

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on January 5, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: Chairman Thayer introduced committee members, and staff present. A small contribution was taken from committeemen, for their coffee fund.

HEARING ON SENATE BILL 43

Presentation and Opening Statement by Sponsor: Senator Rapp-Svrcek, Senate District 26, stated he was submitting the bill to make a change in the itinerant merchants fee. He noted discovering a need for clean-up language, in the portion of the law, pertaining to the bill. He also stated, the Department of Agriculture had informed him that itinerant merchants were required to post a \$1000.00 bond in addition to paying the \$200.00 itinerant merchants fee. He cited the presence of a representative, from the Department of Agriculture, to present an amendment deleting the bond requirement for itinerant merchants selling less than \$2000.00 a year. (See Exhibit #1)

Senator Rapp-Svrcek reported the meat of the bill to be on pages 3 and 4. He said that at the bottom of page 3, the fee was being changed from a straight \$200.00 to 10% of the applicants previous gross receipts, with a minimum fee of \$50.00 and a maximum fee of \$200.00. He cited page 4 as stating that an itinerant merchant applying for the first time, would pay a \$50.00 fee.

List of Testifying Proponents and What Group They Represent:

Ralph Peck - Montana Department of Agriculture

List of Testifying Opponents and What Group They Represent:

None

Testimony: Ralph Peck said he was there to give a little background and support for SB 43. He said that last session the itinerant merchant fees were raised from \$100 to \$200. He said the Department had worked with Senator Rapp-Svrcek to amend the bill to provide for the beginning merchant to begin operation without a bond. (See Exhibit #2) He said that if a problem arose, it would probably have to be settled in the small claims court. He said that in the past an itinerant merchant had to obtain a license and post a \$1,000 performance bond with the Department, because they did not have a permanent place of business. He said this amendment would exempt the beginning merchant from that bond requirement, if they did under \$2,000 worth of business per year, or if they had under \$2,000 inventory. He said the amendment had been written that way, to be sure that the large merchants still had to provide for a performance bond. He said they were there as a resource, and would be happy to answer any questions. He stated that Mr. Roy Bjornson, was also available for any clarification.

Questions From Committee Members: Chairman Thayer asked if, on page 1, line 13, itinerant merchant was intended to be just the person selling the produce, or could it also involve someone involved in the transport of the produce? Senator Rapp-Svrcek asked Mary McCue if this was the amendment they had spoken about earlier?

Mary McCue said she was wondering if the person spoken of, was the person who only sold the produce, and didn't transport it? Senator Rapp-Svrcek said yes it might be, but it might also be someone who brought the produce in and sold it. He said his recollection of the amendment they had discussed, was for an either or clause in that line.

Mary McCue stated that the present definition seemed to have two requirements, you sell it, and you transport it. She said there was a need for another provision there, to clarify that the bill included both the person selling and transporting, or merely sold the product. Senator Rapp-Svrcek said his intent was to include both areas.

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Chairman Thayer asked if this would require another amendment? Mary McCue said yes, and she thought they would also have to rework the title a little bit.

Mary McCue said she thought this was a substantiative change, which included people who were not presently included. She said she didn't think present law included people who were merely selling, and that was different to include them at a lower fee, than just lowering the existing fee.

Chairman Thayer asked someone from the Department if they would like to respond? Roy Bjornson, Administrator of the Pioneer Division of the Department of Agriculture, said that was a bit of a technical problem with the bill. He said that in most cases the people who transported produce, also sold from temporary stands as well. He said he thought that SB 43 tended to clarify that, in terms of the definition found on page 2, line 22, where it talked about the established place of business and temporary sales areas. He said he agreed that the technical point should be clarified in the definition of a Montana merchant. He said their current policy was that anyone who sold produce at a temporary location had to be licensed as an itinerant merchant.

Chairman Thayer asked if a separate amendment was needed? Mary McCue said it would be a separate amendment, and she had not prepared it, because she had not been clear as to the intent. She said she would be happy to prepare the amendments needed.

Senator Lynch asked if Senator Rapp-Svrcek's constituent was included under the law? Senator Rapp-Svrcek said yes, he had been.

Senator Hager asked if the person raised the produce, and sold it on their own property, would they be required to be licensed? Mary McCue said they were specifically exempted.

