaks will be discovered in the next few years. The amnesty provision in this bill will result in very heavy workloads during the first two years of the program. The fund will only remain solvent by virtue of governments inability to

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Prepared Statement, Larry Mitchell, DHES
HB 603
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oversee cleanup plans and process claims. Other state fund programs are still too new or different from that proposed in HB 603 to make workload comparisons possible. Nearly all are suffering from staff shortages needed to administer the program. HB 603 wisely proposes to separate DHES regulatory cleanup oversight from claims payment through the establishment of an independent board for claims processing. These efforts must be adequately staffed and funded in order to manage the program efficiently to the satisfaction of all.

In summary DHES supports the investigation and cleanup of petroleum releases from underground storage tanks. We cannot continue to ignore the problem. It does not go away. There have already been too many losses; of businesses due to financial ruin and of groundwater resources for present and future uses.

prepsthb.603

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT 1
DATE 2/14/89
HB 603
Rep. Bob Roney

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

February 14, 1989

Re: Financial Responsibility for USTs - Federal EPA Requirements

Financial Responsibility will be needed for all UST owners by October of 1990. Most UST owners will need to show \$1 million per occurrence and \$1 million annual aggregate.

The EPA allowable mechanisms for financial responsibility as listed in 40 CFR 280.

1. Financial test of self-insurance - Company must show a tangible net worth of at least \$10 million
2. Guarantee - parent company guarantees to pay for cleanup, the parent must meet the financial test of self-insurance
3. Insurance
4. Risk retention group
5. Surety bond - performance bond of required amount of coverage
6. Letter of credit - showing required amount of money is set aside
7. State Fund
8. Trust Fund - set up by owner

The insurance coverage will be extremely hard to get for most of the UST owners within Montana. The tanks which are over 10 years old and do not meet the present EPA design requirements are not being covered. The design requirements are: cathodic protection; spill protection; overfill prevention; and leak detection. Presently only a handful of facilities meet all of these requirements.

Other states throughout the country have also found that insurance is not an option for the majority of the UST owners and therefore have set up state funds to help cover tank cleanup

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Rep. B. F. Roney

costs. The states which presently have state funds in place for corrective action and third-party liability include:

Alabama; Delaware; Florida; Georgia; Illinois; Indiana; Louisiana; Minnesota; Mississippi; New Hampshire; New Jersey; New Mexico; New York; Oregon; South Carolina; South Dakota; Tennessee; Vermont; and Virginia.

States which are proposing state funding mechanisms to aid owners in corrective action and third-party liability include:

California; Colorado; Iowa; Massachusetts; and Wyoming.

Many of the other states are also looking at state funds for financial responsibility because of the difficulty for UST owners to procure other financial responsibility mechanisms.

EXHIBIT 7-2

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS
COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|---|---|---|--|---|--|
| | | | Corrective Action | Third-Party Liability | |
| Alabama Groundwater Protection Trust Fund | Establishes a \$10 million fund to provide for the cleanup of LUSTs during a two-year grace period, after which the State will set financial responsibility requirements with an owner/operator responsible for a maximum of \$100,000 for corrective action (CA) and \$300,000 for third-party compensation coverage (with a \$500,000 per occurrence limit). Also provides for an insurance pool for those unable to secure cleanup and/or liability insurance. | 1. Motor fuels fee | Yes During the two-year grace period, all CA costs are covered; subsequently, costs will be covered according to the yet-to-be established financial responsibility requirements. | Yes Covers all third party claims over \$300,000 with a per occurrence limit of \$500,000. | |
| California State Underground Tank Insurance Fund [PROPOSED] | Establishes a board of directors that will determine the eligibility requirements and the amounts of coverage for CA and third-party liability. Authorizes the board to act as a reinsurer as well. | 1. State appropriations 2. Premiums 3. Interest income on the fund 4. Cost recovery 5. Revenue bonds | Yes To be determined. | Yes To be determined. | |
| Storage Tank Cleanup Fund [PROPOSED] | Owners and operators must file claims for reimbursement of covered costs from the fund. | 1. Fees 2. Interest income on the fund 3. State appropriations 4. Cost recovery | Yes Covers costs of CA from \$100,000 to \$1 million per occurrence. | No | |
| Colorado Underground Storage Tank Fund [PROPOSED] | The bill would allow the State insurance commissioner to establish a program to assist owners and operators in complying with the financial responsibility requirements. | 1. Registration fees 2. Civil penalties 3. Certification fees 4. Gifts 5. Reimbursements 6. State appropriations 7. Interest income on the fund | To be determined. | To be determined. | |
| Oklahoma Leaking Underground Petroleum Storage Tank Response Fund | Nonlapsing revolving fund; Covers remedial cleanup costs after a \$2,500 deductible if LUSTs are reported by December 1988. After that date, the trust fund covers cleanup costs up to \$1 million after a \$100,000 deductible. Establishes a \$100,000 environmental liability limit for owners and operators and a \$300,000 limit for third-party claims. | 1. Cost recovery from the owner/operator 2. Expenses, costs, and judgments recovered pursuant to the Act 3. Interest income from fund 4. Reimbursements under Federal law 5. Tank registration fees | Yes Remedial costs over \$2,500 for LUSTs reported by 12/88. After that date, \$100,000 to \$1 million per occurrence per facility. | Yes \$300,000 to \$1 million per occurrence per facility. | |

