

MINUTES

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

Call to Order: By Chairman Gene Thayer, on February 7,
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: Senator Meyer said Senator Thayer
was presenting a bill at another hearing, but would
return.

HEARING ON SENATE BILL 298

Presentation and Opening Statement by Sponsor: Senator
Farrell, Senate District 31, said SB 298 clarified long
term health care insurance that people were presently
purchasing. He said there was confusion over coverage
of some policies being bought. This bill allowed the
insurance auditor to clarify what the policies did
cover, and the amount of coverage people could expect
from their policies. (See Exhibit #1)

List of Testifying Proponents and What Group They Represent:

Kathy Irigoin - State Auditors Office
Tom Hopgood - Health Insurance Association
Fred Patten - American Association of Retired Persons
Judith Carlson - Montana Senior Citizens Association
Larry Akey, Assn. of Life Underwriters
Steve Waller - Carpenter Paper Company (Exhibit 12)

List of Testifying Opponents and What Group They Represent:

None

Testimony: Kathy Irigoien had prepared testimony presented to the committee, and followed it in detail. (Exhibits 2 & 3)

Tom Hopgood stated the bill was a model long term care health insurance act which had been endorsed by the National Association of Insurance Commissioners. He said it had been the subject of an ongoing study by a subcommittee of that organization, and various groups, including the Health Insurance Assn of America. He stated the association believed SB 298 was a solid bill benefitting the state of Montana, the consumer, and would assist the industry in developing, designing, and marketing long term health care products. He said there was a great need for that type of insurance for the catastrophic illness or injury. He said that in order to responsibly provide that type of coverage, the association believed a statutory and regulatory framework was necessary for guidance to the member companies.

He stated the association asked that the committee give SB 298 a Do Pass recommendation.

Fred Patten said there were certain parts of SB 298 they were particularly pleased about. The non-duplication of coverage provision was of real importance. He stated, so often older people saw insurance advertised on television, called the 800 number and bought the insurance. He said some of these people had several policies and often none of those policies were really very good. In reality, they had spent a lot of money and still didn't have good insurance coverage. He said "AARP urges a Do Pass."

Judith Carlson said the Montana Senior Citizens strongly urged a Do Pass, and thanked Senator Farrell and the auditor's office for sponsoring the legislation. She said there were three sections of SB 298 that they particularly like. The first was section 6, which contained the prohibited practices. Subsection 3 provided for skilled nursing care and encouraged people to get the least expensive care. Section 10 contained the right to return policies, and gave people a chance to discuss the purchase with their family and friends, and return the policy if they were not satisfied. She stated section 11 gave a clear and simple outline of coverage. She said that was the section the consumer really read and utilized.

Larry Akey said they believed SB 298 would provide insurance coverage of value to consumers, and also benefitted the agents and the Association of Underwriters. They urged a Do Pass.

Questions From Committee Members: Senator Noble asked what rules SB 298 changed, that were in force now? Mr. Hopgood said it would change some of the ways companies did business. He stated long term health insurance had been a problem for the regulatory agencies and the industry in general. When unregulated, there was room for abuse, and the group of people in the market for that type of insurance were easily preyed upon.

Senator Noble asked if the tightening of regulations would increase costs? Mr. Hopgood said it may have some effect on the cost, but would also allow development of products to fit specific needs of the insured.

Senator Weeding requested Mr. Patten to elaborate further on the non-duplication portion of the bill. Mr. Patten said they felt the television advertised insurance was sold fairly cheap, so the elderly bought the policies. We have talked to some of these people, and many have several policies. He said they had encountered a high number of people who had as many as ten policies. He said the total cost of the policies became substantial. However, the way the policies were often designed, if one paid, the rest wouldn't. He said that sometimes the elderly had the concept that they were buying sizeable amounts of insurance by adding the coverages together.

Senator Weeding asked, if SB 298 was enacted, would it demand payment regardless of other policies? Kathy Irigoien said, this bill allows a person ten days to review the policy without payment. She said, "We have administrative rules in place right now, that address coordination of benefits between policies. Those rules would apply."

Senator Noble asked Kathy Irigoien if Section 5, subsection 2, changed existing rules or laws? He said the bill stated, if an employee leaves the employment where he was insured, he would have the right to retain the insurance. He asked if that wasn't an existing federal act called COBRA? Kathy Irigoien explained, COBRA was a federal act requiring continuation of coverage for an extended time, but in state law, we already have a conversion statute for individual as well as group policies. She said, in Section 5, (2), the statute

33-22-508 governed conversions. State and federal laws didn't match exactly so the inclusion of that section was important. It covered areas COBRA missed, and fit the state laws already in place.

Senator Williams asked what the consequences were for the companies in the case mentioned earlier where people owned multiple policies. He asked if the companies pro-rated the coverage, or would one of the policies pay the entire bill? Kathy said it depended on how the policies were written, but it would be unlikely to be paid twice. She said there would have to be a decision reached, as to what policies were in force first.

Senator Williams asked Kathy Irigoien if she thought the policy examination period was going to be very effective? He said he thought people wouldn't examine the policies in the ten day period, and there should be another way to cover the problem. She said the ten day and thirty day provision was already in our law for other types of insurance, and seemed to work. She said SB 298 proposed to include long term health.

Senator Hager asked Kathy Irigoien to explain section 4. She said, all policies would not be regulated by section 4. She stated that sometimes a group policy ended up covering Montana people, but was issued in another state. As an example, she cited groups of people who work for companies like Buttreys. She said policies like that would cover anyone who worked for that company, anywhere they worked, and would be regulated in the state of it's issuance.

Closing by Sponsor: Senator Farrell said SB 298 mainly sets standards and ground rules for the consumer and the seller of insurance. He asked for a favorable consideration.

DISPOSITION OF SENATE BILL 298

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF SENATE BILL 267

Discussion: Mary McCue told Chairman Thayer said there had been no amendments proposed.

Senator Weeding said he was amazed banks were not objecting. He said he had some reservations about the bill. He stated that banks had accepted risks of ag lending for years and deserved any prosperity that may come their way.