Senator Boylan asked if the Department inspected and graded the products? Roy Bjornson said that they did, and the merchants were supposed to check with the Department upon arrival for a quality and grade check. He said the Department also had some responsibility to insure that honest weights were being promoted or sold.

Senator Williams asked how monitoring was done, as to who had paid fees or not? Mr. Bjornson said the itinerant merchant was instructed to check in with the Department

upon arrival. He said the other source of information was through local businesses and sheriff's departments in the area, who were very quick to call and check on licensing. He said they received occasional complaints, depending on the availability of the fruit. He said there were more complaints if the quality of the fruit was poorer.

Chairman Thayer said that if it was alright with Senator Rapp-Svrcek and the committee, he would ask that they instruct Mary McCue to prepare the additional amendment necessary, and take executive action on the bill tomorrow.

Closing By Sponsor: Senator Rapp-Svrcek said that would be fine, and he would like to apologize for not having a clean bill for the committee. He said he was confident that the committee could clean it up. He said he appreciated the hearing, and the Department of Agriculture's help with the bill.

DISPOSITION OF SENATE BILL 43

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON SENATE BILL 16

Presentation and Opening Statement by Sponsor: Senator Weeding, Senate District 14, said he was the only sponsor of SB 16, which dealt with the release of liens on mortgages filed in the court houses. He said the bill was requested by some of the county assessors. He said the problem occurred after the mortgages had been satisfied. He said liens were filed in the office of the clerk and recorder, the assessors office, and the treasurer's office, but when the lien was due to be released, the lien was often only released at the clerk and recorders office. He said the treasurer's and assessors offices weren't always aware of the release, and it resulted in problems bookkeeping problems. He said he had been informed that it would be much better if all filings of the lien were released. He said page 4, subsections (a) and (b) provided for these releases.

List of Testifying Proponents and What Group They Represent:

Marvin Barber - Montana Assessors Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Marvin Barber said they wholeheartedly supported SB 16. He said it would save embarrassment of taxpayers, and the assessors. He said that unreleased liens quite often ended up in an appeal, because they had assessed personal property with real property which they were not aware of. He cited a case where the bill would have avoided such an instance from occurring. He said the assessors would urge passage of the bill, as it would save them countless time and energy in updating their records. (See Exhibit #3)

Questions From Committee Members: Chairman Thayer asked if liens were filed at three different places. Mr. Barber said that wasn't a constant factor, and they would like to see that become the case. He said it would only be a matter of having three copies of the lien distributed to the court house.

Chairman Thayer asked if the lien releases were normally made in all three places? Mr. Barber that to his knowledge, the answer was no. He said he had been an assessor for fifteen years, and he had never had a lien collected in his office.

Closing by Sponsor: Senator Weeding said he closed.

DISPOSITION OF SENATE BILL 16

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion SB 16 DO PASS. Senator Meyer seconded the motion. The motion Carried Unanimously.

HEARING ON SENATE BILL 18

Presentation and Opening Statement by Sponsor: Senator Williams, Senate District 15, said he was presenting SB

18 for their consideration. He stated he would like to go through the title of the bill with them; An Act To Allow The Public Service Commission To Treat Advertising Costs That Promote Increased Use of Communication Services as an Expense Deductible from Income or Capital Assets When Setting or Regulating Rates; and Amending Section 69-3-307, MCA."

He said he was carrying the bill at the request of US West, and they had been in contact with the PSC to work out the details in question. He said he would like to call on a representative from US West, to explain the bill in detail. He said there were also people from the PSC to answer any questions the committee may have.

List of Testifying Proponents and What Group They Represent:

Dennis Lopach - Attorney, US West Communications

List of Testifying Opponents and What Group They Represent:

None

Testimony: Dennis Lopach said their rates were basically determined through an examination which involved a test year, which was administered by the PSC. He said the commission looked at what their investment revenues and expenses were for the twelve month period, per the provision of utility service, to their customers. He said the stature that was being amended was unusual, in that it was a place where the legislature has told the commission how to handle particular types of expenses. He said that in this section, the legislature had stated that when you consider the operating expenses of the company in the test period, it wanted them to disallow certain types of expenses. He said those were listed on page 1, line 13. He said that there were certain exceptions for types of advertising that could be allowed to be recovered as an expense from the rate payers. He said there was an exception for communications advertising which promoted more efficient use of a communications system. He said the bill would add an additional exception, and would permit the commission to let them recover expenses associated with advertising designed to promote increased use of communications services.

