

MINUTES

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

Call to Order: By Chairman Gene Thayer, on March 16, 1989,
at 10:00 a.m., room 410

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: None

Announcements/Discussion: Mary McCue, Legislative Council

HEARING ON HOUSE BILL 719

Presentation and Opening Statement by Sponsor:

Representative Menahan, House District 67, said HB 719 was an act related to the privatization of state functions. He stated the meat of the bill was in sections 3 and 4. He said the bill had come about because of the history of the private contracts for the maintenance of the capitol complex. He said the bill didn't affect the state's affirmative action efforts, displace state employees, and it would provide a savings large enough to insure against limiting the private sector in a manner which would cause fluctuation in services. He said the bill would not allow replacement of employees through a reduction of wages or benefits. He said his hope was to keep from turning the state over to second-rate performances at an increased cost, or causing state employees to lose their jobs.

List of Testifying Proponents and What Group They Represent:

Terry Minow - Montana Federation of Teachers
Montana Federation of State Employees
Don Judge - Montana AFL-CIO

Gene Fenderson - Montana State Building Construction
Trade Council
Local Unit 254, State Employees, Capitol Complex

List of Testifying Opponents and What Group They Represent:

Wayne Phillips - Legislative Liaison, Representing
Governor Stan Stephens

Ken Dunham - Associated Printers and Publishers of
Montana

Testimony: Terry Minnow said HB 719 was a positive response to the question of privatization. She said privatization was not a new idea, and many had long regarded the transferring of public services and assets to private concerns as a panacea to budgetary woes. She said the choice should not be between the private and public sector, but as to which structure worked best, and was able to deliver effective service the most efficiently. She said 719 contained safeguards that the contract would not cause displacement of state employees, the bidding process was defined to be equitable, the cost savings of the contract could not result from lower pay rates or benefits, and the contract review board would consist of three gubernatorial appointees, one state employee, one member from the state employee's union, and one member from the general public. She said the state of Montana has had negative experiences with privatization of state agencies, and those had been an increased cost to the state. (See Exhibit #1, #2, & #3) She said HB 719 required privatization to occur in an orderly fashion, with protection for state workers and services, and privatization could not be a vehicle for cutting wages. She asked for a favorable consideration of the bill.

Don Judge said they were in support of HB 719. He read his testimony from Exhibit #4.

Gene Fenderson said they rose in support of HB 719, for many of the reasons already presented. He said Mr. Judge had stated most of his testimony, but there was another publication he thought was interesting. He said a periodical of MACO, a national organization of counties, had emphasized that before any government body privatized, there should be a thorough study and investigation of all cost factors, delivery services, and suggested a trial basis before rendering a decision. He said that government bodies who had not properly studied the change to privatization, were the ones who generally had trouble with the change not working. He urged support of HB 719.

Wayne Phillips said they treated HB 719 very seriously, because it dealt with a matter which was at the heart of Governor Stephens' campaign, to look at privatization of state services. He said they had a philosophical disagreement with HB 719. He stated that difference was basically whether or not the Governor was going to be allowed an opportunity to look at state services for privatization for cost savings, as well as an allowance to decide whether the private sector or the state should be providing the services in a break even situation. He said there was a lot of rationale as to why the Governor should be left some freedom to look at these areas. He said HB 719 may be a positive response, but it throttled any attempt to privatize state services. He stated that the Governor needed freedom to prove whether or not privatization was a viable option, and HB 719 did not leave any options. He asked the committee to give a do not pass recommendation.

Ken Dunham said they opposed HB 719, because it was extremely detrimental to the printing and drafting industry in Montana, which contracted work with the state government. He said HB 719 would make that contracting very difficult with the state, and would further erode Montana's economy. He said they wished to continue to work with the administration, and asked the committee to leave the system they now had in affect, so they could continue to work on an acceptable form of privatization. He said they respectfully asked the committee to kill HB 719.

Questions From Committee Members: Senator Lynch asked if the Governor's contention was to privatize without saving money? He said he thought that was the purpose of privatization. Mr. Phillips said the sole purpose wasn't to look at a cost savings, even though it was a major criteria. He stated that if there was a break even proposition, perhaps it was a service that was more appropriately or efficiently provided by the private sector.

Senator Lynch said to break even didn't mean that the employees should make a minimum wage. He said that if the businessman made fifty percent, and gave fifty percent to the employee, that would be a break even situation. He asked what would be accomplished for the state, with a minimum wage employment situation, while some company made all of the money? Mr. Phillips said an assumption was being made, that the only thing the administration was going to do was eliminate state employees. He said he thought that was an

exaggeration, and rather overemphasized the approach the Governor wanted to take. He said the Governor had reiterated that he wanted to be reasonable, and was not out to destroy the state employees, their economic base, or their livelihood.

Senator Lynch asked what, specifically, the administration, did not like in HB 719? Mr. Phillips said they seriously studied the bill, and tried to work with the sponsor in an effort to combine ideas which would make the bill work. He stated that the administration had proposed some amendments, and a number of individuals stated that even with the amendments, they could not maintain the integrity of the bill, and make it better. (See Exhibit #5) He said that with that development, they had decided to ask the committee to not pass the bill. He said he would be glad to present the proposed amendments, but he stated that they required a major reworking of the bill.

Representative Menahan told Senator Williams the bill was just designed to protect the employees in some way, as the process of privatization took place. He stated, as testimony had revealed, some of the privatization that had been enacted was actually costing the state more. He said, that privatization had directed spending out-of-state, and tax dollars were supporting that process, at an increased expenditure. He said the bill had been ready, but he hadn't been free to introduce it earlier.

Chairman Thayer asked if the Governor didn't have a policy, that any state employee displaced by privatization efforts would be given first priority on job openings in state government? Mr. Phillips said they had discussed the problem, and that was the conclusion reached. He said they had not done anything formally, because there was a concern as to how the administration could retain some flexibility.

Senator Weeding asked the magnitude of privatization the administration had planned throughout state government and state institutions? Mr. Phillips said they were concerned about looking at institutions, but did not think that an appropriate step at this time. He said this would be a first look at privatization attempts in Montana, and they felt there was a need for a systematic approach. He said they were more interested in things such as printing functions, purchasing of supplies, and relatively obvious areas where the private sector may be more effective.

Senator Boylan asked if state liquor sales, and sale of the state worker's compensation were examples of what they were looking at? Mr. Phillips said yes, transfer of the liquor sales was requested by the Governor, and those were areas they wanted to look at seriously.

Senator Meyer asked for an explanation of section 3, as it appeared to him that the requirements would virtually eliminate privatization? Representative Menahan said section 3 set forth a criteria which must be followed. He said the section required savings, publicized bids, and proof of economic advantages.

Senator Meyer said section 3, line 19, subsection (a), called for clearly demonstrated over-all cost savings to the state. He said that type of language continued on page 3, line 1, and said all of that criteria would prevent any contracting out to the private sector. Representative Menahan said it did tie it down, but he wasn't trying to completely stop turning anything over to the private sector. He said he was basically talking about things where the state was in the business, and had the employees. He said he was upset about situations where the state was still in the business, such as institutions, and the services had been privatized at a greater cost.

Closing by Sponsor: Representative Menahan said he closed, and his main concern was with economy, and supporting services the state had to offer. He said he thought HB 719 was a probusiness bill.

DISPOSITION OF HOUSE BILL 719

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 626

Presentation and Opening Statement by Sponsor:

Representative Whalen, House District 93, said HB 626 inserted a definition of section 69-14-202 MCA, which was the statute governing hearings and closures on railroad stations. He said that in previous

legislation, language had been introduced for the purpose of determining whether or not railroad stations were needed at particular locations in Montana. He said the past legislature had heard legislation to remove the artificial language, which left the statute with the simple wording which read "public convenience and necessity". He said the resulting history had been that the Public Service Commission had listened to testimony offered by shippers, and since that time there had been approximately thirty-two stations closed. He said the purpose of HB 626 was to insert a definition of public convenience and necessity, which appeared on page 2, line 13 of the bill. He read the definition, and submitted to the committee that he thought that was probably what legislature had thought public convenience and necessity had meant. He stated that the definition was taken from Idaho statute, and it had proven successful there.

List of Testifying Proponents and What Group They Represent:

Representative Stang - House District 52
Alec Hansen - Montana League of Cities and Towns
James T. Mular - Chairman, Montana Joint Rail Labor
Legislative Board
Kay Norenberg - Women Involved in Farm Economics
Senator Tveit - Senate District 11

List of Testifying Opponents and What Group They Represent:

Pat Keim - Superintendent of Operations, Burlington
Northern Railroad
Orson Murray - Montana Rail Link
Randy Johnson - Executive Vice President, Montana Grain
Growers Association
Leo Barry - Helena Attorney, representing Burlington
Northern Railroad

Testimony: Representative Stang said he stood in favor of HB 626, mainly from the point of public safety. He said he had testified at one of the station closing hearings, and the testimony had revealed that there were radio dead spots on the railroad tracks, where the trains could not communicate with the base station. He said their station agent had testified that these dead spots made it unsafe for workers, and if there was a train accident in one of those dead spots, it would be hard to communicate the occurrence of that accident. He said that as a volunteer fireman in that area, he was concerned that a train accident or accident related fire would not have a reporting facility available. He said that right now, there were instructions that fires

were not to be fought until they spread outside of the railroad right-of-way, because they had never been provided with a contact number for the railroad. He said they felt it was important to consider the safety factor when stations were closed.

Alec Hansen said they were in support of HB 626, in behalf of the small cities and towns that believed the railroad depots were an important part of their community. He said they felt the railroad depots were a public convenience, and an economic asset to those cities and towns, and they urged the committee to favor the bill.

James Mular said they represented approximately 3500 active and retired railroad employees in Montana, and they rose in support of this legislation, from a public standpoint. He said it was interesting to note that HB 626 referred to passenger accommodation, as well as freight. He called the committee's attention to Exhibit #6, and spoke of the flagstops listed. He said that meant there was a toll free number listed for potential passengers to call for a boarding number, then the passenger had to reach the designated boarding point. He said the information pertaining to arrival and departure variations was not always up-to-date, and he said they did not feel a flagstop was really an accommodation to a passenger. He presented his testimony from the information in Exhibits #7, #10, and #11. He said he personally felt this was not a labor issue, and they were merely present to present a resume of what had happened in the area of this bill. He said he hoped the committee would pass HB 626.

Kay Norenberg read her testimony from Exhibit #8, and presented it for the record. She urged passage of HB 626.

Senator Larry Tveit said he rose in support of HB 626. He said there was an area of convenience to consider for his district's patrons and shippers, and he felt the railroad could justify their actions. He said he was also concerned about the flagstops for the passengers, and he stated a concern that service was deteriorating along that line. He said the flagstops presented an inconvenience for people in those communities.

Pat Keim said he was speaking in opposition to HB 626, because it was their feeling that the present statute was totally adequate to meet the situation. He said the revision being proposed was unnecessary and brought in an irrelevant factor, which was public service and

need. He said that what was being proposed, was to introduce a safety requirement into the present statute, as a consideration of part of the PSC proceedings. He said that in reality the function of the station agents, had not really been train safety, and the agents were not trained in train safety, freight car or locomotive inspection, or anything along the line of safety. He said qualified inspections were made by qualified personnel, as to the trains safety, and wayside detectors watched the trains along the main lines. He said station agents were only present in the stations, twenty percent of the time, and their limited presence would not cover that situation anyway.

He said that the Amtrak flagstops, in reality had a provision for someone to come open the depots at train time. He said that whenever there wasn't an agent on duty, Amtrak had a caretaker to come open the waiting room facility, for train passengers.

He said it was proper to consider the need for the agency, in terms of the lite of public need. He said they really did not perform a function, as far as safety to the train.

Orson Murray said his entire career had entailed many jobs with the railroad, and he had been responsible for the operation of agents on the line. He said agents primarily had taken care of the carload, sold tickets, handled milk shipments, took care of baggage, Western Union, and the Railway Express. He said that slowly the duties had been removed, until the railroad was left with carload business only. He said that technology had changed, and there presently was very little for an agent or clerk to do. He said he would like to note, that OSHA and SRA had preempted much of the safety area. He said passage of HB 626 would put the PSC in opposition to the existing safety bodies.