EXHIBIT 8

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EXHIBIT 7-2 (continued)

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS
COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|---|--|--|---|-----------------------|--|
| | | | Corrective Action | Third-Party Liability | |
| Florida Inland Protection Trust Fund | Set up to allow the Dept. of Natural Resources to respond without delay to incidents of inland petroleum contamination; nonlapsing, revolving fund. | 1. Tank registration and renewal fees 2. Excise tax on petroleum products 3. Penalties 4. Loan of five million dollars from the Florida Coastal Protection Trust Fund 5. Cost recovery 6. Interest income from the fund | Yes Funds for State-sponsored CA only. | No | |
| Early Detection Incentive Program (part of the Inland Protection Trust Fund) | Amnesty period set up from 7/1/86 to 10/1/88 during which the State will clean up all reported leaks meeting certain criteria. | See above | Yes No defined limit; reimbursement at "reasonable rates for allowable costs." | No | |
| Petroleum Liability Insurance Program | Provides \$1 million third-party liability insurance and \$1 million restoration insurance to qualified tank owner operators. | 1. Tank registration and renewal fees for restoration coverage 2. Excise tax on petroleum products for restoration coverage 3. Premium for third-party liability | No | Yes | |
| Georgia UST Environmental Corrective Action Trust Fund | Dept. of Natural Resources Board establishes criteria for reimbursing tank owner/operators for corrective actions. Tank replacement and retrofit are not eligible costs. | 1. Tank fees | Yes Owner/operator pays first \$10,000 and then after cleanup submits eligible CA costs for reimbursement. | No | |
| Illinois Underground Storage Tank Fund | Only available to tank owners/operators who have registered their tanks and paid an annual fee of \$100. Funds are available for cleanup where the owner/operator refuses to comply, cannot be found, or there is an emergency. | 1. Annual \$100 fee from UST owners 2. Cost recovery | Yes Covers CA costs from \$100,000 to \$1 million. | No | |
| Indiana Underground Petroleum Storage Tank Trust Fund / Underground Petroleum Storage Tank Excess Liability Fund | The Trust Fund is designed for use by the Dept. of Environmental Management for costs incurred by the State for CA. The Excess Liability Fund may be used by owners and operators for CA costs between \$100,000 and \$1 million. Includes a study for future funding needs and the establishment of a risk retention group. | 1. Annual registration fees | Yes Covers CA costs between \$100,000 and \$1 million. | No | |

EXHIBIT 7-2 (continued)

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS COVERING PETROLEUM RELEASES

(as of September 1988)

