

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on March 8, 1989, at 8:30 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 SENATE BILL 303

Presentation and Opening Statement by Sponsor:

Sen. Thayer, Senate District 19. Sen. Thayer stated that this bill is the result of an incident that happened in Great Falls, the theft of money by an escrow agent. The agent eventually pled guilty to felony theft charges for more than a million dollars stolen from hundreds of customers' escrow accounts. This bill was drafted in the response to the need to provide some type of insurance to the public. The original bill regulated the agents and the companies. We decided the company is the one to be regulated. Sen. Thayer went over the amendment he had to the bill.

Testifying Proponents and Who They Represent:

Gene Phillips, MLTA
Tom Hopgood, MT Association of Realtors
Sen. Ethel Harding
Bill Gallan, Helena Abstract & Title Co., Helena
Tim Connor, National Mortgage, Bigfork
Bill Dawe, Morris Escrow, Helena
Chip Erdman, MT League of Financial Institutions
George Bennett, MT Bankers Assoc.

Proponent Testimony:

Mr. Phillips said his association supports the bill as amended by Sen. Thayer.

Mr. Hopgood's association supports the bill as amended, particularly the amendment appearing on page 5, lines 1 and 2, which strikes the time limit for an escrow held by a real estate agent. In some instances a real estate escrow does last longer than 120 days.

Sen. Harding said one of her constituents from Bigfork called her just last night and wants to go on record as supporting the bill, however, he wants to be considered as a very small escrow agent and he is concerned about the bill. I spoke with Sen. Thayer and he has told me that these amendments will take care of the very small escrow agents. He understands that there is concern and that the cost would be prohibitive for the small escrow agents that charges a very small fee and isn't a big business like the banks. I want the committee to consider the very small escrow agents.

Mr. Gallan stated that his company does do long term escrow. We got into handling these accounts because the people doing it wanted to get out of the business. The only thing I object to in the bill is the requirement for the audit. This would put a tremendous burden on a company like mine. For us to pay \$5,000 per year for this audit is going to cost the people paying the escrow. We offered an amendment to the Senate that would make us subject to an audit. We have no problem being subject to an audit. If Mr. Brown had been subjected to an audit, I don't think he would have had this problem.

Mr. Connor said he has a small escrow company in Bigfork and as this bill now stands we will be out of business as soon as it is passed, as will 35 other independent escrow companies in Montana. We favor the bill, but the required mandatory CPA audit should be amended. Our accountants have told us it will cost \$3,000 for this annual audit, we can't pass this on to the customers. It simply will put us out of business. An audit at request will accomplish exactly the same purpose that the full-blown annual audit would. I know of no industry in Montana that is required to have a full-blown annual certified audit. An amendment that allows for audits at the discretion of the director would be more than adequate protection.

Mr. Dawe said he supports the bill with the amendments. The audit called for in the original bill would cost my company approximately \$4,000 and this is prohibitive, however, we could live with this as amended. The rest of the bill is fine because we do need the regulation in the industry. Mr. Erdman stated that his association supports the bill in its current form and the amendment presented by Sen. Thayer. Financial institutions are exempt if their escrow accounts are regularly audited or examined. Banks and financial

institutions have both internal and external auditors, in addition, they are examined by the regulators. There are times when the regulators don't look at the escrow accounts, but the auditors do look at the escrow accounts.

Mr. Bennett said his association supports this bill.

Testifying Opponents and Who They Represent:

Rep. Ben Cohen, Whitefish

Opponent Testimony:

Rep. Cohen said a small escrow agent in Whitefish asked him to let the committee know that the bill as originally written will put the small businesses in Montana out of business if it is passed. If I could have a copy of Sen. Thayer's amendments to send to my constituent he will probably be in support of the bill.

Questions From Committee Members: Rep. Pavlovich asked Sen.

Thayer if the amendments take care of the audit that everybody is concerned about? Sen. Thayer said that amendment 18 will take care of this concern.

Rep. Simon asked Sen. Thayer if banks will be subjected to the examination of their escrow accounts? Sen. Thayer said banks will be subjected to the full exam as other escrow accounts under this bill.