Senator Noble commented that Mr. Buchanan was a very reputable man, and had testified that their basic interest was in family housing. Senator Noble said he felt Mr. Buchanan was trying to continue business under the state charter, and was simply trying to upgrade the act.

Senator Hager said, with only one state chartered S & L in Montana, he questioned the time and effort to regulate legislation for that one entity. He said that every other S & L was under federal regulation.

Senator Williams asked Mary McCue anything prevented others from obtaining a state charter. Mary McCue said there wasn't.

Senator Meyer said he agreed with Senator Noble. Mr. Buchanan had done a lot for Great Falls in the housing market. He stated there were some farmers that needed an agriculture loan once in a while. It would be another source for farmers to finance when banks were drying up.

Recommendation and Vote: Senator Williams MOVED that the committee DO PASS SB 267. Senator Meyer seconded the motion. The Vote was 7 in favor of passage and 2 opposed. Those opposing were Senator Boylan and Senator Weeding. The motion to DO PASS SB 267 Carried.

HEARING ON SENATE BILL 244

Presentation and Opening Statement by Sponsor: Senator Keating, Senate District 44, asked the committee's permission to enter material concerning SB 245. He said that even though the bill did not pass in committee, this was the printing information they had requested. He said he still felt compelled to have it entered into the record. Chairman Thayer received the committee's consent to open the record on Senate Bill 245. (See Exhibit #4)

Senator Keating said he had handout concerning SB 244. (See Exhibit #5) He said SB 244 dealt with the instate bidder preference from a different angle than SB 245 had. He said that since the committee hadn't seen fit

to repeal the bidder preference with SB 245, this bill came at the request of the legislative audit committee. He said SB 244 was for the purpose of amending the bidder preference laws.

He said the bill would allow non-eligible companies, with significant presence in the state of Montana, to be eligible for instate bidder preference. He cited significant economic presence as a company that maintained a permanent place of business within the state of Montana, or were registered and licensed to do business in the state. Senator Keating cited information, on page 2 of the handout, concerning the criteria for eligibility for preference. He referred to the handout to express the values and economic advantages for passage of SB 244. He said there was discrimination involved in the present law, and said the language need amended to include the significant presence. He urged passage of the bill.

List of Testifying Proponents and What Group They Represent:

Ed Burghardt - Carpenter Paper Company, Missoula
Montana

List of Testifying Opponents and What Group They Represent:

Lloyd Lockrem - Montana Contractors Association
Herb Kimble - Universal Athletics Service
Steve Waller - Carpenter Paper Company, Great Falls,
Montana
J. H. Chauvin - Graybar, Billings, Montana

Testimony: Ed Burghardt said their company supported SB 244. He said they were one of the companies not eligible for the instate bidders preference. However, he pointed out, they have had a presence in Montana for over 75 years. He said they had three locations in Great Falls, Missoula and Billings. He stated they owned their property, and employed over 30 Montana residents. He said they paid property, income taxes, workers' compensation, supported local and state civic projects, and were good Montana citizens. He said they were a viable Montana business, asked for support of SB 244. He said the bill would give them equality when they went to the bidding table. (See Exhibits 7 and 8)

Lloyd Lockrem said he appeared in opposition to SB 244. He stated the basic problem they had was that the legislative auditor did not take into consideration the impact SB 244 would have on the construction industry. He said the impact was significant, because out of

state contractors came into Montana with large amounts of equipment and got prorated taxes for a short period of time. He said in state contractors paid personal and real property taxes, and the cost of doing business was greater for them. He said until the repeal of personal property taxes, their association opposed anything that would upset the present preference system.

He said the language in SB 244 was similar to the statute Wyoming had used in the past. (See Exhibit #9) He said the significant economic presence language was defined as maintaining a permanent place of business and being registered to do business. He said "We can see no redeeming feature in this particular bill. We feel the loose language in this bill is going to virtually open up the preference for the construction industry, and, at the same time, subject those firms to the reciprocal agreement." He said they urged a Do Not Pass for SB 244.

Herb Kimble said Universal Athletics was a small Montana corporation with stores in seven cities, and employed about one hundred and seventy Montanans. He said they also had a location in Wyoming, and one in Utah. He said they felt the qualifications to be significantly the economic in Montana were too broad. He said the bill made it too easy for the out of state businesses to establish and compete within the state, and created unfair competition for instate businesses. Therefore, he said they opposed SB 244. (See Exhibit #10)

Questions From Committee Members: Senator Noble asked Ed Burghardt why his company didn't start a Montana company called Carpenter Paper of Montana Incorporated, and simply use that company to do their instate bidding? He replied, first, the laws of Montana, required a majority of the board members be state residents. Secondly, he thought it was illegal to establish a corporation to circumvent the laws. He said they probably wouldn't want corporations in every state. He said the idea hadn't been thoroughly investigated, but thought wasn't unfeasible.

Senator Williams said they had discussed the same situation, and it was easily accomplished. A firm from out of state could incorporate here under the foreign corporate laws. Mary McCue read the law and said there was nothing to prevent it from happening, but she wasn't sure about the residency requirement.

Senator Noble asked Mr. Burghardt what information he had available. Mr. Burghardt stated that in exhibit 9, page 3, Subsection 3, it said that a corporation formed to circumvent the law was illegal. Mary McCue stated, "That language is right in their bidding preference statute."

Senator Boylan asked why the legislative Audit Committee was involved? Senator Keating said the audit had only involved letting of state contracts, and they thought that by repealing the preference law, they could save the three percent. He said they had also felt that by opening the bidder market further, they would receive cheaper bids. He said it had been a government decision to try saving more money through additional competition.

Chairman Thayer asked about Exhibit #5 that Senator Keating had handed out earlier. He noted the last paragraph was a request to kill the bill. Senator Keating said Graybar had wanted to do away with bidder preference altogether, and was more in support of SB 245.