EXHIBIT 8

DATE 2/14/89

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Rep. Bill Roney

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|---|--|--|---|---|--|
| | | | Corrective Action | Third-Party Liability | |
| Alabama Comprehensive Petroleum Underground Storage Tank Fund (PROPOSED) | Establishes a "deductible" or minimum financial responsibility requirement for owners and operators of \$20,000 for CA and third-party liability costs. An owner or operator may apply to the State for coverage above the deductible up to \$1 million per occurrence. Also allows an owner or operator to apply for full coverage by the fund under specified conditions. The minimum fund amount is \$5 million. | 1. Risk-based premiums 2. Tank fees 3. Cost recovery and penalties 4. Interest income from the fund 5. Gifts, grants (including Federal grants), and appropriations | Yes Upon application to the State, an owner or operator may qualify for either full coverage or meet a \$20,000 "deductible" up to \$1 million per occurrence. | Yes Upon application to the State, an owner or operator may qualify for either full coverage or meet a \$20,000 "deductible" up to \$1 million per occurrence. | |
| Illinois Environmental Programs Trust Fund / Underground Storage Tank Trust Fund | The fund is set up to defray the cost of the State UST program, including State-initiated CA; also provides matching funds for Federal UST grant money. | 1. Registration fees 2. Annual monitoring and maintenance fees | Yes Funds for State-sponsored CA only. | No | |
| Mississippi Coastal and Inland Surface Oil Clean-up Fund (CISOCF) | Nonlapsing, revolving fund; Fund total is limited to \$4,500,000. | 1. License fees 2. Funds loaned from the Ground Water Oil Clean-up Fund 3. Penalties 4. Interest income on funds invested 5. Cost recovery 6. Federal matching funds 7. Borrowing of funds by and between CISOCF | Yes Funds for State-sponsored CA only. | Yes No defined limit on the level of coverage; six month limitation on filing a claim after an occurrence. | |
| Massachusetts Underground Storage Tank Petroleum Cleanup Fund (PROPOSED) | Funds will be provided at the discretion of the State for reimbursement of CA costs over \$5,000 up to \$1 million, including third-party claims. Eligibility is confined to those owners and operators who are in compliance with the State UST regulations. | 1. Petroleum fee (suspended when fund balance is over \$30 million; reinstated at a balance of \$10 million) 2. Interest income on the fund | Yes Covers CA costs between \$5,000 and \$1 million. | Yes Covers third-party costs between \$5,000 and \$1 million. | |
| Minnesota Petroleum Tank Release Cleanup Fund | Provides authority to the Pollution Control Agency to take or compel CA. Available to owners and operators who have taken corrective action in response to a release reported on or after 6/4/87. Provides for reimbursement of 75% of eligible CA costs greater than \$10,000 and less than \$100,000. UST owner or operator must be in compliance with all applicable State and Federal laws at the time of the release. | 1. Cost recovery from responsible parties 2. Civil penalties 3. Certification fees 4. Gifts, grants other than Federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund 5. Interest income from fund 6. Petroleum tank release cleanup fee (only if the fund balance falls below \$1 million) | Yes Reimbursement for 75% of CA costs greater than \$10,000 and less than \$100,000. | No | |

EXHIBIT 8

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EXHIBIT 7-2 (continued)

HB 603

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS
COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|---|---|---|---|---|--|
| | | | Corrective Action | Third-Party Liability | |
| Mississippi Groundwater Protection Trust Fund | A revolving fund for the investigation and assessment of contamination sites, restoration and replacement of potable water supplies, and rehabilitation of contamination sites. The owner or operator is liable for the costs if he or she is not in "substantial compliance" on the date of discharge. When the balance of the fund reaches \$6 million, the funding fee will abate until the balance falls below \$4 million, at which point the fee is reimposed. Establishes a two-year grace period from the date of enactment (July 1, 1988), during which all CA costs are covered under specified conditions. | 1. Environmental protection fee on all motor fuel distributor sales and deliveries 2. Interest income on the fund 3. Federal grants 4. Tank regulatory fee 5. Cost recovery from owners not in substantial compliance on the date the release is reported | Yes Reimbursement upon application--no \$1,000,000 limit during the grace period. After the two-year grace period, the State will establish minimum financial responsibility requirements for third-party liability not exceeding \$300,000 per occurrence. (The State will cover claims up to \$700,000). | Yes \$1,000,000 per occurrence limit. After the two-year grace period, the State will establish minimum financial responsibility requirements for third-party liability not exceeding \$300,000 per occurrence. (The State will cover claims up to \$700,000). | |
| New Hampshire Oil Discharge and Disposal Cleanup Fund | Provides partial reimbursement to owners and operators of USTs (including home heating fuel tanks) with a capacity equal to or greater than 1,100 gallons and who are in compliance with the regulatory requirements. Reimbursement is provided for CA and third-party liability costs according to the number of facilities owned by the owner or operator. At \$5 million, the fee abates until the fund drops below \$2.5 million. Transfer and transport fee and cleanup fund will lapse on January 1, 1994. | 1. Per gallon fee on oil and oil product transfer or transport within or into the state 2. Per barrel license fee | Yes Owners and operators of one facility are responsible for the initial \$5,000 of CA costs; two to nineteen facilities, the initial \$20,000; twenty or more the initial \$30,000; coverage provided up to \$1 million. | Yes Owners and operators of one facility are responsible for the initial \$5,000 of CA costs; two to nineteen facilities the initial \$20,000; twenty or more the initial \$30,000; coverage up to \$1 million. | |
| New Jersey Spill Compensation Fund | Money available to the NJDEP to pay for cleanups and indemnify its contractors in the event they cannot obtain insurance, indemnification by the DEP expires 1/1/88; also allows preventive measures by the DEP; Nonlapsing, revolving fund. | 1. Spill Compensation and Control Tax 2. Penalties 3. Cost recovery 4. Automatic liens against the property of the discharger 5. Interest received on the fund 6. Federal government securities and interest 7. State appropriation | Not for the owner or operator; only DEP initiated actions and reimbursement for third-party cleanups (including municipal-ity cleanup where the DEP has approved the plans). | Yes No limitation on the level of coverage; also indemnification for contractors by the DEP was provided through 1/1/88. | |