He said the basic point which he felt was significant, was that the revenue generated from the additional business, went into the rate-making pot, and then served to reduce the rates they needed to recover

from other services. He said that if their advertising was successful, the result should be more long distance sales were stimulated, and less money was required from the basic rate payers. He said they thought it made sense that if the revenue benefitted the rate payers, then the expense should be recoverable as well. He said they were not addressing utilities other than tele-communications companies, and it did not address all advertising.

He said there was an amendment needed in the title, on line 6. He said they would insert the word "Regulated" , following "OF". He said the same kind of change was needed on page 2, line 5, following "of", insert "regulated". He said that in 1987 an act was approve by legislature, which permitted the deregulation of certain services. He said they wanted to clarify that the only expenses to be recovered from rate payers would be advertising related to the promotion of regulated services.

Questions From Committee Members: Senator McLane asked if the bill simply gave the PSC the option, and if they could decide not to allow the option? Mr. Lopach said the bill only stated that the allowance could be allowed, and did not require the allowance.

Senator Lynch asked if there was a fiscal note? He said he saw the telephone companies saving some money, and he wondered who was going to pay the expense? Mr. Lopach said that historically the disallowance for advertising had ranged around \$500,000. He said the rates wouldn't be changed immediately, because it was a pending case and it wouldn't affect that. He said that in the future, their advertising would be categorized according to the advertising type, and maybe \$400,000 dollars would be a ballpark figure for the allowed advertising. He said the rate payers would be assessed that amount. He stated the rate payers were already benefitting from the revenues that advertising would generate, and he thought it was appropriate that the expense went with the benefit.

Senator Lynch asked if, through the advertising the company would make more money because of the increased use of communications? Mr. Lopach said that rather than say the company would make more money, he would like to say that there would be more revenue to be considered in the rate making process. He said that revenue that was generated through the additional use, would serve to reduce the amount of money that would be required to be otherwise recovered from the rate payers. He said the

voluntary use of more long distance would mean the rate payer wouldn't have to pay more on his basic rates.

Senator Meyer asked if they had looked at the bill, as far as the consumer was concerned? Mary Wright, an attorney for the Montana Consumer Council said they had looked at the legislation, but their office had not taken a position on the bill. She said she would like to point out, that the key to this legislation was the fact that it gave the PSC discretion to review the expenses incurred by the telephone company, for advertising. She said the bill would allow the PSC to decide if it was reasonable for those expenses to be included in the rates, and therefore recovered for the company's customers. She said there were a couple of potential problems with the legislation. She said that, as drafted, the bill talked about expenses that were designed to promote increased use of the system. She said the advertising didn't necessarily have to be successful, to be considered for inclusion in the rates. She said that by adding the word regulated, she thought it did reduce the potential for prossubsidy. She stated that during the start-up period there was a potential for mismatch. She said the funds could be recovered by the telephone company before they ever resulted in a benefit to the rate payers. She said the type of advertising design could be such, that a benefit would not be realized until a subsequent year.

Senator McLane asked if the PSC wouldn't refuse the allowance, if those problems were there? Mary Wright said that was correct, and it was necessary that the PSC had that discretion to review those expenses.

Senator Hager asked if the break-up of the telephone company hadn't been to pay the cost of the services the rate payers were actually using? He said that if that was the case, how was a change on the long distance services going to affect the local user rates? Mr. Lopach said he thought there was a direction within the business, to move prices to their cost. However, telecommunications had been so heavily based on noneconomic pricing, that there were all types of inter-charging among services, and those would remain for the foreseeable future. He said he thought there was a direction within the industry, to reduce long distance prices, but they were still in excess of their economic costs. He said that was true of all types of services yet. He said he thought the most heavily subsidized service, was the basic service, and that would continue to be helped by the generation of additional revenues from other types of services.

Chairman Thayer asked if the PSC limited the amount of profit that a public utility could realize? He asked if there would be a distinction between his explanation of profit and revenue? He asked, the advertising could increase the revenues, but if that translated back into profit then didn't that profit figure have to translate back into rate decreases? Mr. Lopach said he thought that was a clearer way of explaining the situation. He said the total revenue was fixed, and the total profit was fixed, and the question was where the revenue came from. He said the bill would generate more money from some of the optional services, and the argument was that the expenses required to generate that revenue, should be recoverable.