Closing by Sponsor: Senator Keating said the issue was confusing and difficult to work with. He said the bidder preference was a do nothing law, and we were trying to be fair to the instate businesses. He said that what the committee had hear from the opposition was hear say, not statistical facts. He said the fact was, that people doing business in this state were being discriminated against.

DISPOSITION OF SENATE BILL 244

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF SENATE BILL 268

Discussion: Senator Lynch said he though banks should be banks, and S & Ls shouldn't use the term because it was misleading.

Amendments and Votes: Senator Meyer made a motion to Amend SB 268 as follows: In the title on line 9 following "32-2-402, MCA;" insert "AND", and on lines 9 and 10, strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE".

On Page 5, line 15, Stride: "penalty" and insert the word "principal". The motion was seconded by Senator Lynch. The motion Carried Unanimously. 268.

Senator Lynch made a motion to strike the effective date from SB 268. On Page 6, Lines 4 and 5. Strike: section 6 in its entirety. Senator Meyer seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator Lynch moved that SB 268 DO NOT PASS AS AMENDED. The motion was seconded by Senator Boylan. Chairman Thayer asked for a roll call vote and the count was 3 in favor of the motion and 6 opposed. Those opposed were Senator Meyer, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Thayer. The Motion Failed.

Senator Meyer made a substitute motion to DO PASS AS AMENDED. The motion was seconded by Senator Noble. The vote was 6 in favor, and 3 opposed. Those opposed were Senator Boylan, Senator Weeding, and Senator Lynch. The motion Carried.

ADJOURNMENT

Adjournment At: 11:28 a.m.



SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 2/7/89

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.

SENATE STANDING COMMITTEE REPORT

February 7, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 267 (first reading copy -- white), respectfully report that SB 267 do pass.

DO PASS

Signed: 
Gene Thayer, Chairman

J.C.
2/7/89
12:31 P.M.

SENATE STANDING COMMITTEE REPORT

February 7, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 268 (first reading copy -- white), respectfully report that SB 268 be amended and as so amended do pass:

1. Title, line 9.

Following: "32-2-402, MCA;"

Insert: "AND"

2. Title, lines 9 and 10.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 5, line 15.

Strike: "penalty"

Insert: "principal"

4. Page 6, lines 4 and 5.

Strike: section 6 in its entirety

AND AS AMENDED DO PASS

Signed: 

Gene Thayer, Chairman

4.6.
2/7/89
3:37
2: p.m.

Long-term Care Insurance Act

Section by Section analysis
Prepared by Tanya Ask
February 3, 1989

This bill is drafted based on the National Association of Insurance Commissioners' Model Long-term Care Act as amended December 1988.

Section 1. Short Title

Section 2. Purpose. From the standpoint of Montana residents, promoting availability of this coverage and establishing standards are two very important purposes of the bill. The purpose statement is very broad.

Section 3. Definitions. This section contains the definitions for specific terms used in the bill. Probably the most important definitions are on page 4, the definition of long-term care and the definition of policy. Policies include commercial insurance company coverage, health service corporation, health maintenance organization or other potential arrangements providing health inpatient skilled, intermediate or custodial coverage. (Skilled, intermediate and custodial coverage are the three levels of nursing coverage contemplated for nursing home care. Not all nursing homes offer all three levels of care, and currently not all nursing home policies provide benefits for all three levels of care, a point that is very confusing for many buyers of this coverage type.)

Section 4. Extraterritorial jurisdiction. Many policies covering Montana residents are issued outside of the borders of Montana, and then individual certificates of insurance sold off the policy--a form of group insurance. Under this section, some of those certificates could not be marketed in the state unless they also met the minimum standards established by this bill.

Section 5. Disclosure and performance standards.

Subsection 1 allows the commissioner to establish policy standards by rule.

Subsection 2 requires long-term care coverage issued on a group basis to contain a conversion privilege should the individual insured leave the insured group. An example of this would be if long-term care insurance was provided as an employer benefit and an employee left employment. The employee would be able to convert over to an individual policy by applying and paying for the coverage.

Subsection 3 requires certain other insurance policies to comply with this bill if it provides certain basic types of health insurance coverage and, in addition, contains a provision of long-term care benefits of at least 6 months.

Section 6. Prohibited practice and policy provisions. A long-term care policy or certificate cannot be terminated in any way because of the individual insured's age or a deterioration of mental or physical health. (If this was not in the bill, a company could collect premium while an insured was healthy, and as soon as the insurance was needed, terminate the insurance, never incurring a claim.) If coverage is converted or replaced within the same company, the company cannot require the insured to meet a new preexisting waiting period except if the insured voluntarily requested an increase in benefits. An insurer cannot sell long-term care insurance which only covers skilled care, or covers skilled care at a higher rate than other types of care. (Most individuals entering a nursing home or other long-term care facility are not there for skilled care, but some lesser level of care.)

Section 7. Preexisting conditions. This section sets forth what type of restrictions can be placed on preexisting conditions, those conditions for which an insured has received treatment or should have received treatment prior to the effective date of the long-term care insurance. In certain instances the limits can be extended for specific age groups in specific policies if it is found to be in the public interest. A company's right to underwrite applications is recognized, and the company can impose a preexisting waiting period. However, no waiver or rider limiting or excluding coverage for specifically named preexisting conditions can apply beyond the waiting period.

Section 8. Prior hospitalization or institutionalization. A requirement that the insured receive prior hospitalization or a higher level of care before benefits will be paid is prohibited. Any other limitation or condition for receipt of benefits under the policy must be clearly labeled so the insured can find them in the policy or certificate. Home health care coverage cannot be contingent on prior institutionalization. Any other benefits cannot be predicated on a prior institutionalization of more than 30 days.

Section 9. Loss ratio standards. This section allows the commissioner to establish loss ratio standards by rule. A loss ratio is the percentage of claims paid to insureds as a function of the premium collected from those individuals.