EXHIBIT 7-2 (continued)

EXHIBIT 8

DATE 2/14/89

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS
COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Corrective Action | Third-Party Liability |
|--|---|--|---|--|
| New Mexico Environmental Impairment Cleanup Fund | Provides reimbursement of 50% of owner/operator CA costs over \$150,000 up to \$750,000, and reimbursement for 100% of the costs from \$750,000 to \$1 million. The balance of the fund is set to range from \$5 million to \$2 million. Fund covers all State-registered USTs. | 1. Gasoline and special fuels surcharge tax 2. Cost recovery | Yes Covers 50% of CA costs from \$150,000 to \$750,000, and 100% of CA costs from \$750,000 to \$1 million. | No |
| New York Environmental Protection and Spill Compensation Fund | Nonlapsing, revolving fund; claims against the fund have to be filed within three years of the date of discovery of damage and within ten years of the date of the incident which caused the damage. There is no limit on the amount of awards. | 1. License fees 2. Surcharge on license fees 3. Penalties 4. Cost recovery 5. Interest received on the fund 6. Reimbursements | Yes Covers State-initiated CA; the discharger and the fund are liable for all cleanup and removal costs and all direct and indirect damages. | Yes No limit on the amount of awards. |
| Oregon Leaking Underground Storage Tank Cleanup Fund | Provides a source of funds for State-initiated CA; also matching funds for Federal CA under the Solid Waste Disposal Act Amendments of 1980. | 1. Cost recovery 2. Penalties, fines, and damages recovered | Yes Funds for State-sponsored CA only. | No |
| Underground Storage Tank Insurance Fund | Provides the authority to establish a fee-supported fund covering the financial assurance requirements for owners and operators. | 1. Annual Financial Responsibility (FR) fee (to be determined) levied on owners and operators | Yes Set according to the FR requirements. | Yes Set according to the FR requirements. |
| South Carolina State Underground Petroleum Environmental Response Bank Account (SUPERB) | Fund will reimburse owner/operator for cleanup expenditures due to early detection of releases from 12/31/87 to 12/31/89. After this grace period, the fund will reimburse from \$100,000 to \$1 million as long as funds are available. | 1. Registration fee on regulated tanks 2. Interest income on the fund | Yes As long as funds are available | No |
| South Dakota Petroleum Release Compensation Fund | A \$5 million revolving fund created to cover the costs of administering the petroleum release program, to reimburse tank owner/operators for corrective action, and promote research and development efforts concerning cleanups. | 1. Tank inspection fee 2. Cost recovery 3. Interest income on the fund 4. Gifts, grants 5. One-time interagency allocation | Yes Covers costs of CA from \$10,000 to \$90,000 | No |

Coverage For

EXHIBIT 7-2

DATE 2/14/89

HB 603

EXHIBIT 7-2 (continued)