Joan Mandeville, of the PSC, told Chairman Thayer that as long as they were allowed to review a situation, they did not have any objections.

Closing by Sponsor: Senator Williams thanked the committee for a good hearing, and urged them to give SB 18 passage.

DISPOSITION OF SENATE BILL 18

Discussion: None

Amendments and Votes: Senator Meyer moved the proposed amendments to SB 18. Senator McLane seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator McLane made a motion SB 18 DO PASS AS AMENDED. Senator Meyer seconded the motion. The motion Carried.

ADJOURNMENT

Adjournment At: 11:49 a.m.


 SENATOR GENE THAYER, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/5/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 5, 1989

1 Mr. President: We, the committee on Business and Industry report
that SB 16 (first reading copy -- white) do pass.

DO PASS

Signed: *Gene Thayer*
Gene Thayer, Chairman

*eg
105-89
300*

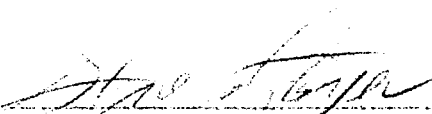
STANDING COMMITTEE REPORT

January 5, 1989

Mr. President: We, the committee on Business and Industry report that SB 18 (first reading copy -- white) do pass and be amended as follows:

1. Title, line 6.
Following: "OF"
Insert: "REGULATED"
2. Page 2, line 5.
Following: "of"
Insert: "regulated"

DO PASS AS AMENDED

Signed: 
Gene Thayer, Chairman

19
1-5-89
3:00

EXP 2/1
DATE 1/5/89
BILL NO: SB18

Amendments to Senate Bill No. 18 First Reading Copy

Requested by Senator Williams
For the Committee on Business and Industry

Prepared by Greg Petesch
January 4, 1989

1. Title, line 6.
Following: "OF"
Insert: "REGULATED"

2. Page 2, line 5.
Following: "of"
Insert: "regulated"

Testimony of Montana Department of Aquaculture
For The Senate Aquaculture, Livestock and
Dungation Committee on Senate Bill 43.

The proposed legislation will allow the department to prorate a license fee based on the previous year's gross receipts of a licensee.

The proposed change in the method of establishing the license fee is not anticipated to decrease license fee revenues.

History

The 50th Legislature has now increased fee from \$100 per license to \$200.00 per license. Section 80-3-705

(Surety Bond) was also amended to

license for the first time or who was not engaged in the business in the previous year.

Possibly the applicant could sign an affidavit stating the applicant's gross receipts.

In conclusion:

The intent of the American law is to ensure that itinerant merchants to deliver honest weights, measures, or grades; accurate representation as to quality or class of the produce; made payments for all produce purchased by the itinerant merchant.

Ex. 2
1/5/89
Pg 3

We are suggesting that low volume
itinerant dealers paid the required
fee of 50 but allowed to
sell up to \$2000 dollars of produce
in calendar year before the
bond or its equivalent would
apply.

Therefore, 80-3-705 needs to be
amended to reflect an exemption
from bonding if less than \$2000 is
sold in a calendar year.

Section 80-3-704 needs to be amended
to address bonding requirements
for itinerant merchants apply for a

Ex. 2
11/5/89
B4

allow bond equivalents.

Comment:

S.B. 43 in our opinion do not really address the entire problem as expressed by low volume itinerant merchants.

If the license fee is going to be based on 10% of the applicant's previous year's gross receipts, with a minimum fee of \$50.00 and a maximum fee of \$200. this section

80-3-205 should also be addressed.

It may be appropriate to provide an exemption to the bond requirement

this allowing low volume itinerant merchants to operate without bond.

(This sheet to be used by those testifying on

SENATE BUSINESS & INDUSTRY
a bill.)

EXHIBIT NO. 3

DATE 1/5

BILL NO. SB 16
DATE 1/5/89

NAME: Marvin Barber

ADDRESS: 1215 Washington Apt. "B" Helena, Mt. 59601

PHONE: 442-0247

REPRESENTING WHOM? Monatan Assessors Association

APPEARING ON WHICH PROPOSAL: SB 16

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

COMMENT: We urge passage of this bill, as it would be very

beneficial in the Treasurers and Assessors offices.

By supplying a copy of the lein in the respective offices,

it would prevent an error in the assessing and taxing

of said property.

Thank you,

Marvin Barber

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