Rep. Wallin asked Sen. Thayer how many days an agent has to get the money into a financial institution. Sen. Thayer referred this to one of the proponents from the audience. The response was that this is done daily.

Closing by Sponsor: Sen. Thayer said even though this may never happen again, it did happen and devastated several people's lives. Many older people who thought they had their homes paid off, woke up one morning, read the paper and found out that they had lost large amounts of money.

HEARING ON SENATE BILL 18

Presentation and Opening Statement by Sponsor:

Sen. Williams, Senate District 15, said this bill will allow the PSC to treat advertising costs that promote increased use of regulated communication services as an expense deductible from income or capital assets when setting or regulating rates.

Testifying Proponents and Who They Represent:

Dennis Lopach, Attorney for US West
Gene Phillips, Northwestern Telephone Systems, Kalispell

Proponent Testimony:

Mr. Lopach said his company supports this bill. The way the PSC determines the rates that utility customers pay, they consider the entire pot of revenues, expenses, and investments related to the regulated business.

Mr. Phillips said Northwestern supports this legislation. This does not require the PSC to accept these advertising expenses. They can consider them and if think appropriate can allow them as an offset.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Sen. Williams said that we all know that advertising stimulates revenues. What we are hoping to do is promote long distance use of the phones.

HEARING ON SENATE BILL 351

Presentation and Opening Statement by Sponsor:

Sen. Williams stated that this bill clarifies the authority to sell debentures to the in-state investment fund; removes retained earnings from a company's capital base; amends the time for certification; amends provisions for carrying back and carrying forward of tax credits; allows investments in capital companies by a trust and a decedent's estate; amends the time schedule for making qualified investments; provides for an extension to the schedule; clarifies restrictions on the use of capital company funds; and provides for automatic decertification in certain cases and for voluntary decertification.

Testifying Proponents and Who They Represent:

Bob Pancich, Board of Investments

Proponent Testimony:

Mr. Pancich stated that they support the bill and concur with the changes and participated in the changes as to clarification.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Sen. Williams stated that several companies are in favor of this bill. They are working and trying to get things going in Montana.

HEARING ON SENATE BILL 369

Presentation and Opening Statement by Sponsor:

Sen. Brown said that SB 369 would repeal Sections 23-5-1101 through 23-5-1106, MCA, which authorizes calcutta pools.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Keller asked Sen. Brown if he was aware that there are different kinds of calcutta pools? Sen. Brown said that Attorney General Greely wrote a ruling of what the interpretation should be of the law to allow the kinds of calcuttas in the state that have always taken place but not allow commercialized calcuttas. Rep. Bachini asked Sen. Brown what kind of calcuttas would be allowed in SB 431? None? Sen. Brown said that SB 431 is designed to restrict the calcuttas to the common kinds of calcuttas.

Rep. DeMars asked Sen. Brown why he wanted to repeal calcuttas? Rep. Holiday's bill did not include the commercialized kind of calcuttas. Now we have them and that is why I want to repeal them.

Closing by Sponsor: Sen. Brown said he closed.

HEARING ON SENATE BILL 313

Presentation and Opening Statement by Sponsor:

Sen. Mazurek stated that SB 313 clarifies foreclosure procedures under the small tract financing act of Montana and other mortgage laws; provides a remedy for waste of encumbered real property; defines circumstances under which deficiency judgments can be obtained on residential and nonresidential properties. Sen. Mazurek said there are several amendments which he would like to propose be amended into the bill.

Testifying Proponents and Who They Represent:

Mike McKee, President, 1st Federal Savings & Loan, Missoula
Jock Anderson, American Federal, Helena
Randy Reger, Billings
Tom Hopgood, MT Association of Realtors
Chip Erdman, MT League of Financial Institutions
George Bennett, MT Bankers Association
Roger Tippy, MT Independent Bankers

Proponent Testimony:

Mr. McKee said he supports this bill with the proposed amendments.

Mr. Anderson said American Federal supports the bill and the amendments.