He said they hadn't had any protests from shippers, regarding public convenience and necessity. He said the term of public convenience and necessity came from the Interstate Commerce Act, and there were many rules and regulations governing this interpretation. He said they felt the PSC was adequate and capable, and had proven itself efficient, and they stood in opposition to HB 626.

Randy Johnson said their group represented Montana wheat and barley growers, who were heavy users of the rail transportation system in Montana. He said they rose in opposition, because transportation costs in their

commodities represented a large percentage of their cost of production. He said they felt HB 626 would place unreasonable restrictions and regulations on transportation companies, and would raise their cost of transportation. He said they didn't believe HB 626 had anything to do with safety, and would do nothing to further the cause of rail safety in Montana. He asked the committee to oppose HB 626.

Leo Barry said that under current law there had been numerous petitions submitted by Burlington Northern Railroad, to close agencies. He said there were a number of considerations used, to select which agencies were to be closed first. He stated the two primary ones were Burlington Northern's effort to accommodate the PSC's travel budget, and they had taken the easier closures first. He said the choice of the easy closures, had rendered ten of the eleven closures granted, because there had been no opposition other than Mr. Mular. He said he could not recall any shipper ever appearing in opposition to a closure, and the PSC allowing that closure. He said there were situations where shippers had opposed, and the PSC had denied the closure.

He said he had researched HB 626, and while it was true that the language was taken from Idaho statute, it was not particular to agencies. He said the language was a general, broad definition that was included in the Idaho statute, and applied to all utilities which the PSC regulated in Idaho. He stated that the broad definition was now being proposed to apply to a specific provision of Montana statute, and did not make sense, in the manner it would read. He said that was because of the law presently on the books. He said page 2 of the bill, in subsection 2 showed that a railroad could petition the PSC, and if it demonstrated a burden to the railroad, and demonstrated that an agency was not needed for public convenience and necessity, then the PSC must grant the closure. He said this bill defined public convenience and necessity, and that definition read, "public convenience and necessity means the maintenance and staffing of facilities". He said that became a circular argument, which was an impossible standard to meet. He said he thought the bill was fraught with legal problems, both federally and administratively. He offered an editorial from the Livingston Enterprise, for the committee's review. (See Exhibit #9) He urged a do not pass for the bill.

Questions From Committee Members: Senator Lynch said the major concern seemed to be from rural Montana, and apparently they did not feel the current law was sufficient. He asked Mr. Barry if they felt the present law was adequate, even though a large number of Senators and Representatives who signed the bill, did not? Leo Barry said he had not spoken to those legislators, but what he was saying was that the PSC had a lot of pending decisions to make, and he wasn't sure there should be any change in the law. He said he thought they should let the PSC finish its job, then see if there was dissatisfaction. He stated that there were present statutes on the books, to adequately grant the PSC authority, on safety matters concerning the railroad.

Senator Lynch asked if we had the language, being presented from the Idaho statutes, in any of our Montana laws? Mr. Barry said that had been his reference, we did have language, but the laws were structured differently. He cited different sections of the Montana statutes, which covered the safety factor, and stated that Idaho did not have an agency law like the one Montana presently had.

Senator Lynch said that Mr. Keim had stated that Mr. Mular's example of flagstop situations was incorrect. He stated that there never was a situation where a passenger would have to wait in our weather conditions for a flagstop. Mr. Mular said he had been a victim of that particular circumstance. He said the caretaker Mr. Keim had spoken of, had not shown up, and he had been forced to sit in his car and wait.

Senator Williams asked if they were contemplating twenty-four hour service at all of the stations, or what did they have in mind from a safety standpoint? Mr. Mular said safety was a factor, but was a separate factor. He said that once the station was closed which had provided safety, you had to submit another petition, and there was no way to get that particular party back. He said the question that should be submitted, was how many people were available, per track mile, for safety standards?

Senator Noble asked what Amtrak had to do with this? Mr. Mular said what happened was that when Amtrak was created, Burlington Northern made application to close the agencies, and those agencies had become flagstops. He said this statute was applicable to accommodations of passengers, as well as freight shippers.

Senator Noble stated that the grain shippers had just testified that their main interest was to the cheapest method of shipping. He asked what other products were in contention for shipping convenience in the bill? Mr. Mular said grain was an outgoing commodity, but there were incoming commodities, such as anhydrous ammonia, fertilizers, farm implements, vehicles and other needed items. He said it was a fallacy to assume there would be a cost savings by closing the stations, because the employees had lifetime guarantees which would far exceed the money saved by closing a few agencies.

Senator Noble asked about the testimony regarding trains traveling one hundred or one hundred and fifty miles, without communications? He asked what forms of communication were used? Pat Keim said trains themselves were equipped with two-way radios, and the radio system was operated off of a land-based backbone system. He said the land system had transmitter sites strategically located throughout the property. He said the land-based stations geographically covered a radius, which sometimes had some terrain limitations. He said the blind spots were generally a distance of less than one mile, and the longest he remembered was about two miles. He said there were very few of those spots, and they had nothing to do with the agency.

Closing by Sponsor: Representative Whalen said he thought there had been a very good hearing. He said it was too bad the committee wasn't the PSC talking about a specific station, because this was precisely the type of testimony they would like to have at the station agency closure hearings, and they weren't getting that testimony. He said the testimony of Mr. Keim, and Mr. Murray would have been appropriate testimony at a station closure hearing, but it had been presented here instead. He stated, in regard to Mr. Barry's testimony, that if the public wasn't allowed to present testimony at the hearings, there wasn't any sense in attending the hearings.

He stated, with regard to language contained in the bill, they had two representations made to them. He said the first was that safety was already provided for in other provisions within the statutes, and therefore it was not needed in HB 626. He said Representative Stang had also testified to the fact that safety was not included as a consideration at the closure hearing in St. Regis. He said he would suggest that the PSC was not considering safety, and they were not listening to testimony from anyone other than

shippers.

He said there had been testimony that the Idaho statutory language in HB 626 applied to utilities, but he reminded them that in Idaho a railroad was a utility. He said there were a number of case histories where this language had been applied to railroads in Idaho. He said he would submit to the committee, that there were all kinds of examples of how the language would apply, and what affect it would have. He said that case history was the reason this particular language was adopted, so there could be some certainty in the law, if HB 626 was passed. He said HB 626 did nothing more, or nothing less than expand the kind of testimony which would be allowed before the PSC's deliberation of a station closure. He said he thought it only fair to have a greater scope of testimony at the hearings, so that a good decision could be made on how to serve Montana with railroad service.

DISPOSITION OF HOUSE BILL 626

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 652

Presentation and Opening Statement by Sponsor:

Representative Brooke, House District 56, said HB 652 required a lender to pay the interest on a mortgage reserve account, and it was a simple procedure. She said that if you had a mortgage, it was usually accompanied by an escrow account which the bank or lending agency maintained. She said that while the money was in escrow for the payments, it was also earning interest. She said the proponents of HB 652 contended that the interest was entitled to the mortgage owner, and the bill proposed this idea be put in statute. She said the mortgagor would be responsible for paying the interest to the owner of the mortgage. She urged their concurrence, and told them the bill had passed the House with a sixty-four to thirty-four vote, and had a good hearing on the House floor.

List of Testifying Proponents and What Group They Represent:

Alan Wiener - Self, Missoula, Montana
Senator Fred Van Valkenburg - Senate District #30

List of Testifying Opponents and What Group They Represent:

Gerry Hudson - Self, Billings, Montana
Chip Erdman - Montana League of Savings Institutions
Montana Savings and Loans
Steve Gross - Eastern Division President, Western
Federal Savings Bank of Montana
A. J. King - Real Estate Loan Officer, Valley Bank of
Kalispell
Mike McKee - President, First Federal Savings and Loan,
Missoula, Montana
Tom Hopgood - Montana Association of Realtors
John Cadby - Montana Bankers Association
Steve Mandeville - Real Estate Agent, Helena, Montana

Testimony: Alan Wiener presented his testimony in written form, and followed the information in his oral delivery. (See Exhibit #12) Mr. Wiener had introduced the idea of the legislation, and expressed very strong feelings for his support of HB 652.

Senator Van Valkenburg said he supported HB 652, and Mr. Wiener was one of his constituents who had brought this to his attention the preceding fall. He said he thought the committee should look at the bill from the perspective of saving the financial institutions of Montana a substantial amount of money. He said he felt the last page of Mr. Wiener's exhibit, which talked about the lawsuit in California, was something which the committee should think about. He said that eventually the Mr. Wieners of the world would unite with the trial lawyers in Montana, and they were going to accumulate a class action that was going to really hurt. He said it was obviously a transition difficulty for the financial institutions of Montana to begin paying interest on reserve accounts, but HB 652 would save them a lot of money in the long run.

Gerry Hudson presented his written testimony in Exhibit #13, and said he would give an abbreviated form of that testimony. He stated there had been some misconceptions presented as to what happened to mortgages, and where the interest went, and he presented his testimony in opposition to HB 652.

Chip Erdman said they rose in opposition to HB 652. He said they had several points, and several amendments if the

committee decided to continue with the bill. (See Exhibit #14) He stated that a bill had previously passed legislature, which limited the amount of money to be held in escrow accounts, so there was no large slush fund which financial institutions were making interest on. He said the nonpayment of the interest was in effect, a trade-off for the servicing of the escrow account. He stated that was in everyone's best interest, and insured that the taxes and insurance were always paid. He said there were financial institutions in Montana that did pay interest on escrow accounts, but those were financial institutions who had factored that into the pricing equations, when they sold the mortgage. He stated that HB 652 would affect every mortgage in Montana, and it was unfair to access additional cost after the pricing had been set, and it was probably illegal. He said the Montana and U.S. constitutions both had a provision which prohibited legislature from impairing contracts.

Steve Gross read his testimony from Exhibit #20. He spoke to the possible adverse affect of HB 652, and asked the committee to reject the bill.

A. J. King presented Exhibit #15 for the record, and read it to the committee. He said he was speaking in opposition to HB 652, because research within their bank revealed that the requirement for them to pay interest on reserve accounts would cost a great deal of money. He said they did not feel the bill was good legislation, and he urged the committee to vote against it.

Mike McKee said he could appreciate the problems which Mr. Wiener had encountered, and offered to help him figure out a way to solve his problem. He said that mortgagors and mortgagees of Montana were operating in an environment which had not noted this as a problem, and he didn't believe it was an existing problem. He said he believed that the mortgagors at his firm were very happy to have them administer their tax and reserve accounts, as it was extra bookkeeping and hassle for them. He said they provided a major service to the mortgagors and the county by providing timely collection and payment.

He said he had reviewed their accounts for November, when he heard the bill had passed the House, after they had paid the taxes for the first half of 1988. (See Exhibit #17) He said the red lines represented the balances in the escrow accounts which were negative balances, the yellow lines were accounts

with less than \$50 in the reserve, and the green lines indicated a balance greater than \$50 in the account. He said the concept of a large slush fund was false. He also presented a letter from their data service, regarding the time and programming costs to facilitate the tracking necessary, and reporting of a 1099 to the Internal Revenue Service. (See Exhibit #16)

Tom Hopgood said they represented people who bought and sold houses, and people who needed to obtain financing to buy and sell houses. He said they believed it was in the best interest of those people, to be able to find and afford financing, and they felt HB 652 was a step in the wrong direction.

John Cadby said there had already been plenty of testimony heard, so he would pass out copies of his testimony for the committee members to review. (See Exhibits #18 & #19)

Steve Mandeville said he was present to speak in opposition to HB 652. He said he had been on both sides of the desk because he had spent thirteen years as a bank lending officer, seven years financing real estate, and five years in the delivery of that product to the consumer who was a house buyer. He said there was an existing system in the state, and any time you interfered with that, you were going to lose some of the secondary market, and it was going to be more expensive to the consumer.

Questions From Committee Members: Senator Hager asked if the case in California had been appealed, and what the results of the appeal were. Senator Van Valkenburg said he did not know the answer.

