

MINUTES

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

Call to Order: By Chairman Gene Thayer, on January 9, 1989,  
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,  
Senator Boylan, Senator Noble, Senator Williams,  
Senator Hager, Senator McLane, Senator Weeding, Senator  
Lynch.

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor: Senator  
Devlin, Senate District 13, representing the Department  
of Revenue introduced his bill as an Act entitled: "An  
act providing for a continuous license for any person  
other than a licensed gasoline distributor; eliminating  
the license fee; and amending section 15-70-203 MCA."

Previously, the license was issued for a 3 year period  
at a fee of \$3.50. Such licensing was termed a  
nuisance for the department to administer. The bill  
proposed nothing more than remove all of the 3 year  
expiration date from the law to create a continual  
license.

Senator Devlin stated, "The only change I would like the  
committee to make on the bill, if you see fit to  
approve it, is to make an effective date of July 1st,  
1989. A July 1st date would remove the need for  
renewal prior to the September 1st license renewal date  
previously set forth."

Senator Devlin told the committee, "Norris Nichols, with the  
Motor Fuels Division of the Department of Revenue, is  
here to answer any questions you may have."

List of Testifying Proponents and What Group They Represent:

Norris Nichols - Administration of Motor Fuels

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norris Nichols stated, "What this bill does, is give the person who is selling gasoline to farmers and others who are entitled to a refund, eligibility for a continuous license. The continuous license is issued the same as for a gasoline distributor or diesel dealer until cancelled for cause."

Questions From Committee Members: None

Closing by Sponsor: Senator Devlin simply stated, "I close."

DISPOSITION OF SENATE BILL 5

Discussion: Chairman Thayer pointed out that there was no controversy on SB 5. All we have to do is attach the amendment, making the effective date July 1st 1989.

Amendments and Votes: Senator McLane moved the amendment to DO PASS. Senator Lynch seconded the amendment and it carried. (SEE EXHIBIT #4)

Recommendation and Vote: Senator Lynch made a motion that SB 5 DO PASS AS AMENDED. Senator McLane seconded the motion and SB 5 PASSED AS AMENDED.

HEARING ON SENATE BILL 64

Presentation and Opening Statement by Sponsor: Senator Halligan, District 29, said, "Last session the Judiciary Committee heard the major changes the Legislature made in the Mechanics' Liens' Law area. This bill is the result of an interim commission study, on which Senator Thayer and I served. What this bill represents is simply a fine tuning of the major changes we made last time around."

"We have set up a notice of lien liability which is separate from a lien. This protects the homeowner and people who normally don't deal with the lien area and makes them aware of the possible liens that can be filed against their property.

"The bottom of page 2, provides for the handling of the notice when everything has been satisfied. The length of time the lien notice is supposed to stay filed at the Clerk and Recorders office is also clarified. We felt one year was a reasonable period of time for projects of this type. After one year's period of time, the notice of lien liability would be expunged. This may not be the appropriate word here. There is also an opportunity for a continuation of that one year period printed on page 3, lines 3-12."

List of Testifying Proponents and What Group They Represent:

Riley Johnson - Western Building Material Association  
Mike Sather - Manager of United Building Center,  
Helena, MT.  
Cort Harrington - The Montana County Association of  
Clerk and Recorders

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Riley Johnson stated, "I have a letter to Senator Thayer from Irvin E. Dellinger, which I would like to read at this time." (Exhibit #1) In part of the letter it states, "An issue overlooked was some way to remove the rights to claim a lien, filed with the Clerk and Recorders office. Montana Building Material dealers feel that Senate Bill 6 is a vehicle which should serve this purpose. We ask the committee to pass Senate Bill #64 as proposed."

Mike Sather, manager of United Building Center, Helena Montana, said he was there on behalf of UBC and Western Building Materials Association. He said they concurred with everything Riley had stated, and felt it was very important to have the period of one year. He urged the passage of the bill as it stood, with one year.