Mr. Reger stated he supports the bill as it stands.

Mr. Hopgood stated that his association supports the bill and the amendments.

Mr. Erdman said his association supports the bill with the amendments Sen. Mazurek proposed.

Mr. Bennett said that his association supports SB 313 with the amendments. See exhibit 3.

Mr. Tippy's association supports this bill with the amendments.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Thomas asked Mr. Kain from the Montana Board of Housing what impact will this bill

have on the housing industry and the state's involvement? Mr. Kain said I thought when I came into the committee hearing I understood the bill. At this point I'm not sure I do understand the bill. I was under the opinion that this bill would allow a secondary market, such as MBOH, to go after deficiency judgments when we foreclose on someone's property and they trash the house for whatever reason. So we could get the waste portion for the destroyed property. Sen. Mazurek said they could not get a deficiency judgment but they could bring action for damage of waste to the property.

Rep. Thomas asked if there was a representative from the Board of Investments in the audience? Mr. Pancich responded to Rep. Thomas's question, how do you feel this bill will affect the Board's policy? Mr. Pancich said the Board had 6 foreclosures before the Supreme Court decision, this fiscal year we have had 45 foreclosures. A lot of them were caused because people can just walk away from the property. People with wherewithal can walk away easier. We can't go after a deficiency the way the current law is written, I think this helps correct some of those provisions. What is desirable is the choice to go after a deficiency judgment by foreclosing as a mortgage which gives the person who took the mortgage originally a whole year of redemption and go through the process of getting all the money or giving us the choice of not going after a deficiency and foreclosing it by advertisement and sale which takes about 120 days.

Closing by Sponsor: Sen. Mazurek said this is a fairly important bill. I ask you to give this bill a do pass.

ADJOURNMENT

Adjournment At: 11:30 a.m.



REP. BOB PAVLOVICH, Chairman

BP/sp

5503.MIN

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3 8 89

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

R.L.P. Inc.

d/b/a MOUNTAIN ESCROW

BOX 1374 128 CENTRAL AVE. - WHITEFISH, MT 59937
(406) 862-5888

2
S13303
3/8/89

DEAR LEGISLATIVE MEMBER:

THE HEARING FOR SENATE BILL 303 IS SCHEDULED FOR HEARING BEFORE THE HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE ON WEDNESDAY, MARCH 8 AT 8:30 IN ROOM 312.

WE WOULD LIKE TO MAKE YOU AWARE OF SOME SERIOUS CONCERNS REGARDING 3 SPECIFIC ITEMS.

1). COST OF INDEPENDENT AUDIT

THE COST OF AN INDEPENDENT AUDIT WILL BE APPROXIMATELY \$10.00 AN ESCROW. FOR EXAMPLE: WE CURRENTLY SERVICE 738 ACTIVE ESCROW ACCOUNTS. WE WOULD BE LOOKING AT A COST OF \$7,380.00 ANNUALLY. THIS COST WOULD HAVE TO BE PASSED ON TO THE CUSTOMER IN ORDER FOR US TO RECOVER THE EXPENSE. CONCEIVABLY A MONTHLY FEE OF \$10-\$15 PER MONTH PER CUSTOMER.

THAT IS A VERY EXPENSIVE ESCROW FEE. CAN YOU PLEASE TELL US WHY THE STATE CANNOT DO THE AUDITS AS IS DONE WITH THE REAL ESTATE PEOPLE FOR EXAMPLE, AFTER ALL IT IS THE STATE THAT WILL BE REQUIRING THE AUDIT.

IF BANKS DO NOT HAVE THE COST OF AN INDEPENDENT OUTSIDE AUDIT AS YOU ARE REQUESTING US TO DO, OBVIOUSLY THEY WILL NOT HAVE TO INCREASE THEIR COST PER ESCROW ELIMINATING ALL PRICE COMPETITION. CURRENTLY, PRIVATE ESCROW COMPANIES ARE COMPETITIVE WITH BANKS ON MONTHLY ESCROW FEES.