Senator Hager asked if it would make any sense to require a \$300 balance in escrow accounts, and in affect, pay more interest on more money? Mr. McKee said that within their organization, they took the full amount of taxes, plus the full amount of the insurance which was going to be needing paid, divided that by twelve, and took that times the number of months until the loan was closed, or payment made, and asked for that money to be placed in the reserve account. He said that in essence, they tried to budget a zero balance account, so that when money was necessary to be paid, the money was there at the given intervals. He said the requirement of a \$300 dollar balance seemed like over kill, from their standpoint, and he did not think it was needed.

Senator Hager said he thought it could work like a checking account, and if you kept above a minimum, the bank paid interest on that balance. He said he assumed it was cheaper for the bank to pay that interest, if he kept a higher balance. He asked if that would work to the advantage of the bank and the borrower? Mr. McKee said that was a concept that could be considered by the committee, but he felt they would have to incorporate some kind of provision for the collection of the interest, when the bank advanced its funds, versus the customers interest for his funds on deposit.

Closing by Sponsor: Representative Brooke said there was a printing error on the sponsor list, and instead of Senator McLane's name, it should be Representative McDonough. She said there had been many attacks on the bill, and she urged the committee to listen with consumer ears. She said it was hard for her to believe that HB 652 was going to cause a secondary market crisis. She said she thought that when they enacted a law in Montana, it applied to contracts written in the state, and would apply to the out-of-state mortgage holders. She said she thought that should be questioned. She said HB 652 was optional, and could be utilized by those who wished. She stated that there were people who were receiving interest from their escrow accounts, and thought it should be offered for all mortgage holder accounts. She said there had been many supporters for the bill in the House, and urged the committee to concur in the bill.

DISPOSITION OF HOUSE BILL 652

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

Announcement: Chairman Thayer stated that Senator Gage had requested executive action on SB 453 be held until tomorrow. He said there would not be executive action on the bills heard today.

DISPOSITION OF HOUSE BILL 645

Discussion: Chairman Thayer asked for an explanation of the amendments. (See Exhibit #21) Mary McCue stated a need for a couple of changes that had come to her attention. She said they had waited to talk to Peter Funk, as to where to codify the provisions. She said the language at the bottom of page 2, which created the crime, obviously went in title 45, the criminal provision of the code. She said that on page 3, the language which set out the procedure, Mr. Funk had suggested be put in title 46. She said the codification instructions were not contained in exhibit #21, as it was prepared prior to Mr. Funk's suggestion. She said the other thing which needed discussed, was the insertion of the reference to secondhand dealers. She asked if this was going to include all of the people they wanted to reach?

Senator Noble asked what Mr. Wilson had to add? Curt Wilson said he had spoken to Mr. Funk this morning, and he had suggested a definition that dealt with anyone who dealt with used merchandise. He said Mr. Funk had been satisfied that secondhand would handle the situation.

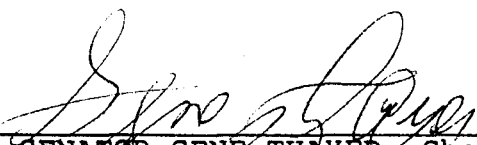
Chairman Thayer stated amendment #7 should read "a pawnbroker, or dealer who buys and sells secondhand merchandise".

Amendments and Votes: Senator Lynch moved the amendments, with the proposed language. Senator Noble seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator Hager made a motion HB 645 BE CONCURRED IN AS AMENDED. Senator Lynch seconded the motion. The motion Carried, with Senator Boylan opposing the motion. Senator Lynch carried the bill on the Senate floor.

ADJOURNMENT

Adjournment At: 12:27 p.m.



SENATOR GENE THAYER, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/16

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

page 1 of 2
March 17, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 645 (third reading copy -- blue), respectfully report that HB 645 be amended and as so amended be concurred in:

Sponsor: Addy (Lynch)

1. Title, line 6.

Following: "PAWNBROKERS"

Insert: "AND SECONDHAND DEALERS"

2. Title, line 7.

Following: ";

Insert: "AND"

Following: "PAWNBROKERS"

Insert: "AND SECONDHAND DEALERS"

3. Title, line 9.

Strike: "; AMENDING"

4. Title, line 10.

Strike: "SECTION 31-1-407, HCA"

5. Page 2, lines 17 through 25.

Strike: section 1 in its entirety

6. Page 2.

Following: line 25

Insert: "NEW SECTION. Section 1. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days, as provided in [section 2], commits the offense of theft as defined in 45-6-301."

7. Page 3, line 3.

Strike: "junk"

Following: "dealer"

Insert: "who buys and sells secondhand merchandise"

8. Page 3, line 5.

Strike: "junk"

Following: "dealer"

Insert: "who buys and sells secondhand merchandise"

9. Page 3, lines 12 through 14.

Strike: lines 12 through 14 in their entirety

Insert: "(1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 5, part 2, and the provisions of Title 46, chapter 5, part 2, apply to [section 2]."

AND AS AMENDED BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

grade 9, with a salary range of \$12,665 to \$14,542 for beginning positions. At the time of this writing, it was not clear who would be responsible for developing or conducting the training courses, or administering or grading competency evaluations. No funds are requested in the modified budgets submitted by the institutions for outside training, but either assume the training would be conducted by current staff or request RN positions to conduct the training in-house.

No additional funds for implementation of the new regulations have been made available by the federal government. However, medicaid rates paid to facilities are anticipated to take into account the additional costs.

Option A: Appropriate to each institution funding to meet OBRA requirements, which would add 9.34 FTE and \$214,362 general fund in fiscal 1990, and 7.15 FTE and \$277,893 general fund in fiscal 1991.

Option B: Take no action.

ISSUE 2: HPI DRUG CONTRACT FOR PHARMACY SERVICES

In January of fiscal 1988, the Department of Institutions entered into a contract with a company called HPI Health Care Services, Inc. to provide drug services to the institutions. All pharmacist positions at Montana State Hospital, Montana Developmental Center, Montana Veterans' Home, the Center for the Aged, and Montana State Prison, were eliminated or are being requested as converted positions, and the contract with HPI now provides all pharmacist functions. In addition, the state pays HPI for the cost of all drugs prescribed and administered.

Table 2 compares expenditures for drugs at each institution in the first six months of fiscal 1988, before the contract, with expenditures in the last six months, after HPI took over all pharmacy functions.

Table 2
Comparison of Drug Costs - 1st Six Months to 2nd Six Months
Fiscal 1988

<u>Institution</u>	<u>1st Six Months</u>	<u>Average Month</u>	<u>2nd Six Months</u>	<u>Average Month</u>	<u>% Increase 1st to 2nd Six Months</u>
Montana State Hospital	\$ 94,032	\$15,672	\$173,169	\$28,862	84.2
Montana Veterans' Home	36,534	6,089	47,267	7,878	29.4
Montana Developmental Center	33,325	5,554	67,484	11,247	102.5
Center for the Aged	20,894	3,482	33,141	5,524	58.6
Montana State Prison	41,422	6,904	68,379	11,397	65.1
Total	\$226,207 =====	\$37,701 =====	\$389,440 =====	\$64,908 =====	72.2 =====

Ex. #1
3/16/89

As shown in Table 2, total expenditures for drug costs have increased 72.2 percent under HPI.

Table 3 shows the number of pharmacists and pharmacy technicians in fiscal 1988 at each of the institutions, and the approximate cost of those positions if they had been maintained in the 1991 biennium, and compares this cost to the HPI administration fees requested in the 1991 biennium.

Table 3
Comparison of HPI Administration Costs to Pharmacy Positions Costs
1991 Biennium

Institution	FY90				FY91			
	FY90 HPI Admin.	Pharmacy Pers. Serv. Costs	Diff.	Percent Diff.	FY91 HPI Admin.	Pharmacy Pers. Serv. Costs	Diff.	Percent Diff.
MSH	\$262,466	\$131,149	\$131,317	100.13	\$275,590	\$131,787	\$143,803	109.12
MVH	30,426	14,906	15,520	104.12	31,947	14,992	16,955	113.09
MDC	64,975	57,206	7,769	13.58	68,224	57,108	11,116	19.46
CFA	24,309	20,745	3,564	17.18	25,525	20,828	4,697	22.55
MSP	11,389	13,908	(2,519)	(18.11)	11,958	13,904	(1,946)	(14.00)
Total	<u>\$393,565</u>	<u>\$237,914</u>	<u>\$155,651</u>	<u>65.42</u>	<u>\$413,244</u>	<u>\$238,619</u>	<u>\$174,625</u>	<u>73.18</u>

As shown in Table 3, the Department of Institutions would spend more than \$155,000 in fiscal 1990 and \$174,000 in fiscal 1991 for HPI administration fees than they would have for pharmacists and pharmacy technicians.

The department has indicated that difficulties in recruiting and retaining pharmacists at the prevailing state compensation contributed to the decision to contract for pharmacy services. Pharmacists are currently grade 14, with a salary range from approximately \$19,726 to \$27,427, excluding benefits. Pharmacy technicians are grade 8, with a salary ranging from \$12,509 to \$17,553. No studies have been done of salaries of a cross section of pharmacists in the state. However, various sources estimated salaries at between \$25,000 and \$35,000 per year, depending on whether the pharmacist is working for an independent store, a hospital, or a chain store. A study compiled by the Department of Administration showed institutional pharmacist salaries in other states in the region at approximately \$32,000 per year. Assuming an average salary of \$30,000, to make state positions commensurate with private industry and surrounding states it would be necessary to increase pharmacy positions three grades. Table 4 shows the cost of upgrading the pharmacy and the pharmacy technician positions three grades and compares this to the current level cost of the positions as well as the contracted pharmacy costs.

Ex. #1
3/16/89

Table 4
Comparison - Current Personal Services Costs to Upgrades
1991 Biennium

	<u>Currently in Budget</u>	<u>Raise Three Grades</u>	<u>Difference</u>
----- Comparison - Current Personal Services to Upgrades -----			
Fiscal 1990	\$214,003	\$284,501	\$(70,498)
Fiscal 1991	214,985	285,397	(70,412)
----- Comparison - HPI to Upgrades -----			
Fiscal 1990	\$393,565	\$284,501	\$109,064
Fiscal 1991	413,244	285,397	127,847

The table shows that an additional \$70,000 each year would be needed to upgrade the pharmacy positions, but that costs would still be over \$100,000 lower than HPI fees each year.

- Option A: Approve current level which includes 9.0 FTE pharmacist positions, and maintains drugs at the fiscal 1988 actual level, plus inflation. Any costs of terminating the HPI contract, which runs until 1991, are not included.
- Option B: Include funding for drugs and the HPI contract at the requested level, and eliminate all pharmacy positions. This option would require an additional \$218,559 in fiscal 1990 and \$242,777 in fiscal 1991 of general fund, which is the difference between current level and the agency's requested level.
- Option C: Maintain drugs at the fiscal 1988 level plus inflation, and increase funding for pharmacy positions to raise three grade levels. Direct the department to seek a reclassification of pharmacist positions from the Department of Administration. This option would require an additional \$70,498 in fiscal 1990 and \$70,412 in fiscal 1991 of general fund.