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS
COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|---|--|---|---|---|--|
| | | | Corrective Action | Third-Party Liability | |
| Vermont Petroleum Underground Storage Tank Fund | Nonlapsing, revolving fund with a minimum balance of \$2 million and a maximum balance of \$5 million. After the first year the Act is in effect, the CA coverage will be set at a level between \$50,000 and \$100,000 by the State. Likewise, the third-party liability coverage will be set between \$150,000 and \$300,000 after the first year. | <ol style="list-style-type: none"> 1. Fees 2. Civil penalties and damages 3. Interest income from the fund 4. State appropriations | Yes 100% of CA costs over \$75,000 up to \$1 million per occurrence. | Yes Covers all claims in excess of \$150,000 up to \$1 million per occurrence. | |
| | | | Yes Covers CA costs between \$100,000 and \$1 million. | Yes Covers third-party compensation costs between \$300,000 and \$1 million. | |
| Environmental Contingency Fund | The fund provides assistance to uninsured owners and operators in meeting the State financial responsibility requirements. It also provides a source of funds for State-initiated CA in emergencies and other situations where there is no owner or operator found, or he or she cannot or will not take CA. In these cases, the fund allows for cost recovery where appropriate. The fund may be used to cover any cost in setting up a risk retention group that is in excess of "reasonable" contributions by the participants. | <ol style="list-style-type: none"> 1. Licensing fees 2. Interest income from the fund 3. Reimbursement and cost recovery 4. General fund appropriations | Yes Covers CA costs between \$100,000 and \$1 million. | Yes Covers third-party compensation costs between \$300,000 and \$1 million. | |
| | | | Yes Funds for State-sponsored CA only; level of coverage not defined except for "individual non-emergency situations" where the limit is \$50,000/situation. | No | |
| Risk Retention Pool | Authorizes owners and operators of USTs to set up insurance pools with the Banking and Insurance Commissioner's approval. | <ol style="list-style-type: none"> 1. Contributions from pool members | Determined on a case-by-case basis. | Determined on a case-by-case basis. | |

EXHIBIT 7-2 (concluded)

EXHIBIT

DATE 2/14/89

STATE FUND OR OTHER STATE ASSURANCE PROGRAMS COVERING PETROLEUM RELEASES

(as of September 1988)

| State/Fund Title | Eligibility/Description | Revenue Source | Coverage For | | |
|------------------|-------------------------|----------------|-------------------|-----------------------|--|
| | | | Corrective Action | Third-Party Liability | |

Virginia
Underground Petroleum Storage
Tank Fund

The State will adopt financial responsibility requirements for owner and operators of not less than \$100,000 for CA and \$300,000 for third-party liability. The fund also is designed to assist in the administration of the State regulatory program for USIs and provides a source of funds for State-initiated CA and matching funds in accordance with the Water Resources Development Act of 1986 (P.L. 99-662). The fund contains \$5 million for 1988.

1. Expenses, costs, and judgments recovered
2. Federal reimbursements
3. Interest income from fund
4. State appropriation
5. Cost recovery

Yes
\$100,000 to \$1 million per facility.
Yes
\$300,000 to \$1 million per occurrence.

Wyoming
Environmental Pollution
Mitigation Account [PROPOSED]

The fund provides for prompt State response to UST releases or threats of releases, administrative costs, and reimbursement of responsible persons according to certain requirements. The fund does not allow for reimbursements that exceed the amount of money in the fund. Eligible responsible parties may be reimbursed for all CA costs in excess of \$50,000 and third-party liability costs in excess of \$100,000.

1. Penalties and judgments
2. Reimbursements
3. Registration fees
4. Cost recovery

Yes
Provides reimbursement of CA costs in excess of \$50,000 for eligible responsible persons.
Yes
Provides reimbursement of third-party liability costs in excess of \$100,000 for eligible responsible persons.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT 1

DATE 2/14/89

HB 603

Rep. Bob Roney



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

February 13, 1989

HB 603 - Proposed DHES Position Paper

Montana Petroleum Marketers Association bill to establish a state fund for reimbursement of expenses related to petroleum cleanup.

Following is a position which the Department of Health and Environmental Sciences (DHES) Underground Storage Tank (UST) Program proposes concerning the bill entitled: "An act providing for reimbursement to owners and operators for expenses related to releases for petroleum storage tanks; establishing a petroleum storage tank cleanup fee to be paid by gasoline distributors; creating a petroleum tank release cleanup special revenue fund and providing for statutory appropriation of the fund; creating a petroleum tank release compensation board; amending section 17-7-502, MCA; and providing an effective date."

HB 603 proposes to establish a state cleanup fund for leaking petroleum tanks. It would provide public funds for the cleanup of petroleum releases to the environment and help to minimize the possibility of fire and explosion due to petroleum vapors and reduce contamination of groundwater. The revenue would come from a 3/4 cent fee on each gallon of gasoline sold in Montana. This should generate approximately 3.3 million dollars annually. Under the two year amnesty program designed into the bill, petroleum releases will be reported early and contamination impacts should be minimized, provided the fund can stay solvent, which it will not, and DHES and the board can handle the workload. After the two year amnesty period, owners will be responsible for the first \$25,000 in costs.

State and federal law currently holds tank owners responsible for corrective action due to petroleum leaks from storage facilities. Federal EPA financial responsibility rules will require UST owners to be able to show financial assurance to pay up to \$500,000 or \$1,000,000 (depending on type of facility) in environmental and third party damage costs by a final October 1990 deadline (some facilities have an earlier deadline). The existence of a state cleanup fund to provide this assurance is a federally acceptable method. This bill proposes to establish such a fund.