2). THE OCTOBER 1, 1989 EFFECTIVE DATE RE: LICENSE

WILL EXISTING COMPANIES BE REQUIRED TO HAVE THE AUDIT DONE PRIOR TO THE OCTOBER 1, 1989 EFFECTIVE DATE; OR WILL EXISTING COMPANIES BE AUTOMATICALLY LICENSED AND THEN, WITHIN A GIVEN TIME PERIOD BE REQUIRED TO PROVIDE THE AUDIT?

THIS A VERY IMPORTANT POINT TO SMALL COMPANIES .

3). DIRECTOR

WHAT ARE THE PARAMETERS OF AUTHORITY GIVEN THE DIRECTOR? THE VERBAGE IN THE BILL IS EXTREMELY BROAD AND DEFINITIVE.

RESPECTFULLY SUBMITTED,

MOUNTAIN ESCROW



13. Page 6, line 8.

Strike: "agent's"

Insert: "business"

14. Page 6, lines 13 and 14.

Strike: "and his residence address"

15. Page 7, line 3.

Strike: "agent's"

Insert: "business"

16. Page 7, line 9.

Strike: "agent"

Insert: "business"

17. Page 7, line 16.

Strike: "agent"

Insert: "business"

18. Page 9, lines 13 through 17.

Following: "(b)"

Strike: remainder of line 13 through "agents." on line 17

Insert: "If a licensee does not file this financial statement certified by an independent public accountant, he may request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director."

19. Page 10, line 8.

Strike: "agent"

Insert: "business"

20. Page 10, line 11.

Strike: "agent"

Insert: "business"

21. Page 10, line 17.

Strike: "agent"

Insert: "business"

22. Page 10, line 18.

Strike: "agent"

Insert: "business"

23. Page 10, line 20.

Strike: "agent"

Insert: "business"

24. Page 10, line 22.

Strike: "agent"

Insert: "business"

25. Page 10, line 22.

Strike: "are"

Insert: "is"

26. Page 10, line 25.
Strike: "agent"
Insert: "business"
27. Page 11, line 4.
Strike: "agent"
Insert: "business"
28. Page 11, line 25.
Strike: "agents"
Insert: "businesses"
29. Page 12, line 6.
Strike: "agents"
Insert: "businesses"
30. Page 12, line 10.
Following: "person"
Insert: "is not a licensed"
Strike: "agent"
Insert: "business license"
31. Page 13, line 16.
Strike: "his"
Insert: "the licensee's"
32. Page 13, line 21.
Strike: "agent"
Insert: "business"
33. Page 14, line 3.
Strike: "agent"
Insert: "business"
34. Page 14, lines 6 and 7.
Following: "the"
Strike: "escrow agent's"
Insert: "licensee's"
35. Page 14, line 8.
Strike: "agent"
Insert: "business"
36. Page 16, lines 3 through 5.
Strike: section 17 in its entirety
Renumber: subsequent sections

TESTIMONY OF MONTANA BANKERS ASSOCIATION
IN SUPPORT OF SENATE BILL 313, WITH AMENDMENT

Senate Bill 313 addresses problems raised by the Montana Supreme Court's decision in the "Chunkapura" case.

The Montana Bankers Association prefers SB 349, but in lieu thereof would support SB 313, with the amendment hereafter set forth.

The problems arise under the "Small Tract Financing Act" which was passed in 1963 and created a nonjudicial procedure for foreclosing by "advertisement and sale" of the "trust indenture" which serves the same purpose as a mortgage under general law.

In the case of First State Bank v. Chunkapura, ____ Mont. ____, ____ St. Rptr. ____, 734 P.2d 1203 (1987), the supreme court in its original opinion held that even if a trust indenture under the Small Tract Financing Act was judicially foreclosed as an ordinary mortgage, that a deficiency judgment could not be obtained.

In its order on rehearing filed thereafter the supreme court stated in pertinent part:

"Our opinion in this cause is limited to the Chunkapura property, and is to be considered as precedent only for trust deeds related to occupied, single family residential property."