Table 24
Current Level Funding For Primary Care By Major Service Category

711000

Category of Service	Fiscal 1988	Fiscal 1989	Fiscal 1990	Fiscal 1991
Inpatient Hospital	\$33,154,068	\$36,544,900	\$38,580,451	\$40,729,382
Number of Services	N/A	N/A	N/A	N/A
Cost per Service	N/A	N/A	N/A	N/A
Physician	\$12,481,958	\$13,758,550	\$14,524,982	\$15,333,939
Number of Services	558,187	578,345	598,587	619,537
Cost per Service	\$22.36	\$23.79	\$24.26	\$24.75
Drugs	\$ 9,269,178	\$10,217,183	\$10,786,280	\$11,387,076
Number of Services	747,140	773,407	800,476	828,493
Cost per Service	\$12.41	\$13.21	\$13.48	\$13.74
Other	\$ 9,245,163	\$10,190,712	\$10,758,335	\$11,357,574
Number of Services	2,591,763	2,688,097	2,782,180	2,879,557
Cost per Service	\$3.57	\$3.79	\$3.87	\$3.94
Outpatient Hospital	\$ 5,666,726	\$ 6,246,290	\$ 6,594,209	\$ 6,961,506
Number of Services	384,445	397,471	411,383	425,781
Cost per Service	\$14.74	\$15.72	\$16.03	\$16.35
Dental	\$ 2,989,560	\$ 3,295,317	\$ 3,478,866	\$ 3,672,639
Number of Services	122,549	126,842	131,282	135,877
Cost per Service	\$24.39	\$25.98	\$26.50	\$27.03
Other Practitioners	\$ 2,382,214	\$ 2,625,885	\$ 2,772,115	\$ 2,926,522
Number of Services	197,338	204,267	211,416	218,815
Cost per Service	\$12.07	\$12.85	\$13.11	\$13.37
TOTAL MEDICAID	\$75,188,867	\$82,878,808	\$87,495,158	\$92,368,638
Adjustments:				
Add: Rivendell-Billings	\$ 1,089,373	\$ 2,628,000	\$ 2,628,000	\$ 2,628,000
Rivendell-Butte	-0-	1,839,600	1,839,600	1,839,600
Shodair-Helena	2,189,349	2,299,500	2,299,500	2,299,500
State Medical	450,000	450,000	450,000	450,000
Less: Refunds	\$ (700,000)	\$ (700,000)	\$ (700,000)	\$ (700,000)
ADJUSTED TOTAL MEDICAID	\$78,217,589	\$89,395,908	\$94,012,258	\$98,885,738

As shown in Table 24, exclusive of adjustments to the major categories of services, funding for Primary Care increases \$17.1 million, or 22.8 percent from fiscal 1988 to fiscal 1991. The increase in cost is based on an average 3.5 percent per year growth in services as a result of increases in AFDC and SSI caseloads, and a 2 percent inflationary increase in the cost of services provided. In addition to the seven basic services, \$6,767,100 per year is included for inpatient psychiatric care for youth, \$450,000 per year for state medical expenditures and \$700,000 per year to off set refunds to the medicaid program. Table 24 shows that inpatient psychiatric care for youth is the fastest growing segment of the primary care budget increasing from \$3.3 million in fiscal 1988 to \$6.8 million in fiscal 1991, or an increase of 106 percent. According to SRS staff

Ex #2
3/16/87

the above estimate of the cost of inpatient psychiatric care for youth may be low. An additional 20 inpatient psychiatric beds are planned for completion at the Billings Deaconess Hospital and estimates of the percent of beds occupied by medicaid eligible recipients for the other facilities may be low. If each of the three existing facilities achieved a medicaid occupancy rate of 75 percent (Shodair's occupancy rate during fiscal 1988) and the new Billings Deaconess facility was also open in fiscal 1990 with a medicaid occupancy rate of 75 percent, the state could face a potential \$5.4 million in additional medicaid costs for inpatient psychiatric services to youth.

Table 25 presents current level funding for the Primary Care Program during the 1991 biennium.

Table 25
Current Level Funding for Primary Care Benefits
During the 1991 Biennium

	<u>Fiscal 1988</u>	<u>Fiscal 1990</u>	<u>Fiscal 1991</u>	<u>% Increase 1988-1991</u>
----- SSI -----				
Federal Funds	\$24,907,608	\$29,852,041	\$31,563,509	26.7
County Funds	3,312,404	3,278,845	3,290,887	(0.6)
General Funds	<u>7,925,117</u>	<u>8,813,811</u>	<u>9,426,621</u>	<u>18.9</u>
Total	<u>\$36,145,129</u>	<u>\$41,944,697</u>	<u>\$44,281,017</u>	<u>22.5</u>
----- AFDC -----				
Federal Funds	\$28,992,132	\$37,056,483	\$38,922,245	34.3
County Funds	3,855,596	4,070,155	4,058,113	5.3
General Funds	<u>9,224,732</u>	<u>10,940,923</u>	<u>11,624,363</u>	<u>26.0</u>
Total	<u>\$42,072,460</u>	<u>\$52,067,561</u>	<u>\$54,604,721</u>	<u>29.8</u>
----- TOTAL -----				
Federal Funds	\$53,899,741	\$66,908,524	\$70,485,754	30.8
County Funds	7,168,000	7,349,000	7,349,000	2.5
General Funds	<u>17,149,848</u>	<u>19,754,734</u>	<u>21,050,984</u>	<u>22.7</u>
Total	<u>\$78,217,589</u>	<u>\$94,012,258</u>	<u>\$98,885,738</u>	<u>26.4</u>

As shown in Table 25, overall funding for the Primary Care Program increases 26.4 between fiscal 1988 and fiscal 1991. The AFDC portion increases at a somewhat higher rate than funding for SSI primarily as a result of the increased costs for inpatient psychiatric care of youth. County funds shown in Table 25 are the 12 mils levied by the state assumed counties. These funds are treated as general fund and for accounting purposes have been included in the medicaid Primary Care Program. Federal funding for the Primary Care Program increases significantly more than the combined county fund and general fund portion of the budget due to the change in the federal match rate for the Medicaid Program from 68.9 percent in fiscal 1988 to 71.3 percent federal funding in fiscal 1991.

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Ex #3
3/16/89

Table 24
Current Level Funding For Primary Care By Major Service Category

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EXHIBIT NO. 4DATE 3/16/89BILL NO. HB 719

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

Judge

Testimony of Don Judge before the Senate Business and Industry Committee on House Bill 719, March 16, 1989

Mr. Chairman and members of the Committee, for the record, I am Don Judge representing the Montana State AFL-CIO in support of House Bill 719.

Contracting out governmental services has become the vogue in local governments around the country today. Many states and the federal government have also turned their attention to this form of providing public services. The main reason used to justify contracting out -- or privatizing -- our public services is cost. Frankly, we do not believe the argument that the private sector can provide services more efficiently or more effectively. Lower costs stem primarily from lower wages and greater use of part-time workers with fewer fringe benefits.

There have been many studies showing that the real costs of contracting out public services are greater and less efficient than providing these same services in the public sector (see Robert Milford, "The Comparative Performance of Public and Private Ownership," in *The mixed Economy*, ed. Lord Roll of Ipsden (London: McMillan Press, 1982); George W. Downs and Patrick D. Larkey, *The Search for Government Efficiency* (Philadelphia: Temple University Press, 1986); and Charles T. Goodsell, *The Case for Bureaucracy: A public Administration Polemic* (Chatham, N.J.: Chatham House Publishers, 1983). The most important factor in any discussion of privatization is cost effectiveness, and House Bill 719 establishes formal criteria to make these important decisions.

During his tenure in office, President Reagan formed the Presidential Commission on Privatization and Public Employees which issued their report in May of 1988. The report recommends that governments develop formal employment policies when considering privatization. The report included 14 policy recommendations to deal with employment-related issues associated with privatization. These recommendations include: a no lay-off policy; requiring contractors to offer the right of first refusal to affected government employees for all job openings; giving priority consideration during the competitive bidding process to firms that agree to hire displaced governmental workers; protecting transferred employees against pay reductions; tying management pay levels to productivity improvements; setting aside a percentage of the savings for job retraining and placement; offering early retirement benefit packages to workers displaced by contracts; reimbursing public employees for lost pension benefits as a result of leaving governmental service; and reserving all in-house service job openings for displaced workers. These recommendations were not developed by organized labor or those who have been critical of privatization. They are the recommendations of President Reagan's Commission.

As you can see by these recommendations, privatizing public services is not as simple and effortless as its advocates would lead you to believe. It is a complex, difficult public policy decision which must seriously consider all of its ramifications. The most important component in such decisions is early planning and analysis. House Bill 719 provides a planning mechanism to do just that. We urge your favorable consideration of this legislation.

Thank you.

HB 719

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3/16/89
BILL NO. HB 719
Gov. Amend

HOUSE BILL NO. 719

INTRODUCED BY MENAHAN, COCCHIARELLA, REAM, BLOTKAMP, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PRIVATIZATION OF STATE FUNCTIONS; ALLOWING STATE AGENCIES TO CONTRACT FOR STATE FUNCTIONS UNDER SPECIFIC CIRCUMSTANCES; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [This act] may be cited as the "State Privatization Act".

NEW SECTION. Section 2. Definitions. As used in [this act], the following definitions apply:

- (1) "Board" means the contract review board.
- (2) "Department" means the department of administration provided for in 2-15-1001.
- (3) "Displacement" means the layoff of a state employee. The term does not mean changes in shift or days off or reassignment to other positions within the same class.
- (4) "Indirect overhead costs" means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.
- (5) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, or any other legal entity engaging in the manufacturing, processing,

sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.

(6) "Service agreement" means a contract for services that are incidental to a contract for the purchase or lease of real or personal property, including agreements to service or maintain leased or rented office or computer equipment.

(7) "State agency" means the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; and all independent commissions and other establishments of state government.

NEW SECTION. Section 3. Contracting for services. (1) A state agency may contract for services to achieve cost savings if:

(a) the contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state;

(b) the contract does not cause displacement of state employees;

(c) the contract does not adversely affect the state's affirmative action efforts; (probably not needed)

(d) the amount of savings clearly justifies the size and duration of the contracting agreement;

(e) the contract is awarded through a publicized, competitive bidding process;

(f) the contract includes provisions that the contractor's hiring practices meet applicable nondiscrimination and

affirmative action standards;

(g) the potential for future economic risk to the state from potential contract rate increases is minimal;

(h) the contract is with a private enterprise;

(i) the potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government;

(j) confidentiality considerations do not require that the state agency provide the services; and

> ²
(~~1~~) the contractor cannot provide equal or superior services.

> ³
(~~2~~) In calculating the cost savings required by subsection (1)(a), the state agency:

(a) shall demonstrate their inability to provide the same services through the agency at a lower cost;

(b) shall include the state's indirect overhead costs, providing those costs can be allocated to the function in question; and

(c) shall include any continuing state costs that would be directly associated with the contracted function, such as inspection, monitoring, or supervision costs, in calculating the contractor's cost for providing the service.

(3) (a) A state agency may also contract for services if:

(i) the contracted services are not available within state government, cannot be performed satisfactorily or economically by state employees, or are of such a highly specialized or technical

nature that the necessary expert knowledge, experience, and ability are not available from career state employees;

(ii) the services are incidental to a service agreement;

(iii) the state agency needs private counsel because a conflict of interest prevents the attorney general's office from representing the agency;

(iv) the contractor will provide equipment, materials, facilities, or support services that could not feasibly nor economically be provided by the state in the location where the services are to be performed;

(v) the contractor will conduct training courses when qualified state instructors are not available; or

(vi) the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation by a state agency would frustrate their very purpose.

NEW SECTION. Section 4. Preparation of bid invitations. Before preparing an invitation to bid, a state agency shall:

(1) notify the department and the chief procurement officer of the purchasing division;

(2) retain and provide all data and other information relevant to the contract and necessary for a specific application of the standards established in [section 3];

(3) notify any person or organization that has filed a request for notice with the department.

NEW SECTION. Section 7⁵. Severability. If a part of [this

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act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Applicability. [This act] applies to contracts entered into after [the effective date of this act].