Section 10. Right to return policy--free look. An individual has a ten day right to look at an individual policy and return for full refund if not satisfied. If the long-term care insurance is provided by a policy or certificate purchased through the mail or over the phone, the individual has 30 days to examine and return for a full refund. Free looks provide the consumer with the opportunity to review the product after purchase--the individual applicant rarely has the opportunity to look at the policy or certificate at the time of purchase, having only a policy summary or coverage outline to view at the time of initial sale.

Section 11. Outline of coverage. A potential applicant for long-term care insurance must receive an outline of coverage at the time the individual is first contacted to purchase this type of coverage. Subsection 2 spells out the contents of the coverage outline.

Section 12. Required content of certificate. If an individual insured is covered under a group long-term care policy, the individual does not receive a copy of the full policy. Instead the individual receives a certificate of coverage, the certificate explaining benefits provided and conditions which must be met to receive the benefits. This section explains what must be contained in the certificate--since the individual relies on the certificate, it must contain the essential features of the contract.

Section 13. Compliance required. Any policy or coverage marketed as long-term care insurance in Montana must comply with the provisions of this bill.

Section 14. Rules. General rulemaking authority is granted to implement this act.

Section 15. Extension of authority. If any existing laws are effected by this bill, rulemaking authority is extended to adopt rules in those instances if necessary.

Section 16. Codification instruction. The long-term care proposal would be codified in the disability (health) insurance section of the insurance code.

Section 17. Severability. If any part of this bill is found to be invalid, all other parts not invalid would remain.

Section 18. Applicability. This bill, if passed, would apply to policies delivered or issued for delivery on and after the effective date of this bill.

Section 19. Effective date. The effective date of sections 6 and 8 are January 1, 1990.

INS 530 (2-4)

Kathy M. Irigoin
State Auditor's Office
444-2020

TESTIMONY ON SB 298
Long-term Care Insurance Act
February 7, 1989

I. Introduction

SB 298 is based on the National Association of Insurance Commissioners' Model Long-term Care Act as amended in December 1988. Its purpose is to establish minimum, uniform standards for policies that can be sold in Montana as long-term care insurance.

II. Section by Section analysis

Section 1. Short Title.

Section 2. Purpose. From the standpoint of Montana residents, promoting availability and establishing standards for long-term care insurance are two very important purposes of SB 298.

Section 3. Definitions. The third section of SB 298 contains the definitions for specific terms used in the bill. Probably the most important definitions are the definitions of "long-term care insurance" (page 5, following line 12) and "policy" (page 6, lines 1 through 7). SB 298 requires coverage of all levels of "long-term care insurance": health inpatient skilled care, intermediate care, and custodial care. (Skilled, intermediate, and custodial coverage are the three levels of nursing coverage contemplated for nursing home care. Not all nursing homes offer all three levels of care, and currently not all nursing home policies provide benefits for all three levels of care, a point that is very confusing for many buyers of this coverage type.) The definition of "policy" includes coverage offered by a commercial insurance company, health service corporation, health maintenance organization, or other similar organization.

Section 4. Extraterritorial jurisdiction. Often, Montana residents are covered by a group insurance policy that was delivered or issued for delivery in a state other than Montana. A Montana resident covered under an out-of-state issued group insurance policy receives a certificate of insurance, evidencing his coverage under the group insurance policy. Section 4 of SB 298 requires prior approval, based on minimum standards set forth in the bill, by the Commissioner of Insurance of this state before certain certificates of insurance can be marketed in the state. (The certificates of

Ex. #2
2/7/89

insurance which fall within the prior approval requirement are those evidencing coverage under a group long-term care insurance policy that is not specifically listed in the definition of "group long-term care insurance" contained in SB 298.)

Section 5. Disclosure and performance standards.

Subsection 1 allows the commissioner to establish by rule standards for full and fair disclosure in a long-term care insurance policy.

Subsection 2 requires long-term care coverage issued on a group basis to contain a conversion privilege should the individual insured leave the insured group. For example, if long-term care insurance was provided as an employee benefit and an employee left employment, the employee would be allowed to convert over to an individual policy by applying and paying for the coverage.

Subsection 3 requires certain other insurance policies to comply with the minimum standards set forth in SB 298 if they provide certain basic types of health insurance coverage and, in addition, contain a provision of long-term care benefits of at least 6 months.

Section 6. Prohibited practices and policy provisions. A long-term care insurance policy or certificate may not be terminated in any way because of the individual insured's age or a deterioration of mental or physical health. (If this prohibition were not part of SB 298, a company could collect premium while an insured was healthy and terminate the insurance as soon as the insurance was needed, never incurring a claim.) If coverage is converted or replaced within the same company, the company may not require the insured to meet a new preexisting waiting period unless the insured voluntarily requests an increase in benefits. An insurer may not sell long-term care insurance that covers only skilled care or covers skilled care at a higher rate than other types of care. (Most individuals entering a nursing home or other long-term care facility are not there for skilled care, but some lower level of care.)

Section 7. Preexisting conditions. Section 7 sets forth the types of restrictions which can be placed on preexisting conditions, those conditions for which an insured has received medical advice or treatment within 6 months preceding the effective date of the coverage of the insured person. In certain instances, the commissioner may extend the preexisting limitation periods for specific age groups in specific policies if it is found to be in the public interest. A company's right to underwrite applications is recognized, and a company is allowed to impose a preexisting waiting period. A company may not, however, apply, in a waiver or rider, an exclusion of coverage for a specifically named preexisting condition beyond the waiting period.

Section 8. Prior hospitalization or institutionalization. A company may not require an insured to receive prior

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hospitalization or a higher level of care before long-term care insurance benefits will be paid. Any other limitation or condition for receipt of benefits under a long-term care policy must be clearly labeled so the insured can find them in the policy or certificate. Home health care coverage may not be contingent on prior institutionalization. Any other benefits may not be predicated on a prior institutionalization of more than 30 days.

Section 9. Loss ratio standards. Section 9 allows the commissioner to establish loss ratio standards by rule. A loss ratio is the percentage of claims paid to insureds in relation to the premium collected from those individuals.