The supreme court's decision in its order on rehearing left many unanswered questions; such as, what constitutes "residential" property, when is the nature of the property determined,

that is, at the time the trust indenture is executed or at the time of foreclosure, or at some other time?

This bill, SB 313, was drafted by a committee of lawyers representing borrowers and lenders and addresses a number of the questions left unanswered by the supreme court.

It is vitally important to credit availability in Montana that certainty be established by the legislature because of the uncertainty created by the Montana Supreme Court in its Chunkapura decision.

MBA prefers SB 349 which returns the law to what it was from 1963 until 1987, however, if the legislature chooses to approve the supreme court's decision in the Chunkapura case then SB 313 goes a long way to clarify the uncertainties created by that decision.

Montana is very dependent on the secondary market for new capital, particularly in the area of residential financing. Not only does the secondary market purchase this type of loan, but also the State of Montana has, and will continue to purchase loans of this nature. All the more reason for the legislature to clarify in the wake of the confusion caused by the Chunkapura decision.

MBA supports SB 313 if SB 349 is not enacted.

However, MBA cannot support SB 313 unless the following amendment is made. The language inserted in the bill on second reading in the Senate, appearing on pages 6 and 7 of the third reading bill, commencing on line 22, page 6, which reads:

"... BUT ONLY IF REPAYMENT OF THE LOAN IS COLLATERALIZED WITH OTHER, NONRESIDENTIAL PROPERTY IN ADDITION TO THE REAL PROPERTY OR ANY INTEREST IN THE REAL PROPERTY THAT IS THE SUBJECT OF THE TRUST INDENTURE."

This language must be stricken from the bill. In the first place it is confusing. It appears to require that in order to obtain a deficiency judgment by judicial foreclosure incident to a trust indenture covering nonresidential property that there must be a second parcel of nonresidential property covered under the same trust indenture.

Whatever the purpose of this amendment may have been it renders the bills totally unworkable.

GEORGE T. BENNETT
MBA Counsel

#1
SB 351
7/8/86

MONTANA CAPITAL COMPANY ACT BRIEF SYNOPSIS

In order to promote the concentration of money in venture and development capital funds, the 1985 and 1987 legislatures passed the Montana Capital Company Act which provided for investment tax credits, originally at a rate of 25% and later at a rate of 50% for investors in such funds. The law limits credits to \$150,000 per taxpayer and \$1,500,000 to a fund and requires that a minimum of \$200,000 be raised in order to be qualified as a Montana Capital Company. Credits may be used to offset a taxpayers Montana state income tax liability.

The Act requires that Capital Company funds be invested in qualified investments : (e.g. manufacturing, transportation, tourism, production & processing of: ag products, mining, timber, fisheries or research & development relative to any of the above.) Additionally, any business is a qualified investment if half its revenues come from outside Montana or if half its revenues result from the sale of Montana made products. The Act further requires that funds raised pursuant to the Act be 30% invested within 3 years, 50% invested within 4 years and 70% invested within 5 years of the company's certification date.

SB 351 - AN ACT TO AMEND THE MONTANA CAPITAL COMPANY ACT SUMMARY OF PROVISIONS

CAPITAL COMPANY DEBENTURES

Authorizes Capital Companies to issue debentures to the Board of Investments. Obligates Mt Capital Companies to make qualified investments with debenture proceeds. Clears existing ambiguities. NOTE: Authority of Board to purchase Capital Company debentures established by last legislature.

RETAINED EARNINGS

Current law requires qualified re-investment of Capital Company earnings in perpetuity thus restricting the payment of dividends and complicating liquidation of a Capital Company. This change permits conventional use of retained earnings. This requirement was not in the original Act.

TIME FOR CERTIFICATION

Brings law into conformity with current Board of Investments practice.

CARRY BACK AND CARRY FORWARD OF UNUSED TAX CREDITS

Corrects erroneous Internal Revenue Code reference and codifies, in principle, the I.R.C. carry over provisions.

INVESTMENTS BY TRUSTS AND ESTATES

Broadens the realm of potential Mt Capital Company Investors.