Exhibit #6

3/16/89

Midwest-West Routes

EX 6
3/16
HB
626

EX 6 3-16-89

HB 626

AMTRAK

Winter/Spring 1989 Amtrak Train Timetables

Effective January 15, 1989 through May 20, 1989

Chicago-Memphis-Jackson-New Orleans

Kansas City-St. Louis-Memphis-New Orleans

New Orleans-Houston-San Antonio-El Paso-Tucson-Phoenix-Los Angeles

Chicago-St. Louis-Little Rock-Dallas-Austin-Houston/San Antonio-El Paso-Tucson-Phoenix-Los Angeles

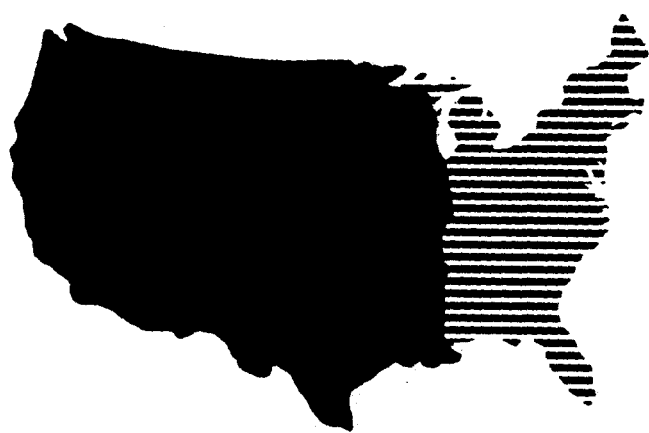
Chicago-Milwaukee-St. Paul/Minneapolis-Whitefish-Spokane-Seattle/Portland-(Vancouver)

Chicago-Salt Lake City-Boise-Portland-Seattle

Chicago-Omaha-Denver-Reno-San Francisco

Chicago-Salt Lake City-Las Vegas-Los Angeles

Chicago-Kansas City-Albuquerque-Los Angeles



BEFORE THE
MONTANA SENATE
BUSINESS AND INDUSTRY COMMITTEE

STATEMENT OF JAMES T. MULLEN,
STATE LEGISLATIVE DIRECTOR,
TRANSPORTATION COMMUNICATIONS UNION
(Formerly the Brotherhood of Railway &
Airline Clerks)
440 Roosevelt Drive R-1, Butte, MT. 59701

Chairman Thayer, members of the Committee, TCU supports the amendment to Section 69-14-202MCA which defines the Common Law Doctrine of Public Convenience and Necessity (PCN). The 1987 Legislature amended this section relating to maintenance and staffing of railroad facilities. Formerly Montana required RR's doing business in Montana to maintain and staff station facilities in communities of 1,000 inhabitants and at least one in each county. Representative Bradely (Dem. Bozeman) amended this law by striking the population criterion defining public convenience and necessity, and merely inserted the present PCN without definition

If you will look at HB 626 bottom page one and extending to page two - Public convenience and necessity means:

"the maintenance and staffing of facilities with equipment and instrumentalities necessary to promote the safety, health, comfort, and convenience of the railroads patrons, its employees, and the public, which must in all respects be adequate, efficient, just, and reasonable".....

This amendment is the same as Section 61-302 of the Idaho Code. I am attaching a copy of that section to this statement, with legal citations pertaining to Idaho station closures.

It is interesting to note that HB 626 applies to both types of rail patrons. Shippers of Freight and Passenger users. As you know AMTRAK (National Rail Passenger Service) traverses Montana

across the highline. As a former Amtrak Ticket Agent there were 12 passenger train stops. That has been reduced 5 since 1970. Presently Amtrak makes regular stops at Wolf Point, Malta, Havre, Shelby and Whitefish. There are 7 flag stops. This means that a passenger must flag the train and board, or make reservations and the passenger train crew stops to pick them up. This is not a comfortable or convenient method. During winter or night time boardings- flag stop stations of Glasgow, Cut Bank, Browning, East Glacier, Essex, Belton (or West Glacier) and Libby could be hazardous to the health and safety of passenger boarders. East Glacier, Essex, West Glacier (Belton) were closed by B.N. Cut Bank Service was reduced to flag stop platform boardings. Browning the same. Imagine flagging a passenger train at 40 below. Or waiting for a passenger train that is running late.

HB 626 addresses these problems. It will not require BN to reopen its Glacier Park Stations. But - it will assure that the Montana PSC take into consideration the closure of passenger like Wolf Point, Malta, Havre, Shelby, Whitefish. Not that the bill gives substance to the meaning of public convenience and necessity. It applies to both freight and passenger customers.

I am attaching a copy of AMGTRAKS current time table that reflects regular stops and flag stops at Montana stations. These are:

Regular Stops

Wolf Point
Malta
Havre
Shelby
Whitefish

Flag Stops

Glasgow
Cut Bank
Browning
East Glacier
Essex
Belton (E.Glacier)
Libby

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HB 626 reflects that a railroad must provide equipment and instrumentalities, and I would like to read into the record what a railroad agency is required to perform. This statement appears in Burlington Northern's PREFACE to their Agents:

" The agency is a VITAL part of Burlington Northern. In a sense, the Agency IS Burlington Northern to many of our customers who may have LIMITED contact with any other company representatives. The Agency role then is DOUBLY important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to ALL THE SERVICE that the Company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions and responsible officers of all other departments of the company....

This preface reflects the vital need for agency services in remote areas of Montana. It also complies with the intent of HB 626 which alludes to EQUIPMENT and INSTRUMENTALITIES. A Staffed railroad station has the following equipment to transact business:

1. Radio/Train Crew and Dispatcher Communications, also Track Crew Communications.
2. Local Telephone Service, FAX copiers, limited computer hardware.
3. Safety devices, such as warning flares, dangerous commodity placards, car seals, track warning torpedoes, flagging devices
4. Typewriters, and telemetric devices necessary in executing company reports.

The following Paper Instrumentalities are available to Railroad Customers:

Bills of Lading, Over Short & Damaged Freight Reports, OSD Car Yard Check Reports, Customer Car Order Forms, Demurrage, Records such as average agreements and straight plan demurrage forms, FRA Hazardous Commodity Tariffs explains what to do in a local crisis with hazardous commodities. Seal Record Book, Record Book of animals killed along rail right of way.

HB 626 assures that this EQUIPMENT and INSTRUMENTALITIES remain with the station until the Montana Public Service Commission find otherwise through the Public Hearing Process. It does not require that Station already closed by the Commission will be required to reopen. The amenddment merely defines PCN.

Montana railroads have been gradually removing the above equipment and instrumentalities, reducing local contact, and then asking the PSC to close the agency for lack of work disregarding public safety.

For example, my office has attended every public hearing conducted by the PSC. Whenever we introduced testimony or documents relating to public safety, very little evidentiary weight was given to safety. The Commission merely applied the common law PCN standard which requires that shippers only have standing to oppose station closures. Many local governments opposed station closures since 1987 premised on Local Safety Concerns etc.

For example Montana Rail Link closed its dualized agency of St. Regis and Superior. Testimony reflected that the agent based in Superior had High Frequency Radio capabilities to communicate

Ex. #7
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with train crews. The Superior St. Regis Line has radio blackouts with Locomotive based radios impairing communications with the train dispatcher. Often times the Superior agent would contact train crews giving them dispatch instructions. Emergency fact situations were entered in the hearing record without any weight to the retention of agency service.

The same scenario appeared in the BN Miles City Closing.

We would like to report to this committee that since the passage of the 1987 legislation eliminating PCN population criterion the following stations have been closed:

MONTANA RAIL LINK was given authority to close:

Darby, Hamilton, Stevensville, Superior, St. Regis, Thompson Falls, Plains, Paradise, Ronan, Polson, Drummond, Phillipsburg, Toston, Townsend, Big Timber, Columbus, Alder, Whitehall, Sheridan, Twin Bridges.

MONTANA RAIL LINK Stations that are still open:

Missoula, Helena, East Helena, Toston, Three Forks, Harrison, Belgrade, Bozeman, Billings, Laurel.

Total Open MRL Montana Stations ten (10)

BN STATIONS CLOSED BETWEEN APRIL 1987 thru November 1988

Brady, Dutton, Conrad, Valies, Choteau, Power, Big Sandy, Rudyard, Hingham, Wibaux, Circle, Farivdiew, Miles City.

At total of 13.

BN CLOSURE APPLICATIONS HEARD and awaiting PSC decision:

Chester, Harlem, Chinook, Hysham, Terry, Ophiem, Glentanna, Richland, Peerless, Scobey, Four Buttes, Plentywood,

Medicine Lake, Reserve, Antelope, Froid, Homestead, Culbertson. Total of 17 Fort Benton was denied.

BN STATIONS THAT ARE STILL OPEN:

Garrison, Huntley, Hardin, Forsyth, Glendive, Sidney, Wolf Point, Glasgow, Malta, Ft. Benton, Havre, Sweet Grass, Cut Bank, Shelby, Browning, Columbia Falls, Eureka, Whitefish, Kalispell, Libby, Great Falls, Stanford, Lewistown. Total Tenty Three (23).

UNION PACIFIC STATIONS 125 Mile operation

Dillon, Silver Bow, Montana

MONTANA WESTERN, 55 mile operation

Butte, and Silver Bow, Montana...

CONCLUSIONS

Montana railroads have closed 32 stations from April 1987 To August 1988 for an average of two stations per month. There are 17 stations awaiting FSC orders, and only one station closing was denied - Ft. Benton..... This is an alarming withdrawl which ignores the public and denies remote areas of Montana to rail agency services.

HB 626 addresses the concerns of Montana Communities relating to Rail Safety and public need.

Thank you for allowing me to appear before this committee..



JAMES T. NULAR, SLD TCU BUTTE MT

Ex. #7
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61-302. Maintenance of adequate service. — Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. [1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.]

Cross ref. Equal transportation rights guaranteed, Const., Art. 11, § 6.

Cited in: Application of Pacific Tel. & Tel. Co. (1951), 71 Idaho 476, 233 P.2d 1024.

ANALYSIS

Abandonment of service.

Cost of service.

Discrimination.

Efficiency.

Equal facilities.

Negligence.

Rate making.

Right to require service.

Sufficiency of service.

Telephone service.

Warning of danger.

Water service.

Abandonment of Service.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

The action of the public utilities commission in denying a railroad's right to discontinue passenger trains on a certain branch

line and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains was neither arbitrary nor capricious, although the service was operated at a loss, where a discontinuance would leave the public practically without railroad passenger service and with only a minimum of bus service at a time when the operation of motor vehicles was seriously restricted because of war, and the operation of the railroad's entire system showed a profit. In re Application of Union Pacific R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Cost of Service.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose; and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. McIntosh v. Oregon R. & Navigation Co. (1909), 17 Idaho 100, 105 P. 66.

Efficiency.

Electric utility was found by commission to be rendering reasonably good service, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. (On rehearing) In re Idaho Light & Co., 2 P.U.C.I. 53, P.U.R. 1915A, 2; In re Idaho Light & Co., 2 P.U.C.I. 38.

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means

and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Const., Art. 11, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell* (1912), 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 866.

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa loquitur*, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C. C. Anderson Stores Co. v. Boise Water Corp.* (1962), 84 Idaho 355, 372 P.2d 752.

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 P. 1083.

Right to Require Service.

A new district or community may be entitled to receive service from a public utility without guaranteeing an amount of revenue at the usual rates to satisfy the utility. *Waters v. Utah Power & Co.*, P.U.C.I. Case F194, Order 601, P.U.R. 1920C, 212.

Public utility will not be required to render service unless such rendering will afford a revenue which will pay the operating expenses and taxes, provide proper depreciation reserve, and afford a fair return on the investment judiciously made in property used, useful, necessary and required in the service of the public under efficient and economical management. In *re Idaho Power Co.*, P.U.C.I. Case F449, Order 838, P.U.R. 1922C, 705.

It is a common carrier's duty to furnish such service as will produce the greatest comfort and convenience to the greatest number of the traveling public. In *re Oregon-Washington R. & Co.*, P.U.C.I. Case F462, Order 841, P.U.R. 1922D, 155.

A public utility may be required to continue service only so long as the public support warrants such continuance. In *re Colonial Trust Co.*, P.U.C.I. Case F660, Order 1124, P.U.R. 1928D, 628.

The refusal of a public utility company to furnish service in any part of a territory in

which an independent company, not a public utility, has entered, cannot be justified, provided public convenience and necessity requires service therein. In *re Darnielle*, P.U.C.I. Case F663, Order 1138, P.U.R. 1928E, 211.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. In *re Application of Union Pac. R. Co. for Leave to Discontinue Agency at Montour* (1943), 64 Idaho 529, 134 P.2d 599.

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. In *re Application of Union Pac. R. Co. to Abandon Certain Train Service* (1943), 64 Idaho 597, 134 P.2d 1073.

Sufficiency of Service.

Service offered by public utility must be reasonably adequate and efficient and must be furnished at rates which the consumers can reasonably afford to pay. *Council v. Adama County Light & Co.*, P.U.C.I. Case F323, Order 661, P.U.R. 1920E, 381.

Adequacy of service was not shown by showing that under unusually advantageous conditions a sufficient supply of water could be had. *Eddy v. Lewiston Valley Water Co.*, P.U.C.I. Case F409, Order 777, P.U.R. 1921D, 479.