Section 10. Right to return policy--free look. An unsatisfied insured person may return a group long-term care insurance policy within 10 days of its delivery and receive a full refund of premium. If the long-term care insurance is provided by a policy or certificate purchased through the mail or over the phone, the individual has 30 days to examine and return the long-term care insurance policy or certificate for a full refund. Free looks provide the consumer with the opportunity to review the product after purchase--the individual applicant rarely has the opportunity to look at the policy or certificate at the time of purchase, having only a policy summary or coverage outline to view at the time of initial sale.

Section 11. Outline of coverage. A potential applicant for long-term care insurance must receive an outline of coverage at the time the individual is first contacted to purchase this type of coverage. Subsection 2 describes the minimum disclosure contents of the coverage outline.

Section 12. Required content of certificate. If an individual insured is covered under a group long-term care policy, the individual does not receive a copy of the full policy. Instead the individual receives a certificate of insurance. The certificate of insurance summarizes the benefits provided under the group insurance policy and lists the conditions which must be met to receive the benefits. Section 12 prescribes the minimum contents of a certificate of insurance. Since an insured person relies on the certificate of insurance to understand the contents of the group insurance policy, the certificate of insurance must contain the essential features of the group insurance policy.

Section 13. Compliance required. A policy marketed as long-term care insurance in Montana must comply with the provisions of SB 298.

Section 14. Rules. The commissioner is authorized to adopt rules necessary to implement SB 298.

Section 15. Extension of authority. If any existing laws are effected by this bill, rulemaking authority is extended to adopt rules in those instances if necessary.

EX. #2
2/7/89

Section 16. Codification instruction. The long-term care proposal would be codified in the disability (health) insurance section of the Montana Insurance Code.

Section 17. Severability. If any part of this bill is found to be invalid, all other parts not invalid would remain.

Section 18. Applicability. This bill, if passed, would apply to policies delivered or issued for delivery on and after the effective date of SB 298.

Section 19. Effective date. To allow affected companies time to change policy forms in compliance with SB 298, the effective date of sections 6 and 8 are January 1, 1990.

SEC/417

To be filled out by a person testifying or a ~~person~~ ^{person} who would not like to stand up and speak but wants their testimony entered into the record.

DATE 2/
BILL NO. SB 298

WITNESS STATEMENT

NAME Kathy M. Irigoin BILL NO. SB 298

ADDRESS P.O. Box 4009

WHOM DO YOU REPRESENT? State Auditor's Office

SUPPORT OPPOSE AMEND

COMMENTS: See Exhibit #2

Lined area for additional comments or notes.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

To: Senator Keating

From: Marvin Eicholtz, Administrator
Procurement and Printing Division

Date: February 2, 1989

Re: SB 245: The number of printing awards based on the bidder's preference for calendar year 1988.

We didn't have records readily available for the same period of the audit. However each year the number of awards for printing that resulted from the preference laws is very small. During calendar year 1988, we awarded six printing jobs resulting from the preference laws. The amounts were as follows:

Job 1	\$ 20,663	
2	420	
3	6,627	
4	1,792	
5	148	
6	<u>125,000</u>	Estimate (1)
Total	\$154,650	

(1) This is a term contract award for envelopes. The contract runs until this coming summer. The dollar estimate is based on the activity on the previous term contract award for one year that was held by an out-of-state printer.

6 jobs awarded/Total of 786 jobs for period = Less than 1%

In Dollars:

\$154,650/Total of \$2,400,000 awarded = 6%

I would expect the number of awards would still be very small if SB 244 is passed instead.

If you have any questions, Please call me at 444-3053 or 444-2575.

J. H. CHAUVIN
MANAGER
A. M. BAKER
OPERATING MANAGER

Graybar
ELECTRIC COMPANY, INC.
200 REGAL STREET
BILLINGS, MONTANA 59102

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2/7/89
BILL NO. SB 244

TELEPHONE (AREA CODE 406) 252-0171

February 2, 1989

Mr. Thomas F. Keating
20522
Billings, MT 59104

RE: House Bill #244

Dear Mr. Keating:

I am writing you in regards to the above House Bill #244.

Graybar has been located in Montana for over 45 years. Our 13 employees and their families reside here. They pay local and state taxes, gasoline taxes, and property taxes. Yet, Graybar has been discriminated against with the 3% Preference Law.

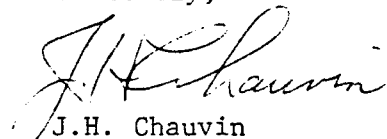
Recently Graybar bid over \$40,000 worth of primary switches on which we were the low bidder. After the 3% was added to our bid, it was higher than our competitor--using the same manufacturer as we did. You paid a higher price and we, Graybar, was again discriminated against.

Our neighboring state, Wyoming, protects any business who has a significant presence in the state--where Montana seems to send them away.

Last week the state was bidding on a fixture conversion kit made in Japan. We called to see if there was a domestic preference and they said no. Our laws do not seem to follow any logical justice.

Please vote to kill House Bill #244 (The 3% Preference Law) for anyone who has a significant presence in Montana. Thank you.

Sincerely,


J.H. Chauvin
Manager

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2/7/89
BILL NO. SB244

INFORMATION PERTAINING TO CHANGING THE DEFINITION
OF A MONTANA RESIDENT

Currently, a company incorporated in a state other than Montana is not eligible for the in-state bidders preference. Some of these Montana companies contribute to Montana's economy by employing Montanans and buying or leasing capital assets. In March 1987 there were approximately 250 businesses with Montana addresses on the Purchasing Bureau's vendors list that were not eligible for the preference due to incorporation of company headquarters in another state.

The following illustration compares the number of employees and dollar volume of business with state government for ten companies with Montana addresses not eligible for the preference and ten companies eligible for the preference. These companies had the most dollar sales to state government for their respective categories (not eligible and eligible for the preference) in fiscal year 1986-87. Also shown is the value of property each business has in Montana. An "R" indicates the company owns real property in Montana while a "P" indicates the company owns personal property in Montana. All of the companies without a value indicated for real property either lease or rent a building in Montana.