SB313
#1
3/8/89

Amendments to Senate Bill No. 313
Third Reading Copy
Requested by Sen. Joe Mazurek
Prepared by Mary McCue
March 7, 1989

1. Page 1, line 18.
Following: "(2)"
Insert: "(a)"
2. Page 1, lines 18 through 20.
Following: "that" on line 18
Strike: remainder of line 18 through "thereafter," on line 20
3. Page 1, line 21.
Following: "grantor"
Insert: "or his successor in interest"
4. Page 1, line 22.
Strike: "(a)"
Insert: "(i)"
5. Page 1, line 24.
Strike: "(b)"
Insert: "(ii)"
6. Page 2, line 1.
Strike: "(c)"
Insert: "(iii)"
7. Page 2, following line 4.
Insert: "(b) To be considered residential property, the property must be continuously occupied by the grantor or his successor in interest from the time the trust indenture is executed or within 60 days of its execution through the date of default and within 30 days of the date of the trustee sale."
8. Page 2, line 16.
Strike: "or"
Insert: "(b) failure to promptly pay taxes or assessments as they become due; or"
9. Page 2, line 17.
Strike: "(b)"
Insert: "(c)"
10. Page 3, line 4.
Following: "involved."
Insert: "The action may be brought against the mortgagor, grantor, or grantor's successor in interest. The mortgagee, trustee, beneficiary, or a successor in interest to any of these may recover a reasonable attorney's fee and costs expended in the action."

TESTIMONY ON SB 313
BEFORE HOUSE BUSINESS & INDUSTRY COMMITTEE

The Small Tract Financing Act of Montana was adopted by the Legislature in 1963. It was enacted due to a feeling that the requirements of the mortgage laws were restricting the financing of homes and business expansion in Montana. The Act authorized the use of trust indentures for real estate loans of not more than 15 acres.

The Act provided that if a trust indenture were foreclosed by advertisement and sale, as authorized in the Act, the lender could not obtain a deficiency judgment against the borrower. The Act also specifically authorized that the lender had the option of foreclosing the trust indenture through advertisement and sale or by following the judicial procedure for the foreclosure of mortgages. When a mortgage is foreclosed, a deficiency judgment is allowed.

The Trust Indenture Act as written created a balance. The lender could foreclose a trust indenture by notice and sale and acquire the property relatively quickly. The trade off for this is that they would not be entitled to pursue a deficiency judgment against the borrower. The lender could also choose to foreclose the trust indenture as a mortgage. In doing this, the lender was entitled to pursue a deficiency, but the borrower had a one-year right of redemption on the property. The property was therefore tied up for a substantial period of time. The system as it was envisioned by the Legislature worked quite effectively.

In 1987, however, the Supreme Court issued a decision in Chunkapura v. First State Bank of Forsyth, 743 P.2d 1203. This Supreme Court decision held that whenever a lender foreclosed a trust indenture, regardless of whether they foreclosed by notice and sale or as a mortgage, no deficiency judgment was allowable on residential property. The holding appeared to contradict the plain language of the statute and diminished the use and utility of trust indentures.

In the 1989 Legislature, there were essentially three approaches to the problems presented by the Chunkapura decision. One view, represented by SB 275 and HB 511, would have expanded the scope of Chunkapura and would have further diminished the use of trust indentures. SB 349 would have essentially reversed the Chunkapura decision and returned Montana to the interpretation of the Small Tract Financing Act prior to Chunkapura. SB 313 was a middle of the road compromise between SB 275 and SB 349. SB 313 would codify the Chunkapura decision but would define "residential property" for purposes of deficiency judgments.

The drafters of SB 313 and SB 349 agreed in the Senate Committee that SB 313 should be amended. The amendments were not added to the bill although the Committee approved them. The amendments involve Sections 2 and 3 of SB 313. In regard to Section 2, the proposed amendmend essentially does the same thing as the current version of SB 313 but in better language. In regard to Section 3, the proposed amendment does not go quite as far as the proposed language in the current version of SB 313.