This section does not require maintenance of plainly excessive or obsolete equipment. In *re Boise Artesian Water Co.*, P.U.C.I. Case F504, Order 909, P.U.R. 1931A, 566.

X Extent of demand for service and use thereof by the public is to be considered in determining the reasonableness of and necessity for such service. In *re Oregon Short Line R. Co.*, P.U.C.I. Case F603, Order 1029, P.U.R. 1926E, 364.

Conditions may be such as not to require the keeping of an agency at a railroad station, and at the same time require a caretaker. In *re Northern Pac. R. Co.*, P.U.C.I. Case F843, Order 1085, P.U.R. 1927E, 653.

X It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. In *re Application of Union Pac. R. Co. for Leave to*

P R E F A C E

The agency is a vital part of Burlington Northern. In a sense, the agency is Burlington Northern to many of our customers who may have limited contact with any other company representatives. The agency's role then is doubly important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to all the service that the company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions, and responsible officers of all other departments of the company.

This manual is intended to serve as a convenient reference to existing instructions, rules, and regulations applicable to agency operations. While every conceivable procedural detail will not be found, instructions covering the principal matters applicable to the conduct of an agency are covered. Agents and agency supervisory forces are responsible for implementing and enforcing these instructions and for suggesting improvements where necessary.

Volume I makes up the bulk of the manual and contains the specific instructions required for the day-to-day operation of an agency. Revisions will be issued, printed on colored paper, as changes occur. These revision pages will be numbered to correspond with the page number on which the item being revised appears and are to be placed in the manual next to that page number. When the colored sheets become fairly numerous, indicating many revisions, the entire section will be re-issued. Instructions covering some items are still being prepared, and upon completion will be forwarded for insertion in numerical order in the manual.

Volume II is to be used for filing of information circulars which are issued from time to time by various departments. Each department has been assigned a specific reference number as shown in Volume II. Circulars and Information Bulletins as received should be filed in appropriate section as indicated by dividers.

Questions arising about the conduct of an agency that cannot be answered by reference to this manual should be referred to the department involved with the operation in question, or to Manager, Station Services.

ORDER FOR CARS



BURLINGTON
NORTHERN

NOTE: THIS FORM IS USED FOR ORDERING
EMPTY CARS, MUST SHOW CAR NUMBER
DATE AND TIME WHEN PLACED. IF
ORDER CANCELLED, SHOW DATE AND
TIME

A. ORDER NUMBER	
B. STATION NAME AND NUMBER	I. DATE AND TIME
C. NUMBER OF CARS WANTED	J. DATE WANTED
D. KIND OF CARS	K. COMMODITY - CLASS
E. WHERE WANTED	L. LENGTH AND SIZE
F. ROUTING	M. DESTINATION
G. SHIPPER	N. NAME OF AN EMPLOYEE RECEIVING REQUEST
H. SHIPPERS AGENT	
O. SPECIAL INSTRUCTIONS: (Protective Service - Tie Downs, Etc.)	

AGENTS RECORD OF CARS FURNISHED

	INITIAL	NUMBER	KIND	CAPACITY	LENGTH	PLACED	
						DATE	TIME
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

FORM 15029 11-73

DEMURRAGE AND STORAGE REFUND OR CANCELLATION NOTICE



BURLINGTON
NORTHERN

SEND TO: _____

STATION	DATE	19	NO.
REPORTED TO CUSTOMER ACCOUNTING CENTER	BILL NO.	BILL DATE	19
DATE	19		
SHIPPER	CONSIGNEE		
CAR MOVED FROM	CAR MOVED TO		

A A No.	CAR		NOTIFIED OR PLACED		DEL'D OR RELEASED		AMOUNT	REFUND MADE BY
	INITIAL	NUMBER	DATE	TIME	DATE	TIME		
AS CHARGED								DRAFT NO.
SHOULD BE								DATE
DIFFERENCE REFUND/CANCEL - DEMURRAGE/STORAGE								AMOUNT \$

Authority: _____

Approved by Director, Customer and Station Accounting

Shipping Order



Ex. #7

3-16-89

must be legibly filled in, in Ink, in Indelible Pencil or in Carbon, and retained by the agent RECEIVING, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

Shipper's No. _____

Agent's No. _____

SHEET 2

at _____, 19____

from _____
 the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract to mean any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western and Illinois Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.
 Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Delivery Address* _____
 (*To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Route _____

Delivering Carrier _____ Car Initial _____ Car No. _____

No. Packages	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN	Subject to Section 7 of conditions, of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
					If charges are to be prepaid, write or stamp here, "To be Prepaid."
					Rec'd \$ _____ to apply in prepayment of the charges on the property described hereon.
					Agent or Cashier.
					Per _____ (The signature here acknowledges only the amount prepaid.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
 NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
 The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per \$ _____

_____ Shipper
 Per _____

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

Printed in U.S.A.

BE Form 3

Association of
American Railroads
Bureau of Explosives

STATION: YARD INSPECTION

Railroad: Burlington Northern
Location: 119039 Silver Bow Road
Silver Bow, Montana 59750

Inspection Date: July 9, 1985
Agent/Trainmaster: J. Pelletier
Yardmaster:

Conditions observed during time of this inspection:

The Bureau of Explosives' Tariff number BOE-6000-E, publishing the Hazardous Materials Regulations of the Department of Transportation was on file.

This yard handles frequent shipments of hazardous materials including: Sodium Cyanide Solid, Liquefied Petroleum Gas, Corrosive Materials, and Flammable Liquids.

In accordance with § 174.33 of the Department of Transportation Hazardous Materials Regulations, an adequate supply of placards is maintained to replace those that are lost or damaged in transportation.

Train lists were reviewed with no exceptions noted.

A discussion of train placement for placarded rail cars was held with Mr. Pelletier, who demonstrated a working knowledge of the appropriate regulations.

This yard is operated jointly by the Burlington Northern and the Union Pacific.

There were no placarded rail cars available for inspection at the time of this visit.

Copies to:

Mr. C. J. Bryan, Vice President Operations
Mr. J. J. Button, AVP System Safety and Rules
Mr. G. E. Thiel, Superintendent
Mr. J. Pelletier, Agent
Mr. J. E. Southworth, Manager, Field Operations
Mr. J. D. Jarvis, Senior Inspector

J. C. Davis

Inspector

July 13, 1985

Date

Ex. #7

3-17-89

BURLINGTON NORTHERN INC.

PRESENTATION FORM FOR LOSS OR DAMAGE CLAIMS

Name of person to whom claim is presented

Date

Name of carrier

Claimant
Address
City
Zone
State

Claimant's Number

Address

Carrier's Number

City Zone State

City Zone State

Claim for \$ _____ is made for () LOSS () DAMAGE, supported by the documents indicated below:

- Original Paid Freight Bill ()
- Original Invoice or Certified Copy ()
- Original Bill of Lading ()
- Other _____

If original Bill of Lading is lost or destroyed, complete this section.
If original Freight Bill is lost or destroyed, complete this section and submit copy.

In presenting this claim covering shipment of _____ shipped by _____
 from _____ on Bill of Lading or Waybill dated _____
 consigned to _____ at _____ the undersigned is unable
 to surrender the original Freight Bill and/or Bill of Lading and hereby guarantees to protect the _____
 and any other interested carrier against all costs, expenses or other fees which may result
 from payment of this claim without surrender of the original document(s).

If Original Invoice or Certified Copy is not available, complete this section.

Invoiced by _____ Address _____
Date of Invoice _____ Invoice Number _____ Total of Invoice \$ _____

Description of Items Covered by Claim:

Item	Number of Items	Price	Discount	Net Price

Show how claim is determined in this section:

Total Claimed \$ _____

Signature affixed guarantees and certifies the above statements to be correct.

Signature of claimant

By _____



WIFE Women Involved In Farm Economics

Kay Norenberg
WIFE (Women Involved In Farm Economics)
HB 626 SUPPORT

Mr. Chairman, members of the committee. My name is Kay Norenberg, representing WIFE (Women Involved In Farm Economics).

We would like to go on record in support of HB 626.

We do understand the necessity of some station closures but feel that public testimony should be weighed along with the testimony of shippers in hearings for these closures.

This bill would allow the public some voice in whether their station is closed or not. We feel that these stations are many times necessary in the community, be it for the convenience or the safety factor, and the community has the right to be heard.

As an example, the closure of stations in the Opheim, Culbertson area leaves a gap of one hundred and fifty miles without a station. This can bring on hardships for shippers in that area.

We would like you to consider what this does to us in the rural areas.

We recommend a do pass.

Thank you!

opinions

Starting to roll

It's been almost two years since the state lightened up on its requirements for railroad freight offices, but the new system seems to be starting to work.

Until the 1987 legislative session, Montana required the railroads to maintain freight offices in every county seat and every town of 1,000 or more population. It caused an unnecessary hardship on the railroads, who wanted to consolidate their freight office operations in fewer locations. At the time the legislature took up the issue, BN had 62 freight agencies in Montana, compared with 16 in Washington, 8 in Wyoming and 6 in North Dakota.

The new law allowed for closure of freight offices, if the railroad could show the Public Service Commission that no major inconvenience or other impact on the shippers and general public would be caused. The PSC has received some of the railroad's applications, held hearings, and granted most of them.

The primary opponents to the closure of the offices, as might be expected, have been railroad union representatives who want to protect the jobs of the freight agents. Only a few shippers and other members of the public have objected.

In mounting their protests, the rail union folks have come up with some pretty thin arguments. One is that the freight agencies need to be maintained because of "livestock kills —" the occasional cow that gets killed by a passing train. Union spokesmen argue that the freight agent needs to be there to record and process the farmer's claim against the railroad — a pretty silly justification to keep an agency open.

Their latest argument is almost as silly — they are beginning to claim the agency should be kept open for safety reasons — so that the agent will be on hand to perform "roll-by" inspections of the trains. It seems when the unions run

out of other job-protection arguments, they often resort to "safety" claims — long on emotion and short on logic.

It makes you wonder how the ranchers of Wyoming or North Dakota get by with so few places to put in a claim when a cow gets killed . . . and how "safe" the trains travelling through those states are, with so few freight agents to "inspect" them.

Anyway, the slow bureaucratic process of earning PSC approval has been underway for several months now. In the meantime, BN sold off the southern line to MRL, so MRL is also applying to close some agencies. Most of the completed closure applications — less than a dozen so far — have been granted, but the PSC has refused a couple of them. More applications are in the mill. It's something that has taken far too long to get going. At least it's moving now, and we can hope the PSC keeps it an objective and expedient process.

BEFORE THE
MONTANA SENATE
HIGHWAYS AND TRANSPORTATION
COMMITTEE

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 10

DATE 3/16/89

BILL NO. HB 626

IN SUPPORT OF HB626 by Repr. Whalen _____ March 1989

TESTIMONY OF JAMES T. MULAR, STATE LEGISLATIVE
DIRECTOR, TRANSPORTATION COMMUNICATIONS UNION
(TCU) formerly the Brotherhood of Railway &
Airline Clerks) 440 Roosevelt Drive, Butte, MT.

Chairman Pavlovich, members of the Committee TCU supports the amendment to Section 69-14-202MCA which defines the Common Law Doctrine of Public Convenience & Necessity (PCN) The 1987 Legislature amended this section relating to maintenance and staffing of railroad facilities. Formerly Montana required RR's doing business in Montana to maintain and staff station facilities in communities of 1,000 inhabitants and at least one in each county. Representative Bradley (Dem. Bosen) amend this law by striking the population criterion defining public convenience and necessity, and merely inserted the present PCN without definition.

If you will look at the bottom of page one and extending to page two HB 626 defines public convenience and necessity to mean:

"the maintenance and staffing of facilities with equipment and instrumentalities necessary to promote the safety, health, comfort, and convenience of the railroad's patrons, its employees, and the public, which must in all respects be adequate, efficient, just, and reasonable.".....

This amendment is the same as Section 61-302 of the Idaho Code.

I am attaching a copy of that section to this statement, with court citations upholding this law.