EXHIBIT 9
DATE 2/14/89
HB 603
Rep. Bob Roney

It has been the experience of DHES that cleanups or investigations of damage do not occur unless the owner has the financial ability to pay for them. Few owners have the HB 603 independent means or the pollution insurance to cover these costs. The existence of this fund would provide dollars to conduct this work. So would private insurance but it is reportedly unavailable to many UST owners or is prohibitively expensive with high deductibles.

This legislation would help the small business owner/operator because these businesses may never be able to procure financial responsibility from insurance companies. The cost of the insurance may be out of range to the small operator with aging tanks and the fund may be a way to assure that these types of facilities can comply with the Federal EPA financial responsibility requirements.

Under this bill, the tank owner/operator will not have to pay any of the cleanup costs if the release is reported within the first two years of the program. Reimbursement of corrective action costs is not available to some tank owners and is not available to any tank owner if tank management and operation was not in compliance with all applicable state and federal requirements. During the two year amnesty program the owner/operator does not pay any of the cleanup costs associated with the release. This will obviously result in non-reporting of petroleum releases until the legislation becomes effective. But for the two year amnesty program time frame, DHES expects to be overwhelmed with leak reports and claims for cost reimbursement.

DHES has no firm estimate of what the administrative costs associated with this program will be. The legislature must allow for adequate staffing for DHES to carry out its responsibilities. Although an appointed board will pay the claims and is authorized to hire staff, write rules and reimburse DHES costs, DHES staff is required to provide support to the Petro Board. Review and approval of corrective action plans, cleanup levels, review of claims and making recommendations to the board will require considerable DHES resources.

State cleanup fund programs where a state fund assumes the owner's financial responsibility for leak cleanups exist or are proposed to one degree or another in 24 states. State fund programs elsewhere are either dissimilar or too new to compare administrative costs directly. Florida has a temporary amnesty program and a staff of 80 FTE's to administer it. Minnesota has a very new plan where the state pays 75% of the costs over \$10,000. Mississippi has a state cleanup fund most similar to

EXHIBIT

9

DATE

2/14/89

HB

603

Rep. Bill Roney

HB 603
Proposed DHES Position Paper
Page 3

that proposed in HB 603. That state has 25,000 tanks at 10,000 locations (Montana has 18,000 tanks at 9,000 locations). UST program administration in Mississippi is paid with \$500,000 in HB 603 tank fee revenue and provides for 24 FTEs; 15 are currently on staff. Mississippi officials estimate that 30 FTEs are needed and that up to 80% of their staff time is devoted solely to implementation of the state cleanup fund program to the neglect of other prevention and regulatory duties. Montana's program currently has 3 FTE's working on owner initiated corrective action and leak responses.

In summary, DHES supports the investigation and cleanup of petroleum releases from underground storage tanks and owner responsibility for compliance with tank management rules.

Without funding for cleanups; (1) bankruptcies occur, (2) cleanups are not accomplished, (3) tax payer funds are used to clean up serious emergency leaks or (4) DHES resources are wasted in litigation trying to obtain compliance.

If pollution liability insurance were available or affordable there would be no need for a state fund. It is not universally available. Federal EPA rules require \$500,000 to \$1,000,000 financial responsibility that is not realistically available. DHES must be provided sufficient funding to implement the program or no one will be satisfied with it. Workload and fund expenditure estimates will be highest during the two year amnesty program. A minimum of 15 FTEs including one attorney, one accountant and two clerical and an administrative budget of \$500,000 to administer this \$3,300,000 annual program should be anticipated.

EXHIBIT 10
DATE 2/14/89
HB 76
Rep. F. Bardono

Testimony
Presented by Tanya Ask
Montana Insurance Department
February 14, 1989

It is the position of our office to support House Bill 76. The bill does away with the guaranty fund premium tax offset allowed by current law.

Montana established two guaranty associations for the protection of Montana insurance consumers. In the event an insurance company becomes insolvent, all other admitted insurance companies writing business are assessed to pay off the claims and return premium of that insurer.

All insurance companies writing business in Montana pay a tax on premiums of 2 3/4%. On the life and disability or health insurance side of the business Montana law has allowed an offset against premium taxes for the amount of assessment a company pays to the guaranty fund. The offset or tax writeoff is spread over a period of five years. Because premium taxes are deposited directly into the general fund, the offset results in a lowering of general fund revenues by the amount of the assessments made to pay for the effects of the insolvent insurer.