Ex. #4
2/7/89
SB 244

COMPARISON OF VENDORS WITH A PREFERENCE
AND VENDORS WITH MONTANA ADDRESSES WITHOUT THE PREFERENCE

Vendors Eligible for the Preference

Vendor	Category of Vendor	Number of Employees in Montana	Property Value	Fiscal Year 1986-87 Sales to the State
A	Auto dealer	9	\$ 111,776 P & R	\$2,672,326
B	Equipment Co.	9	\$ 90,835 P	\$1,224,870
C	Auto dealer	99	\$ 2,457 P	\$ 666,367
D	Dairy	79	\$1,907,273 P & R	\$ 453,890*
E	Equipment Co.	7	\$ 3,469 P	\$ 362,935
F	Food Distr.	19	\$ 150,885 P & R	\$ 283,351
G	Computer Co.	46	\$ 52,352 P	\$ 282,621
H	Computer Co.	28	\$ 68,090 P	\$ 272,109
I	Auto Dealer	41	\$ 824,169 P & R	\$ 219,307
J	Paint Co.	69	\$1,126,369 P & R	\$ 105,762
Total		406	\$4,337,675	\$6,543,538

Vendors with Montana Addresses not Eligible for the Preference

Vendor	Category of Vendor	Number of Employees in Montana	Property Value	Fiscal Year 1986-87 Sales to the State
1	Food Distr.	147	\$1,573,488 P & R	\$1,015,908
2	Security Co.	111	\$ 3,190 P	\$ 184,178
3	Computer Co.	112	\$ 829,396 P	\$ 181,257
4	Photocopier Co.	26	\$ 101,832 P	\$ 170,727
5	Computer Co.	15	\$ 83,224 P	\$ 98,961
6	Printing Equip.	6	Unknown	\$ 71,991
7	Communications	14	\$ 75,467 P	\$ 57,466
8	Hauling Co.	11	\$ 95,507 P & R	\$ 51,792
9	Communications	8	\$ 25,655 P	\$ 49,019
10	Paint Co.	42	\$ 4,615 P	\$ 43,320
Total		492	\$2,792,374	\$1,924,619

Term contract sales totalling approximately \$2,070,000 are not included in the fiscal year sales figures.

P - Represents personal property

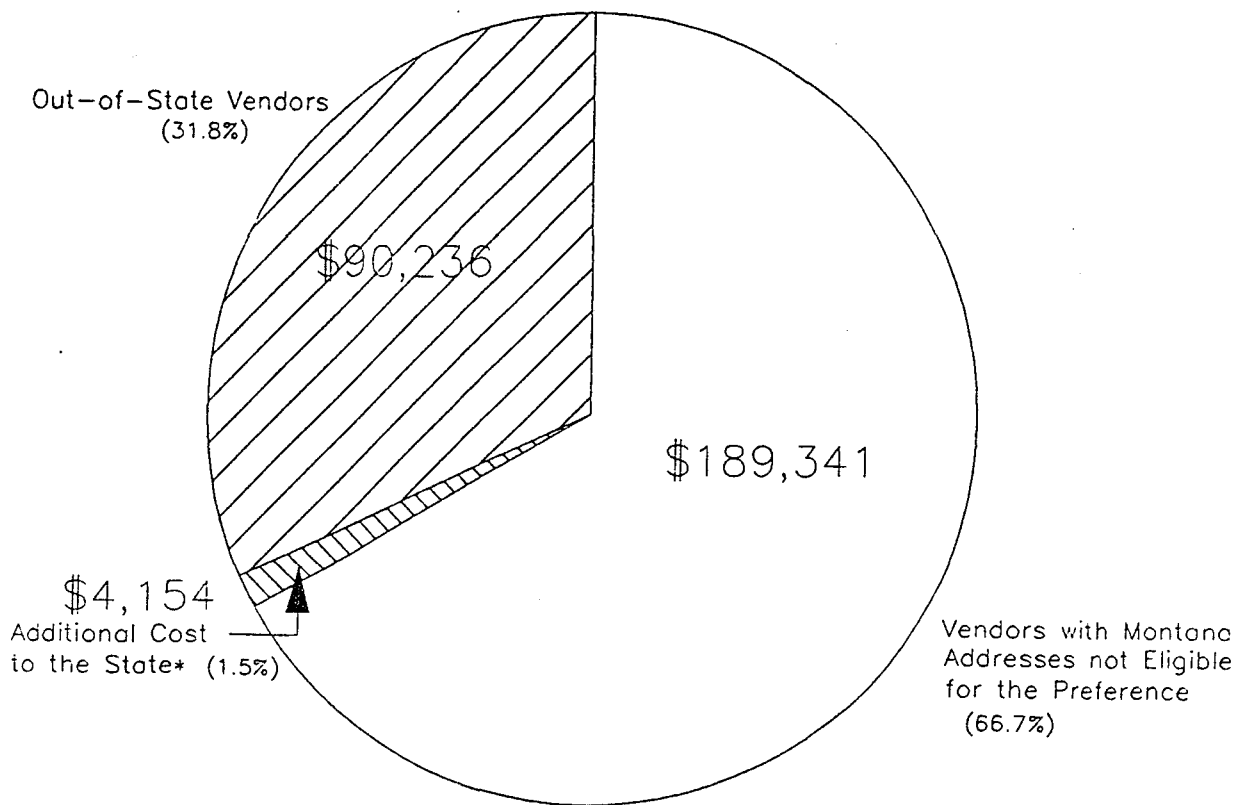
R - Represents real property

Source: Compiled by the Office of the Legislative Auditor from Purchasing Bureau, Department of Labor and Industry, and Department of Revenue records

Ex #6
2/7/89
SB 24

Approximately \$190,000 of the \$280,000 awarded to vendors as a result of the preference would have gone to vendors with Montana addresses not eligible for the preference. Because the low bid could not be accepted due to the application of the preference, there was some additional cost (approximately \$4,000) to state government for those contracts. The following illustration shows the distribution of dollar sales affected by the preference if the preference law had not been in place in fiscal year 1986-87.