HB 626 reflects that a railroad must provide equipment and instrumentalities, and I would like to read into the record what a railroad agency is required to perform. This statement appears in Burlington Northern's PREFACE to their Agents:

" The agency is a VITAL part of Burlington Northern. In a sense, the Agency IS Burlington Northern to many of our customers who may have LIMITED contact with any other company representatives. The Agency role then is DOUBLY important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to ALL THE SERVICE that the Company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions and responsible officers of all other departments of the company....

This preface reflects the vital need for agency services in remote areas of Montana. It also complies with the intent of HB 626 which alludes to EQUIPMENT and INSTRUMENTALITIES. A Staffed railroad station has the following equipment to transact business:

1. Radio/Train Crew and Dispatcher Communications, also Track Crew Communications.
2. Local Telephone Service, FAX copiers, limited computer hardware.
3. Safety devices, such as warning flares, dangerous commodity placards, car seals, track warning torpedoes, flagging devices
4. Typewriters, and telemetric devices necessary in executing company reports.

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The following Paper Instrumentalities are available to Railroad Customers:

Bills of Lading, Over Short & Damaged Freight Reports, OSD Car Yard Check Reports, Customer Car Order Forms, Demurrage, Records such as average agreements and straight plan demurrage forms, FRA Hazardous Commodity Tariffs explains what to do in a local crisis with hazardous commodities. Seal Record Book, Record Book of animals killed along rail right of way.

HB 626 assures that this EQUIPMENT and INSTRUMENTALITIES remain with the station until the Montana Public Service Commission find otherwise through the Public Hearing Process. It does not require that Station already closed by the Commission will be required to reopen. The amenddment merely defines PCN.

Montana railroads have been gradually removing the above equipment and instrumentalities, reducing local contact, and then asking the PSC to close the agency for lack of work disregarding public safety.

For example, my office has attended every public hearing conducted by the PSC. Whenever we introduced testimony or documents relating to public safety, very little evidentiary weight was given to safety. The Commission merely applied the common law PCN standard which requires that shippers only have standing to oppose station closures. Many local governments opposed station closures since 1987 premised on Local Safety Concerns etc.

For example Montana Rail Link closed its dualized agency of St. Regis and Superior. Testimony reflected that the agent based in Superior had High Frequency Radio capabilities to communicate

with train crews. The Superior St. Regis Line has radio blackouts with Locomotive based radios impairing communications with the train dispatcher. Often times the Superior agent would contact train crews giving them dispatch instructions. Emergency fact situations were entered in the hearing record without any weight to the retention of agency service.

The same scenario appeared in the BN Miles City Closing.

We would like to report to this committee that since the passage of the 1987 legislation eliminating PCN population criterion the following stations have been closed:

MONTANA RAIL LINK was given authority to close:

Darby, Hamilton, Stevensville, Superior, St. Regis,
Thompson Falls, Plains, Paradise, Ronan, Folsom, Drummond,
Phillipsburg, Toston, Townsend, Big Timber, Columbus, Alder,
Whitehall, Sheridan, Twin Bridges.

MONTANA RAIL LINK Stations that are still open:

Missoula, Helena, East Helena, Toston, Three Forks,
Harrison, Belgrade, Bozeman, Billings, Laurel.

Total Open MRL Montana Stations ten (10)

BN STATIONS CLOSED BETWEEN APRIL 1987 thru November 1988

Brady, Dutton, Conrad, Valies, Choteau, Power, Big Sandy,
Rudyard, Hingham, Wibaux, Circle, Farivdiew, Miles City.

At total of 13.

BN CLOSURE APPLICATIONS HEARD and awaiting PSC decision:

Chester, Harlem, Chinook, Hysham, Terry, Ophiem, Glentanna,
Richland, Peerless, Scobey, Four Buttes, Plentywood,

Medicine Lake, Reserve, Antelope, Froid, Homestead, Culbertson. Total of 17 Fort Benton was denied.

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BN STATIONS THAT ARE STILL OPEN:

Garrison, Huntley, Hardin, Forsyth, Glendive, Sidney, Wolf Point, Glasgow, Malta, Ft. Benton, Havre, Sweet Grass, Cut Bank, Shelby, Browning, Columbia Falls, Eureka, Whitefish, Kalispell, Libby, Great Falls, Stanford, Lewistown. Total Tenty Three (23).

UNION PACIFIC STATIONS 125 Mile operation

Dillon, Silver Bow, Montana

MONTANA WESTERN, 55 mile operation

Butte, and Silver Bow, Montana...

CONCLUSIONS

Montana railroads have closed 32 stations from April 1987 To August 1988 for an average of two stations per month. There are 17 stations awaiting PSC orders, and only one station closing was denied - Ft. Benton..... This is an alarming withdrawl which ignores the public and denies remote areas of Montana to rail agency services.

HB 626 addresses the concerns of Montana Communities relating to Rail Safety and public need.

Thank you for allowing me to appear before this committee..



JAMES T. MULAR, SLD TCU BUTTE MT

HB 626

RR

61-302. Maintenance of adequate service. — Every ~~public utility~~ shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. [1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.]

Cross ref. Equal transportation rights guaranteed, Const., Art. 11, § 6.

Cited in: Application of Pacific Tel. & Tel. Co. (1951), 71 Idaho 476, 233 P.2d 1024.

ANALYSIS

Abandonment of service.

Cost of service.

Discrimination.

Efficiency.

Equal facilities.

Negligence.

Rate making.

Right to require service.

Sufficiency of service.

Telephone service.

Warning of danger.

Water service.

Abandonment of Service.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

The action of the public utilities commission in denying a railroad's right to discontinue passenger trains on a certain branch

line and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains was neither arbitrary nor capricious, although the service was operated at a loss, where a discontinuance would leave the public practically without railroad passenger service and with only a minimum of bus service at a time when the operation of motor vehicles was seriously restricted because of war, and the operation of the railroad's entire system showed a profit. In re Application of Union Pacific R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Cost of Service.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose; and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. McIntosh v. Oregon R. & Navigation Co. (1909), 17 Idaho 100, 105 P. 66.

Efficiency.

Electric utility was found by commission to be rendering reasonably good service, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. (On rehearing) In re Idaho Light & C. Co., 2 P.U.C.I. 53, P.U.R. 1915A, 2; In re Idaho Light & C. Co., 2 P.U.C.I. 38.

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means

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and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Const., Art. 11, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell* (1912), 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 965.

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa loquitur*, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C. C. Anderson Stores Co. v. Boise Water Corp.* (1962), 84 Idaho 355, 372 P.2d 752.

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 P. 1083.

Right to Require Service.

A new district or community may be entitled to receive service from a public utility without guaranteeing an amount of revenue at the usual rates to satisfy the utility. *Walters v. Utah Power & Co.*, P.U.C.I. Case F194, Order 601, P.U.R. 1920C, 212.

Public utility will not be required to render service unless such rendering will afford a revenue which will pay the operating expenses and taxes, provide proper depreciation reserve, and afford a fair return on the investment judiciously made in property used, useful, necessary and required in the service of the public under efficient and economical management. In *re Idaho Power Co.*, P.U.C.I. Case F449, Order 838, P.U.R. 1922C, 705.

It is a common carrier's duty to furnish such service as will produce the greatest comfort and convenience to the greatest number of the traveling public. In *re Oregon-Washington R. & Co.*, P.U.C.I. Case F462, Order 841, P.U.R. 1922D, 155.

A public utility may be required to continue service only so long as the public support warrants such continuance. In *re Colonial Trust Co.*, P.U.C.I. Case F660, Order 1124, P.U.R. 1928D, 628.

The refusal of a public utility company to furnish service in any part of a territory in

which an independent company, not a public utility, has entered, cannot be justified, provided public convenience and necessity requires service therein. In *re Darnielle*, P.U.C.I. Case F663, Order 1138, P.U.R. 1928E, 211.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. In *re Application of Union Pac. R. Co. for Leave to Discontinue Agency at Montour* (1943), 64 Idaho 529, 134 P.2d 599.

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. In *re Application of Union Pac. R. Co. to Abandon Certain Train Service* (1943), 64 Idaho 597, 134 P.2d 1073.

Sufficiency of Service.

Service offered by public utility must be reasonably adequate and efficient and must be furnished at rates which the consumers can reasonably afford to pay. *Council v. Adams County Light & Co.*, P.U.C.I. Case F323, Order 661, P.U.R. 1920E, 381.

Adequacy of service was not shown by showing that under unusually advantageous conditions a sufficient supply of water could be had. *Eddy v. Lewiston Valley Water Co.*, P.U.C.I. Case F409, Order 777, P.U.R. 1921D, 479.

This section does not require maintenance of plainly excessive or obsolete equipment. In *re Boise Artesian Water Co.*, P.U.C.I. Case F504, Order 909, P.U.R. 1931A, 566.

X Extent of demand for service and use thereof by the public is to be considered in determining the reasonableness of and necessity for such service. In *re Oregon Short Line R. Co.*, P.U.C.I. Case F603, Order 1029, P.U.R. 1926E, 364.

Conditions may be such as not to require the keeping of an agency at a railroad station, and at the same time require a caretaker. In *re Northern Pac. R. Co.*, P.U.C.I. Case F643, Order 1085, P.U.R. 1927E, 653.

X It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. In *re Application of Union Pac. R. Co. for Leave to*



LEE R. KERR
ATTORNEY-AT-LAW

TREASURE COUNTY ATTORNEY

TREASURE COUNTY COURTHOUSE
P.O. BOX 72
HYSHAM, MONTANA 59038
342-5546

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 3/16/89
BILL NO. HB626
COPY
FOR YOUR INFORMATION ON
NO ACTION REQUIRED
KERR LAW OFFICE
P.O. BOX 72 406/342-5546
HYSHAM, MT 59038

March 9, 1989

Senator Gene Thayer
Capital Station
Helena, MT 59620

RE: House Bill 626, Public Convenience and Necessity Definition

Dear Senator Thayer:

I am deeply concerned about the present efforts of the Burlington Northern Railroad to close the depot and remove the agent from Hysham and elsewhere along the Burlington Northern route. You may recall in the 87 Legislature the Railroad lobby was successful in getting M.C.A. 69-14-202 amended, and modifying it to remove the requirement that a depot and agent be maintained in every county, and replacing it with a public convenience and necessity standard. Unfortunately, the Railroad may have been successful in convincing, to date, the P.S.C. to interpret the public convenience and necessity standard in a very narrow context, which does not allow the local community to adequately protect safety, health, and truly public convenience interests in regard to depot closings and agent terminations.

The legislative problem is the fact that public convenience and necessity is not defined. The Railroad has chose to define public convenience and necessity, not in the ordinary sense or meaning of those terms, but in terms of the absolute need of a local shipper to have an agent present. The Railroad has attempted to meet this definition by providing an 800 number to Glendive, which is made available only to Railroad shippers. This interpretation is a gross disservice to the local communities and completely fails to recognize important health and safety issues along with the convenience of the public at large, not only local shippers.

Hysham, like most communities presently affected by this statute, have only two local people within the Railroad they can look to if they have a problem with the Railroad, the section foreman and the local agent. If the local agent and depot are removed from all rural county seats and communities within Montana, then the only one that remains to address problems in the

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local communities is the section foreman. Typically, the section foreman is doing his job out on the rails and is not in an office or available to answer phone calls regarding problems with the Railroad. Without a local agent and depot, there is no one to call when there are problems with crossing arms, crossing lights or obstructions on the Railroad tracks. Local agents know when trains are coming and can provide information to local authorities. Without an agent, no information will be available. Trains are notorious for starting fires during the summer from hot cars. The Railroad has the primary responsibility to fight and control these fires while they are on their right-of-way. If there is no agent available to contact and not a staffed facility, then the burden will always fall to the county to fight these fires. Stock killings are also a frequent problem with the Railroad. Without a locally staffed facility, the public will have no one locally to turn to for filing a claim or compensation for these stock killings.

Further, removal of depots and agents can have a very negative impact to business development and should properly be considered by the P.S.C. before any decision is made to close a depot or to remove an agent. Once a depot and agent location is lost and it becomes a blind siding, points are often lost when applying for Federal grants. Most important, it must be remembered that this is a one way ticket. Under the statutes, once the P.S.C. grants authority to close a facility and remove staff, there is no mechanism or provision for the facility to be replaced or the staff to be returned upon a change of circumstances. This proposed amended to the statute does not require the facilities stay open or that staff not be removed, but it does take a step in the right direction in allowing a full and fair hearing before the P.S.C. of all important and relevant factors before a decision is made to close a facility or remove personnel.