The office feels this offset is unfair to the taxpayers of Montana. Not all taxpayers own life or disability insurance, but because the offset lowers the general fund, all Montanans are paying for the effects of the insolvent insurer. By supporting HB 76, the office shows its support for having those who benefit from life and disability insurance ^{guaranty fund} protection pay for that protection.

INS 537-1

CHRONISTER, DRISCOLL & MOREEN

ALLEN B. CHRONISTER
PATRICK M. DRISCOLL
J. DENNIS MOREEN

ATTORNEYS AT LAW
CAPITOL ONE CENTER
208 NORTH MONTANA AVENUE
HELENA, MONTANA 59601

EXHIBIT 11

DATE 2/14/89

HB 76

Rep. F. Borden

TELEPHONE:
(406) 449-3691

House Taxation Committee

House Bill 76
2/14/89

Elimination of the Life and Health Insurance Guaranty offset
against premium taxes

Summary of American Council of Life Insurance opposition to
House Bill 76.

1. THE CONSTITUTION PROHIBITS THE PASSAGE OF LAWS WHICH
IMPAIR OBLIGATIONS UNDER EXISTING CONTRACTS.
2. THAT PROHIBITION APPLIES TO CONTRACTS OF PUBLIC
ENTITIES.
3. CONTRACTS OF PUBLIC ENTITIES INCLUDE STATUTES WHICH
FORM THE BASIS FOR SUCH CONTRACTS.
4. A CONTRACT EXISTS BETWEEN THE STATE AND THE INSURERS
DOING BUSINESS IN MONTANA TO HELP MANAGE INSOLVENCIES AND
PROTECT AFFECTED POLICY HOLDERS.
5. TO CONTINUE ALLOWING OFFSET OF ASSESSMENTS AGAINST
FUTURE PREMIUM TAX LIABILITY IS AN UNDERLYING ELEMENT OF THE
CONTRACT BETWEEN INSURERS AND THE STATE
6. THE EXISTING ASSESSMENT OFFSET IS A SIGNIFICANT
FINANCIAL INDUCEMENT FOR THE INSURERS TO PARTICIPATE IN THE
LIQUIDATION OF INSOLVENCY OF LIFE OF MONTANA.

EXHIBIT 11
DATE 2/14/89
HB 76

Rep. F. Bardanour

7. THIS OFFSET OF ASSESSMENTS AGAINST PREMIUM TAXES WHICH FORMS AN ELEMENT OF THE CONTRACT BETWEEN THE INSURERS AND THE STATE OF MONTANA WOULD BE REPEALED BY HOUSE BILL 76.

8. THAT REPEALER HAS NEARLY A 100% CHANCE OF BEING CHALLENGED BY THE 950 AFFECTED INSURERS DOING BUSINESS IN MONTANA OR BY THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ITSELF.

The Supreme Court of the United States has stated:

If a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the contract clause would provide no protection at all.

United States Trust Co. v. New Jersey, 431 U.S. 1(1977)

VISITORS' REGISTER

HOUSE TAXATION

COMMITTEE

BILL NO. HB 603

DATE February 14, 1989

SPONSOR Rep. Bob Raney

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|---------------------|-----------------------------|---------|--------|
| Ronna Alexander | Boz. Mt. Rt. Marketers | X | |
| R M Gunstard | B/Ss Mt. & M Pet | X | |
| L.G. LUND | Kalispell, MT - WAKON | X | |
| Janell Fallon | Helena | amend | |
| Harry Broadwatts | Helena - | X | |
| Peter Johnson | ATOM | amend | |
| Don Ingers | Mt Chamber of Commerce | Monitor | |
| John Augustus | Ceneca Denver Co | X | |
| Steve Visoian | Montana Petroleum Marketers | X | |
| Pat Mc Carthoon | Helena | X | |
| Larry Mitchell | DHES | amend | |
| 1st Nat Bank | Mt COUNCIL OF COOPS | ✓ | |
| San Helen Mt | BILLINGS | X | |
| Doug Wexler | Bozeman Mt. | X | |
| Alvin D. Hendrix | Bozeman Mt. | X | |
| Harold Wallis | Helena Mt. | X | |
| | | | |
| | | | |
| | | | |