SALES DISTRIBUTION IF NOT FOR THE PREFERENCE IN FY 1986-87



*This amount would not have been awarded to vendors eligible for the preference if there had been no preference.

Source: Compiled by the Office of the Legislative Auditor from Purchasing Bureau records

(This sheet to be used by those testifying on

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 2/7/89
BILL NO. SB 244

NAME: Ed Burghardt DATE: 2-7

ADDRESS: 3314 Bancroft Missoula, MT 59801

PHONE: Work 543-5743 Home 728-3043

REPRESENTING WHOM? Carpenter Paper Co

APPEARING ON WHICH PROPOSAL: SB 244

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: We wish to see the Montana In-State
Bidder's preference amended to include all
bidders with a significant economic presence in the
state, Senate Bill 244, as it is worded,
fulfill this need.

Carpenter Paper Company has 3 locations in
Montana and employs over 30 Montana residents.
We own property, pay property taxes, income tax,
workers compensation and all the other costs that go
along with being a viable Montana business. We have
had a presence in the state for over ~~25~~ years. SB#244
would make all legitimate Montana business equal
at the bidder table.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8

DATE 2/7/89

BILL NO. *leftover SB 249*

*Same letter
To all members
Committee members*

CARPENTER PAPER COMPANY

February 6, 1989

Senator Gene Thayer, Chairman
Senate Business Committee
Capitol Station
Helena, MT 59620

Dear Senator Thayer,

This letter is in regard to Senate Bill #244 which would change the definition of a Montana Resident Bidder.

Carpenter Paper is a full-line paper distributor which has been located in Montana for 75 years.

We own property in Great Falls, Missoula and Billings. We employ over 30 Montana residents, pay taxes, support local and state projects, and do all the things necessary to be a viable Montana business.

We support SB-244 and ask for your support.

Thank you.

Very truly yours,

CARPENTER PAPER COMPANY

E. J. Burghardt
Edward J. Burghardt
Branch Manager

mm

812 TOOLE AVENUE
P.O. BOX 7367
MISSOULA, MONTANA 59801
(406) 543-5143

LOCATIONS: Omaha / Lincoln
Grand Island / Sioux City / Denver
Billings / Great Falls / Missoula
Oklahoma City / Tulsa / Fort Smith
Amarillo

FFB 05 '89 10:18

P. 23

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9
DATE 2/7/89 166901
BILL NO. SB 244

§ 16-6-101 WYOMING STATUTES 1977

CHAPTER 6

Public Property

Article 1. Public Works and Contracts

Sec.

- 16-6-101. Definitions.
- 16-6-102. Preference for resident contractors; limitation with reference to lowest bid.
- 16-6-103. Limitation on subcontracting by resident contractors.
- 16-6-104. Preference for state labor and materials; public contracts.
- 16-6-105. Same; public purchases; exception for articles of inferior quality; cost differential.
- 16-6-106. Same; statement of preference in requests for bids and proposals.
- 16-6-107. Same; construction or maintenance of public structures; exception for materials of inferior quality; cost differential.
- 16-6-108. Governing of federal funds by federal law.
- 16-6-109. Use of insurance for rebuilding fire-damaged state structures.
- 16-6-110. Work hours on public works; eight-hour day limitation; overtime; exceptions.
- 16-6-111. Same; penalty.
- 16-6-112. Contractor's bond; when required; conditions; amount; approval; filing; enforcement upon default.
- 16-6-113. Same; right of action thereon; notice to obligee; intervention by interested parties; pro rata distribution.
- 16-6-114. Same; requiring new or additional bond; failure to furnish.
- 16-6-115. Same; limitation of actions.
- 16-6-116. Final settlement with and payment to contractor; required notices.
- 16-6-117. Same; prerequisite filing of contractor's statement of payment; disputed claims.

16-6-118. Unlawful interest of officeholders in public contracts or works; exception.

Article 2. Preference for State Laborers

- 16-6-201. Short title.
- 16-6-202. Definitions.
- 16-6-203. Required resident labor on public works projects; exception; list of residents.
- 16-6-204. Employees not covered by provisions.
- 16-6-205. Enforcement.
- 16-6-206. Failure to employ state laborers; penalty.

Article 3. Public Printing Contracts

16-6-301. Preference for resident bidders; exception; "resident" defined; violation.

Article 4. Public Facility Life-Cycle Cost Analyses

- 16-6-401. Definitions.
- 16-6-402. Life-cycle costs; costs included; alternative computations.
- 16-6-403. Same; analyses.

Article 5. Accessibility of Handicapped to Public Buildings

- 16-6-501. Building plans and specifications; required facilities; elevators; curb ramps; inspections; exceptions.
- 16-6-502. Same; state fire marshal; review and approval.
- 16-6-503. Same; same; ruling and determination; filing of written objection.
- 16-6-504. Same; hearing on objection; final administrative determination; judicial review.

ARTICLE 1. PUBLIC WORKS AND CONTRACTS

§ 16-6-101. Definitions.

- (a) As used in this act [§§ 16-6-101 through 16-6-118]:
 - (i) "Resident" means:
 - (A) Any person who has been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract;

Ex #9
2/7/89

§ 16-6-102 CITY, COUNTY, STATE AND LOCAL POWERS § 16-6-103

(B) A partnership or association, each member of which has been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract;

(C) A corporation which has been organized under the laws of the state and has been in existence in the state for one (1) year or more immediately prior to bidding upon the contract and which has its principal office and place of business within the state.

(ii) "This act" means W.S. 16-6-101 through 16-6-118. (Laws 1939, ch. 50, § 4; C.S. 1945, § 22-510; W.S. 1957, § 9-663; Laws 1961, ch. 152, § 1; W.S. 1977, § 9-8-301; Laws 1982, ch. 62, § 3.)

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts. Applied in *Harding v. State*, 478 P.2d 64 (Wyo. 1970).