The final proposed amendment would clarify that residential properties foreclosed under a trust indenture would not be subject to a deficiency judgment if the property was continuously occupied by the grantor or his successors from the execution of the trust indenture through the date of default and within 30 days of the trustee's sale. This final amendment is necessary to curb some of the abuses that have arisen as a result of the Chunkapura decision.

As the law currently stands, an individual who executes a trust indenture on residential property can walk away from the property at any time secure in the knowledge that the lending institution will not be able to pursue a deficiency judgment. Often well-heeled investors have made what has turned out to be a bad investment and have simply walked away from the property. The abuses in this area appear to be restricted to sophisticated investors who often have sufficient assets to cover any deficiency.

As a result of these abuses, many lending institutions have found it necessary to raise down payment requirements so that the borrowers have a sufficient investment in the property to preclude them from merely abandoning it. The consequence of this is to preclude many first time home buyers from entering the market.

On the Senate floor, Senator Meyer was able to get an amendment on SB 313 which totally defeats its "middle of the road" position. Senator Meyer's amendment would place the future use of trust indentures in question. We urge you to strip the Meyer amendment.

SB 313 is the compromise position on the problems caused by the Chunkapura decision. Obviously lending institutions would like to return to the pre-Chunkapura days. Since the Senate has killed SB 349, the Savings and Loans are willing to support the compromise position of SB 313, with the above noted amendments. We therefore urge that the Committee strip the "Meyer" amendment and accept the amendments proposed by Sen. Mazurek and concur in SB 313 as amended.

Chip Erdmann
Erdmann & Wright
Box 5418
Helena, MT 59604
442-8813

#3
SB313
3/8/89

TESTIMONY OF MONTANA BANKERS ASSOCIATION
IN SUPPORT OF SENATE BILL 313, WITH AMENDMENT

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The Montana Bankers Association prefers SB 349, but in lieu thereof would support SB 313, with the amendment hereafter set forth.

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Whatever the purpose of this amendment may have been it renders the bills totally unworkable.

GEORGE T. BENNETT
MBA Counsel

SB 351
3/8/89

**SENATE BILL 351
AN ACT TO AMEND THE MONTANA CAPITAL COMPANY ACT**

**SUMMARY OF TESTIMONY
OFFERED BY MIKE PARKER, GREAT FALLS CAPITAL CORPORATION
THE HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
8:00 AM - WEDNESDAY - MARCH 8, 1989**

I am representing the interests of the Great Falls Capital Corporation and the Montana Venture and Development Capital Community in General

Vote yes SB 351

Text of bill drafted on a voluntary basis by securities lawyers from the firm of Dorsey & Whitney

Input provided by :

- Existing Capital Companies
- Members of the Montana Venture Capital Network
- Montana Board of Investments
- Other Interested Parties

Broad support of the Montana Venture and Development Capital Community.

All provisions are procedural in nature with the exception of one substantive item relating to reinvestment of retained earnings of Capital Companies.

Fiscal Impact = \$0

Changes are recommended in response to practical difficulties in the operation of Montana Capital Companies and administration of the Montana Capital Company Act.

SB 351 does not change the sense or purpose of the Montana Capital Company Act.

SB 351 is of little direct consequence to anyone except Montana Capital Companies and administrators.

Senator Crippen's SB 283 which will extend the Montana Capital Company Act and provide for additional tax credits appears to have nearly unanimous support, which would imply that Montana Capital Companies will be long term members of the Montana Financial Community. This bill is important to their operation and success.

Thank you

Vote yes SB 351

70% of its capital base caused by increases in retained earnings within 5 years of the end of the fiscal year during which the retained earnings were earned.

(2) Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

(3) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company. The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) and that the failure was not due to neglect on the part of the company. The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund.

History: En. Sec. 7(2)-(4), Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 4, Ch. 583, L. 1987.

Compiler's Comments

1987 Amendment: In (1)(a), (1)(b), and (1)(c), after "capital base", inserted "raised through investments for which tax credits were taken"

and after "board" inserted language relating to percentage of capital base increased by retained earnings.