Cort Harrington assured the committee of the support of the Association of Clerk and Recorders. "They support the concept of this bill, however, there are a couple of proposed amendments we suggest. First, on page 3,

lines 4-6, there is a reference to the requirement that the clerk and recorder expunge the record of the lien. An Attorney General's opinion, Number 100, defines expunge as requiring a physical act of destroying all evidence of the lien. Actually, the files may need to contain the history of the lien, or an intent to file one." (SEE EXHIBIT #2)

"Our second concern would be addressed to page 3, lines 9-12, referring to an unexpired continuation notice. Nothing in the statute now addresses a continuation. The Clerk and Recorders would suggest including the date of the original notice being filed, the original filing number, date of continuation notice, the owners reclaiming right, and who got the notice." (Exhibit #3)

Questions From Committee Members: Senator Lynch asked Mr. Johnson if he had any objections to the proposed amendments since he had urged passage of the bill without them. Mr. Johnson answered that he had no objections.

Closing by Sponsor: Senator Halligan said he closed, thank you.

#### DISPOSITION OF SENATE BILL 64

Discussion: Chairman Thayer suggested action on SB 64 be considered after Mary had time to make the proposed changes. More than likely, she will have had time to prepare by our next hearing on Wednesday.

#### HEARING ON SENATE BILL 4

Presentation and Opening Statement by Sponsor: Senator Hager, Senate District 48, said the bill was requested by the Department of Revenue. "The section of law referred to in the bill is section one of the definitions. What we are looking for is a definition of bulk storage. Bulk storage refers to 50-70-304, in the part of the law requiring bonding. The bond in need is to secure the compliance of this part, in payment of any and all taxes, interest, and penalties due or which become due here after."

"The section further states they want a \$500.00 fee from any special fuel user who possesses special fuel in bulk storage in this state on which the tax has not been paid."

Senator Hager stated, that Norris Nichols of the Department of Revenue had pointed out a mistake in the title.

"The bill refers to special fuel, not gasoline. Mr. Nichols suggested we insert another amendment to designate a minimum capacity to denote the term 'bulk storage'. I think bulk storage should be stipulated as 100 gallons or more."

Senator Hager stated, "Mr. Nichols is here to further explain the bill."

List of Testifying Proponents and What Group They Represent:

Norris Nichols - Internal Revenue, Tax Division

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norris Nichols stated, " Two years ago, the Legislature passed a bonding bill which eliminated all bond requirements except those persons who own diesel powered equipment used upon the highways and were fueling or had the opportunity to fuel from 'bulk storage'. During the last two years, we have had many calls questioning the definition of 'bulk storage'."

Questions From Committee Members: Senator Meyer asked Mr. Nichols if he agreed with the bulk storage amendment defining it as a container of 100 gallons or more. Mr. Nichols agreed that they would have no problem with that.

Closing by Sponsor: Senator Hager stated, he closed.

DISPOSITION OF SENATE BILL 4

Discussion: Executive action will be considered at a later date.

DISPOSITION OF SENATE BILL 36

Discussion: Chairman Thayer presented SB 36 as a carryover bill needing executive action. He asked Mary McCue to refresh the committee's mind.

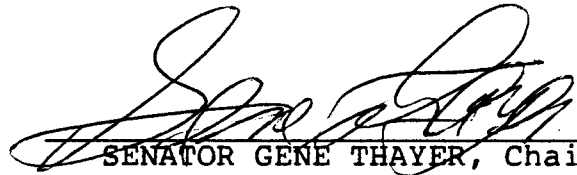
Mary stated, "SB 36 would establish the insurance department as a criminal justice agency. You asked me to check on the other bill in the process dealing with the insurance department's function in regulating securities. I checked the status with the drafter and they are stating the same things as SB 36. SB 36 is as it was represented at the last hearing."

Amendments and Votes: None

Recommendation and Vote: Senator Meyer made a motion that SB 36 DO PASS. Senator Lynch seconded the motion, the motion CARRIED.

ADJOURNMENT

Adjournment At: 10:42 a.m.

  
\_\_\_\_\_  
SENATOR GENE THAYER, Chairman

GT/ct

senmin9.sr

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/9/89

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 9, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 5 (first reading copy -- white), respectfully report that SB 5 be amended and as so amended do pass:

1. Title, lines 7 and 8.

Strike: "AND"

Following: "HCA"

Insert: "AND PROVIDING AN EFFECTIVE DATE"

2. Page 2, following line 3.

Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective on July 1, 1989."