Quoted in *Galesburg Constr. Co. v. Board of Trustees*, 641 P.2d 745 (Wyo. 1982).

§ 16-6-102. Preference for resident contractors; limitation with reference to lowest bid.

Whenever a contract is let by the state, any department thereof, or any county, city, town, school district or other public corporation of the state for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvements, the contract shall be let, if advertisement for bids is not required, to a resident of the state. If advertisement for bids is required the contract shall be let to the responsible resident making the lowest bid if the resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder. (Laws 1939, ch. 50, § 1; C.S. 1945, § 22-507; W.S. 1957, § 9-664; W.S. 1977, § 9-8-302; Laws 1982, ch. 62, § 3.)

Section is rationally related to the advancement of a legitimate state interest of encouraging local industry. *Galesburg Constr. Co. v. Board of Trustees*, 641 P.2d 745 (Wyo. 1982).

Bidding on Public Works in Wyoming: Determination of Responsibility and Preference," see 11 *Land & Water L. Rev.* 243 (1976).

And constitutional. — This section does not violate art. 1, § 3, Wyo. Const., art. 1, § 6, Wyo. Const., art. 1, § 34, Wyo. Const., or U.S. Const., amend. 14. *Galesburg Constr. Co. v. Board of Trustees*, 641 P.2d 745 (Wyo. 1982).

Am. Jur. 2d, ALR and C.J.S. references. — Labor conditions or relations as factor in determining whether public contract should be let to lowest bidder. 110 ALR 1408.

Applied in *Harding v. State*, 478 P.2d 64 (Wyo. 1970).

Determination of amount involved in contract within statutory provisions requiring public contracts involving sums exceeding specified amount to be let to lowest bidder, 3 ALR2d 498.

Law reviews. — For comment, "Competitive

§ 16-6-103. Limitation on subcontracting by resident contractors.

A successful resident bidder shall not subcontract more than twenty percent (20%) of the work covered by his contract to nonresident contractors. (Laws 1939, ch. 50, § 2; C.S. 1945, § 22-508; W.S. 1957, § 9-665; W.S. 1977, § 9-8-303; Laws 1982, ch. 62, § 3.)

Ex. # 9
2/1/89

public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall

apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Economic development bonds — preference to Montanans, 17-5-1526, 17-5-1527.

Montana in-state investment — preference to Montana labor, 17-6-325.

Interest assessed on amounts overdue, 17-8-242.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Small business set-asides, 18-5-304.

Construction with other sections — small business preferences, 18-5-308.

Resident printer preference, 18-7-107.

Letting contracts for school facilities, 20-6-606.

School districts — contracts with Montana firms encouraged, 20-6-635.

Competitive bidding — highways, 60-2-112.

Industrial development projects — preference to Montanans, 90-5-114.

18-1-103. Residence defined. (1) For the purpose of 18-1-102, 18-1-103, and 18-1-111, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-103, and 18-1-111.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925; amd. Sec. 1, Ch. 284, L. 1987; amd. Sec. 58, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 284 in (1) and (4) inserted reference to 18-1-111.

Chapter 370 in (1) and (4) deleted reference to 18-1-112.

Chapter 512 in (4), after "purchase of", substituted "goods" for "products, materials, supplies, or equipment", after "offered" substituted "goods" for "materials, supplies, or equipment", and in middle of sentence substituted

EXHIBIT NO. 10

DATE SB 244

DATE NO. 2-7-89

NAME: HERB Kimball

ADDRESS: 25 WEST MAIN - BOZEMAN, mt. 59715

PHONE: 406-587-4415

REPRESENTING WHOM? Universal Athletic Service, Inc.

APPEARING ON WHICH PROPOSAL: SB 244

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: TOO EASY TO QUALIFY FOR PREFERENCE
AND TOO HARD TO CONTROL.
Need guidelines AS TO WHAT
"SIGNIFICANT ECONOMIC PRESENCE" ENTAILS-
WHAT IS TO STOP A COMPANY FROM SENDING
A REPRESENTATIVE TO OPEN AN OFFICE?
P.O. BOX AND THEN BID WITH THE
3% PREFERENCE?
We Need TO PROTECT THE MONTANA
business THAT PAY ALL THEIR TAXES
HERE AND SO DO THEIR EMPLOYEES.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

2/7/89

EXHIBITS WERE MISNUMBERED. THERE IS NO EXHIBIT NO. 11 FOR THIS DAY.

NAME: STEVE WALLER

ADDRESS: 219 2nd Ave SE Great Falls MT

PHONE: 453 0317

REPRESENTING WHOM? CARPENTER PAPER CO

APPEARING ON WHICH PROPOSAL: SB 244

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS:

I STRONGLY URGE THE COMMITTEE TO
 TAKE A FAVORABLE POSITION ON THIS BILL
 CARPENTER PAPER HAS HELD A STRONG ECONOMIC
 POSITION IN MONTANA FOR OVER 75 YEARS
 WE ARE NOT ASKING FOR PREFERENTIAL TREATMENT
 ONLY EQUAL TREATMENT
 WE ARE MONTANA AND WE WILL STAY
 IN MONTANA. PLEASE HELP SUPPORT US AND
 ALL MONTANA BUSINESSES.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Did not testify.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS & INDUSTRY

Date 2/7/89 Bill No. SB268 Time 11:26

NAME	SEAT NO.	YES	NO
SENATOR DARRYL MEYER	35		✓
SENATOR PAUL BOYLAN	50	✓	
SENATOR JERRY NOBLE	34		✓
SENATOR BOB WILLIAMS	39		✓
SENATOR TOM HAGER	42		✓
SENATOR HARRY "DOC" MC LANE	33		✓
SENATOR CECIL WEEDING	28	✓	
SENATOR JOHN "J.D." LYNCH	5	✓	
SENATOR GENE THAYER	23		✓

Carla Turk
Secretary, CARLA TURK

Gene Thayer
Chairman, GENE THAYER

Motion: Do NOT Pass As Amended
Moved by Senator Lynch and seconded by
Senator Boylan.