90-8-302. Restriction on investment. No more than 50% of the equity raised by a Montana capital company under this chapter may be invested in any one Montana business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one Montana business.

History: En. Sec. 9, Ch. 554, L. 1983.

90-8-303. Conflict of interest. (1) (a) The members of the board, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from any Montana capital company, either directly or indirectly.

(b) These restrictions do not prohibit the board, acting as a whole, from purchasing debentures issued by a Montana capital company.

(2) A member of the investment committee of a Montana capital company who has an interest in a venture that comes before the committee for a vote shall disclose such interest and abstain from voting on investment in the venture.

History: En. Sec. 10, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 7, Ch. 124, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1)(b).

90-8-304. Application of securities law. In lieu of registration under Title 30, chapter 10, a certified Montana capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for such filing.

History: En. Sec. 14, Ch. 554, L. 1983; amd. Sec. 12, Ch. 272, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning of first sentence inserted "certified" before "Montana" and at end of second sentence deleted "or deposit".

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Mike: Leave existing subsection (3) as is. Add the following sentence:

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Add to end of §301(3) of
Montana Capital Company Act

The department of revenue may also grant an extension of time in which to make qualified investments upon application by a capital company showing reasonable cause for such extension.

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3/8/88
#1
Bob Brown

NFL

UNDERDOG FAVORITE PTS.
SUNDAY, SEPT 4

1. Phoenix	2. CINCINNATI	-5
3. Dallas	4. PITTSBURGH	-3
5. GREEN BAY	6. LA Rams	-3
7. BUFFALO	8. Minnesota	-3
9. NEW ORLEANS	10. San Francisco	-5
11. TAMPA BAY	12. Philadelphia	-7
13. Miami	14. CHICAGO	-4
15. Atlanta	16. DETROIT	-5
17. Houston	18. INDIANAPOLIS	-4
19. KANSAS CITY	20. Cleveland	-3
21. NY Jets	22. NEW ENGLAND	-7
23. San Diego	24. LA RAIDERS	-5
25. Seattle	26. DENVER	-4
MONDAY SEPT. 5		
27. Washington	28. NY GIANTS	-3

BACK

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1906 5N

..SEPT 4-5, 1988..

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IN ACCORDANCE WITH
MCA 23-5-1101

ODDS

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4 OF 4 10 TO 1
5 OF 5 15 TO 1
6 OF 6 30 TO 1
7 OF 7 50 TO 1
8 OF 8 80 TO 1
9 OF 9 90 TO 1
10 OF 10 100 TO 1
11 OF 12 100 TO 1

NAME _____

ADDRESS _____

CITY _____

PHONE NO. _____

VISITORS' REGISTER

COMMITTEE

Business18 303BILL NO. 313 351 369 DATE 3/8/89SPONSOR Williams T. Hays
Mazurek Williams BrownPlease put the
bill number thanks

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
GEORGE T. BENNETT	HELENA MONT. BRKS ASSN	SB 313-w/ amend.	
MICHAEL E MCKEE	HAMILTON MT	313-w/ Amendment	
JOCK ANDERSON	HELENA MT	"	
W R DAVIS	HELENA MT	303 w amend -	
CHIP EDMANN	MT LEAGUE FOR WST	303-313 w/ Amendments	
Randy Reger	Big	313 AS IS	
Tom Hopgood	Mont. Assoc. Realtors	303 313	
GENE PHILLIPS	MLTA	SB 303	
GENE PHILLIPS	NTS	SB 18	
Bob Pancich	Board of Investments	SB 351	
Eric M Harding	Sen. Dist #25	SB 313	
Roger Troy	Helena - Mt Indep Bankers	313 w/ SBL amend	
Camp McPhee	Glendive, MT	Legislative aide to Rep John Johnson	
Brad McPhee	Glendive MT		
Bill Gowen	HELENA	w/ AMENDS	
Dan Levine	Great Falls	with Amendments	
Bob Spunngard	Billings	313	
Joe Hauer	MT BANKERS	313	
Charity Conley	Great Falls	313 w/ amendments	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.