DO PASS AS AMENDED

Signed: \_\_\_\_\_  
Gene Thayer, Chairman

J.C. 8  
2/3/89  
1/19/89



STANDING COMMITTEE REPORT

January 3, 1989

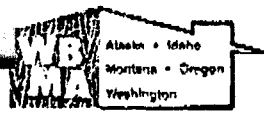
MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 36 (first reading copy -- white), respectfully report that SB 36 do pass.

DO PASS

Signed: Gene Thayer  
Gene Thayer, Chairman

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**SENATE BUSINESS & INDUSTRY**  
 ON THE  
 EXHIBIT NO. 1  
 EARL NELSON  
 DAWN FALLS, IDAHO 1/9/89  
 BILL NO. SB 64  
 TAD SCHARP  
 EUGENE, OREGON  
 SENATE BUSINESS & INDUSTRY  
 OLYMPIA, WASHINGTON



# Western Building Material Association

909 Lakeridge Drive S.W. • Olympia, WA 98502-8009  
 P.O. BOX 1699 • OLYMPIA, WASHINGTON 98507-1699 • (206) 943-3054  
 FAX (206) 943-1219

January 9, 1989

*Gene Thayer*  
 Senator ~~Gene Thayer~~  
 Chrm Senate ~~Legislative~~ Committee  
 State Capital ~~Business~~  
 Helena, Montana

Dear Senator ~~Thayer~~ and Members of Committee:

One issue you have before you this morning is Senate Bill #64, "Notice of Right To Claim A Lien Removal From Records".

Because of a prior committment I am unable to appear and have asked Riley Johnson to speak in my behalf.

Last Legislative Session Senate Bill # 20 "An Act. To Generally Revise The Laws Relating to Mechanics Liens" was passed and signed by Governor Schwinden. An issue overlooked was someway to remove the "Rights To Claim A Lien" filed with the clerk & recorders office.

Senate Bill # 64 would cause the "notice" to lapse at the end of one year unless renewed. Most homes take 4 - 5 months to complete with larger homes taking more time. With time for financial closing one year should be ample. Any less time would cause added time and expense as materialmen, sub-contractors would have to file renewals or file liens to protect their lien rights. This would also created added work and expense for the clerk &

Montana building material dealers feel that Senate Bill #64 is a vehicle which should serve this purpose.

We ask the committee to pass Senate Bill #64 as proposed.

Sincerely,

*Irvin E. Dellinger*  
 Irvin E. Dellinger

*Mike Sather*  
 UBC

VOLUME NO. 42

OPINION NO. 100

COURTS - Destruction of records following court-ordered expungement;

CRIMINAL INFORMATION DISSEMINATION - Records subject to expungement;

CRIMINAL LAW AND PROCEDURE - Expungement of criminal records following a deferred imposition of sentence;

SENTENCE - Requirements of expungement following a deferred imposition of sentence;

MONTANA CODE ANNOTATED - Section 46-18-204.

HELD: When a deferred imposition of sentence results in a dismissal of charges the expungement of the defendant's record mandated by section 46-18-204, MCA, requires that all documentation and physical or automated entries concerning the expunged offense be physically destroyed or obliterated.

20 July 1988

Mike Salvagni  
Gallatin County Attorney  
Law and Justice Center  
615 South 16th Street  
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion of the meaning of the words "expunge" and "record" in the deferred imposition of sentence statute, § 46-18-204, MCA. That statute in its entirety reads as follows:

Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. Upon dismissal of the charges, the court shall send an order directing the department of justice to expunge the defendant's record. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged. [Emphasis supplied.]

On page 3 lines 4 through 6  
the clerk and recorder as to "expunge the  
notice from the public record"

42 AG of 100 deals with what expunge  
means.

Expunge is not necessary and it would create an  
unnecessary burden on the Clerk and Recorder

Suggest deleting the last sentence of  
(5)(b) -

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P 3 lines 7 through 12 refers to an  
"unexpunged continuation notice"

§ 71-3-532 contains the requirement  
of a "notice of right to claim a lien"  
There is ~~nothing~~ nothing in the bill which  
says that a "continuation notice" is  
authorized or what the notice should contain.  
Suggests that the notice include at the very least.

1. Date of the notice being continued
2. Original filing no.
3. Date of continuation notice
4. Owner
5. Person claiming right
6. Who gets the money
7. Who is it filed

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Signed: \_\_\_\_\_  
Gene Thayer, Chairman

J.C. 8  
2:38  
1/9/89