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE TAXATION

COMMITTEE

BILL NO. HB 76

DATE February 14, 1989

SPONSOR Rep. Francis Bardanoue

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

TAXATION

COMMITTEE

DATE Feb. 14, 1989

BILL NO. HB 236

NUMBER _____

| NAME | AYE | NAY |
|---------------------------|-----|-----|
| Cohen, Ben | ✓ | |
| Driscoll, Jerry | ✓ | |
| Elliott, Jim | ✓ | |
| Ellison, Orval | | ✓ |
| Giacometto, Leo | | ✓ |
| Gilbert, Bob | | ✓ |
| Good, Susan | | ✓ |
| Hanson, Marian | | ✓ |
| Hoffman, Robert | | ✓ |
| Koehnke, Francis | ✓ | |
| O'Keefe, Mark | ✓ | |
| Patterson, John | | ✓ |
| Raney, Bob | ✓ | |
| Ream, Bob | ✓ | |
| Rehberg, Dennis | | ✓ |
| Schye, Ted | | |
| Stang, Barry "Spook" | ✓ | |
| Harrington, Dan, Chairman | ✓ | |
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TALLY

9 8

Secretary

Alan Harrington
Chairman

MOTION: DO PASS AS AMENDED carried.

ROLL CALL VOTE

TAXATION

COMMITTEE

DATE February 14 BILL NO. 161 NUMBER

| NAME | AYE | NAY |
|---------------------------|-----|-----|
| Cohen, Ben | | ✓ |
| Driscoll, Jerry | | ✓ |
| Elliott, Jim | | ✓ |
| Ellison, Orval | ✓ | |
| Giacometto, Leo | ✓ | |
| Gilbert, Bob | ✓ | |
| Good, Susan | | ✓ |
| Hanson, Marian | ✓ | |
| Hoffman, Robert | ✓ | |
| Koehnke, Francis | | ✓ |
| O'Keefe, Mark | | ✓ |
| Patterson, John | ✓ | |
| Raney, Bob | | ✓ |
| Ream, Bob | ✓ | ✓ |
| Rehberg, Dennis | | |
| Schye, Ted | | ✓ |
| Stang, Barry "Spook" | | ✓ |
| Harrington, Dan, Chairman | | ✓ |
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TALLY

LaDawn John
Secretary

7 11
Alan Harrington
Chairman

MOTION: DO PASS AS AMENDED failed.

ROLL CALL VOTE

TAXATION

COMMITTEE

DATE Feb. 14, 1989

BILL NO. HB 359

NUMBER

| NAME | AYE | NAY |
|---------------------------|-----|-----|
| Cohen, Ben | | ✓ |
| Driscoll, Jerry | | ✓ |
| Elliott, Jim | | ✓ |
| Ellison, Orval | | ✓ |
| Giacometto, Leo | ✓ | |
| Gilbert, Bob | | ✓ |
| Good, Susan | | ✓ |
| Hanson, Marian | | ✓ |
| Hoffman, Robert | | |
| Koehnke, Francis | | ✓ |
| O'Keefe, Mark | | ✓ |
| Patterson, John | | ✓ |
| Raney, Bob | | ✓ |
| Ream, Bob | | ✓ |
| Rehberg, Dennis | ✓ | |
| Schye, Ted | | ✓ |
| Stang, Barry "Spook" | ✓ | |
| Harrington, Dan, Chairman | | ✓ |
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TALLY

LaHara John
Secretary

Alan Hump
Chairman

3 15

MOTION: DO PASS failed.

ROLL CALL VOTE

TAXATION

COMMITTEE

DATE Feb. 14, 1989 BILL NO. HB 266 NUMBER

| NAME | AYE | NAY |
|---------------------------|-----|-----|
| Cohen, Ben | ✓ | |
| Driscoll, Jerry | | ✓ |
| Elliott, Jim | ✓ | |
| Ellison, Orval | | ✓ |
| Giacometto, Leo | | ✓ |
| Gilbert, Bob | | ✓ |
| Good, Susan | ✓ | |
| Hanson, Marian | | ✓ |
| Hoffman, Robert | | ✓ |
| Koehnke, Francis | ✓ | |
| O'Keefe, Mark | ✓ | |
| Patterson, John | | ✓ |
| Raney, Bob | ✓ | |
| Ream, Bob | ✓ | |
| Rehberg, Dennis | | ✓ |
| Schye, Ted | ✓ | |
| Stang, Barry "Spook" | | ✓ |
| Harrington, Dan, Chairman | ✓ | |
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TALLY

LaDana John
Secretary

Dan Harrington
Chairman

MOTION: DO PASS failed.