The unfairness of M.C.A. 69-14-202 can be remedied by H.B. 626 and I strongly urge your support of this Bill.

This simple definitional insertion will clear up and clarify any distortion the Railroad is presently trying to give to public convenience and necessity, and will properly protect Montana citizens and their interests in safe, necessary, and convenient Railway service.

Please resist any amendments or language changes offered by the Railroad since this is an effort to gut the meaning of the necessary language. I hope you can all join in supporting this bill and get the word out on the floor that a message needs to be sent to the Railroad. The Burlington Northern simply wants to stop at the coal mines and blow its whistle through the rest of the state, without concern to its local responsibilities, including safety, health, and convenience of the public at large regarding use of the Railroad.

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I realize this Legislature may have a mandate of "pro-business". However, this issue is not a pro or an anti-business issue. This is simply a matter of requiring Burlington Northern, a quasi-utility, to provide basic essential services and live up to its obligation to the citizens of this state.

If you need any additional information, please don't hesitate to contact my office.

Sincerely,

Lee R. Kerr
Treasure County Attorney
Director for Treasure Co.
Custer Country Tourism
Region Board of
Directors
President, Hysham Chamber
of Commerce

LRK/df

TESTIMONY IN SUPPORT OF HB 652

Pertaining to Interest on Mortgage Escrow Accounts

1989 MONTANA LEGISLATURE

March 16, 1989

My name is Alan Wiener, and I am a homeowner in Missoula. I am not here representing anybody but myself. However, you must realize that the words in my mouth and the thoughts in my heart are shared by the hundreds of thousands of farm, ranch and homestead owners in Montana. I am also a mortgagee, which means that I have given my "death promise" (a meaning that comes from the Norman and old English words "mort gage") to a mortgagor which is a lending institution that takes up my "mort gage." Two years ago my wife and I refinanced our mortgage through a savings and loan association in Missoula. We shopped for a VA mortgage because of the savings on the interest rate and "points" which were, and still are, afforded under that program. Within one month after completing the mortgage instrument, it was sold to a large investment firm in Pasadena, California. We had been advised that this would happen during the negotiations. This is perfectly understandable because the lending institutions in our state do not hold mortgages anymore, they sell them through Fannie Mae and Ginnie Mae to out-of-state organizations.

The facts are that these banks, thrifts and mortgage companies are ripping off hundreds of thousands of property owners in Montana. When we think of the term "fiduciary responsibility" we equate that with prudence, and above all with fair-dealing. That is just not the case, and here are three strong examples:

1. All these mortgagors use a loop hole in the FHA Regulations to add a buffer to the impoundments in anticipation of tax and insurance increases. However, because of the semi-annual payment program in our state they make that buffer estimate while sitting on an actual second-half tax bill. That doesn't make any difference to them, they just add an increase on the

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total bill. Also, they refuse to recognize our Constitutional limitation on property tax bills.

2. When these mortgagors impound monies in an escrow account for the payment of insurance and taxes, they always impound the full insurance premium. Yet, one-third of that premium is none of their business. The coverage that a property owner buys for personal property and for liability does not have anything to do at all with the mortgage. These latter two coverages are not required under the terms of any Mortgage Instrument. Why then, should they be included in an impoundment?
3. Worst of all, they just won't pay interest on their escrow accounts unless required to do so by state law. That is why a growing number of states, including most of our neighboring ones, have passed similar legislation.

In my own case, when I objected to this buffer for two years in a row, the little old ladies in tennis shoes from Pasadena, California (and I am talking about the biggest buyer of Montana mortgages), gave in on the buffer so quickly that I began to smell something fishy! In researching this bill I have talked to dozens of Montanans who have had all kinds of problems with these impoundments like refusal to recognize property tax adjustments, screwups in payments to insurance companies and County Treasurers and going beyond our State's legal limit of 110% on impoundments. Montanans need legal protection from these and other excesses perpetrated by those out-of-state lenders.

To my way of thinking these practices are a form of cheating by the lending institutions. It becomes particularly obnoxious when one realizes that the Federal Programs which require impoundments of funds for taxes and insurance on all VA and FHA mortgages state that these funds must be held in Escrow. Now Escrow is defined as the holding of funds in Trust Accounts, which has been interpreted by the Courts as monies kept in separate accounts, and not to be invested "at risk" for profit. As an

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example of this type of situation, let me call your attention to a report in THE WALL STREET JOURNAL of August 20, 1982 (a copy of which is included in the material which I will provide to the Clerk of your Committee.) It appears to me, as one concerned citizen, that if HB652 were enacted those out-of-state mortgagors would be put on notice to straighten up their acts.

With these insights, let us now discuss the implications of HB652. It is impressive to note that this bill was proposed by Representative Vivian Brooke, who as a former President of the Missoula League of Women Voters and as a homemaker, is very sensitive to concerns about protective legislation for all the people of Montana and about legislative protection for the household pocketbook. As you may already know, similar legislation was proposed under HB607 of the 1983 Legislature. That bill was "tabled in committee for public relation reasons." I am here to say that this was a misnomer, and could more probably have been identified as PAC reasons. In view of the misleading testimony offered to that Committee by six members of the Montana banking community it is not hard to read that meaning into the Motion to Table. I will shortly offer some rebuttal and refutation of that testimonial ilk.

It was stated in 1983, by Representative Jan Brown that her motivation to offer that Bill was due to a survey taken by the HELENA INDEPENDENT RECORD just the month before which asked the readers to submit ideas for legislation they would like to see enacted. Two very heartfelt letters from homeowners mortgagees were included in that testimony. I would point out that they represent the feelings of hundreds of thousands of farm and ranch owners and householders in this State. For "public relation reasons," may I point out to the Committee that these hundreds of thousands of mortgaged property owners really don't like to feel that they have been ripped off.

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The 1983 bill was poorly written, it had only three paragraphs. In contrast HB652 which you are considering today was very well researched by the Legislative Council, and it was compared with similar enacted legislation by a number of other western states. Recognition of such existing legislation and the growing number of states that have enacted it can be seen on Exhibit One, appended to my testimony. The two annual statements of my mortgage activity, as required by the IRS, have a line on them entitled: INTEREST PAID TO YOU ON FUNDS HELD IN ESCROW. Ask yourselves, why would they have that line entry, except that they do have the mechanism in place to pay such interest according to the laws of the states that have enacted such legislation.

HB652 was not only compared with existing laws in other states, but the Legal Counsel of the Legislative Council had the Legal Counsel of the Regional Office of HUD, in Denver, look at the bill. That office said in effect that they would have no problems with HB652! Thus, we have a Bill that offers protection to all those Montanans whose voting instincts I guess you know only too well. These are the kind of "public relation reasons", that I hope you will keep in mind when you vote on this measure.

May I now call your attention to Exhibit Two and Three appended to my testimony. Let me explain just the basic mathematics in my projections to assure you of their validity. They are meant to give you an indication of the impact of HB652 upon the economy of Montana. The projection I gave you of three to six million dollars a year flowing into the economy of our state is purposely low because I took such low figures for the "nominal" tax and insurance bills. In my own case, my wife and I pay an insurance bill that is 160% higher, and a tax bill that is 177% higher. Looking around the Committee table it is apparent that a number of Members of the Committee have tax and insurance bills are which higher than the "nominal" \$1300 figure I have given.

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The reason I took such low figures was to point out the impact on the poorest farm, home and ranch owners in our State. Thus, you might assume that the three to six million dollars a year flowing into the economy of Montana that is fostered by this bill would more probably be five to eight million dollars a year. Not so much because Montanans are richer people, but rather because so much property in Montana is farm and ranch type holdings, which means we have a higher incidence of mortgages than most other states.

Finally, Mr. Chairman, I would like to rebut and refute the earlier testimony of the Montana banking community. John Cadby of the Montana Bankers Association said that, "He doesn't think that any county would like to rely upon each home owner to pay these taxes." Was he assuming that these hundreds of thousands of Montana farm, home and ranch owners would put the biggest investment of their lives, and the physical base of their family's heritage, in jeopardy by not paying the taxes, in the face of sure foreclosure? Was he saying that Montanans cannot be trusted? He said that, "Banks make direct payments to counties twice a year that covers thousands of homeowners," inferring that it was easier for the County Treasurers to deal with a few checks covering thousands of parcels of property. How ridiculous! Every penny of every single tax bill has to be recorded individually, what difference is there if they get one check or many? What he didn't say was that these payments were on VA and FHA mortgages where impoundment was required by Federal Legislation. What about the Conventional mortgages. No self-reliant Montanan who was so well off as to be able to get a Conventional mortgage would likely submit to impoundment. That was exactly the case with one of the Republican Members of the House Committee on Business and Economic Development who told me that he had voted for this bill. His philosophical outlook is similar to a majority of the Committee Members here.

Mr. Cadby's nine comments are Exhibit Four in my testimony. Let me rebut and refute them one by one.

1. Would the banks rather not give interest to those few Conventional mortgagees who voluntarily submit themselves to the discipline of budgeted monthly payments? What would happen if these Conventional mortgagees were to establish a periodic deposit type savings account in the bank for payment of their taxes and insurance, would the bank have problems paying interest on that account? I am sure we would all bet the same way on that.
2. HB652 does not discourage impoundments in any way, shape or form. Now as to the county tax collectors, their administrative expenses would not be increased one iota under this bill. The payment of interest on the Escrow Accounts would be out of their purview.
3. That statement is not true! How many farms and ranches were foreclosed because the owner "forgot" or "would not" pay the taxes? He's trying to confuse you by inferring that reason to explain all of those farms and ranches that were lost because of the wrongful blandishments of the banking community about easy loans.
4. This statement is misleading. My Exhibit Five will show you the relationship between these few dollars in interest and the tremendous profit produced by mortgages. Then look at my Exhibit One to see how attractive interest paying mortgages in other states really are to these "little old ladies in tennis shoes from Pasadena."
5. This is not the case. Lenders not only have to complete an IRS Form 1099 to report the interest they paid the borrower, but also, and more importantly, to report the amount of interest the borrower might deduct on his or her Federal Income Taxes. Now, look at my Exhibit Two. The average monthly balance on the example given is just \$179 more than his example. Is he saying that banks won't pay interest on these low balance savings accounts such as those held by youngsters in their community?

Ex. #12
3-16-89

6. This thinking is fallacious. No Escrow Account can be put at risk. Interest amounting to \$25 a year could not be described as small potatoes. Why those very banks pay interest on checking accounts in amounts as low as \$5 to \$10 a year.
7. A loss! That's misleading! Look at my Exhibit Five. How about the 3.5% in up front monies banks charge for just initiating a mortgage? How does that equate with the huge profit dollars they make on the mortgage?
8. HB652 puts to rights a shoddy practice by all these mortgagors! And the only protection they can get is if you enact HB652.
9. How does a borrower's delinquency get affected by HB652? NO WAY! Also, if there is a negative balance in the Escrow account it can only be due to shoddy administration by the lender, and I've already described some examples of that type of situation.

Mr. Cadby portrayed this type of legislation as an anti-consumer bill. Actually, it is a pro-bank and thrift bill. Doesn't the banking community have any idea of where these hundreds of thousands of interest payments would go? Discretionary income like this almost always ends up in checking and savings accounts. So these same bank and thrift institutions in our state would be the richer because of HB652.

Another banker, whose name I cannot remember, testified to the House Committee that this bill would increase a bank's mortgage administration costs, and would drive up the interest rates the bank would have to charge on a mortgage. Nothing could be further from the truth. He knew that the mortgage rates are set in the market place, competitively. He knew that his bank charges 3.5% up front just to initiate a mortgage. He knew that bank profits are up in this country by some \$25 Billion. He knew he was trying to pull the wool over the eyes of this Legislature. What he didn't know was that the voters in your Districts won't let you be that naive.

In his 1983 testimony Mr. Cadby made the biggest boner of all. He said that banks and thrifts offer this service to Escrow Accounts for free. On the most "nominal" of such Escrow accounts they handle up to \$1300 a year, totally, and impound monies for insurance premiums which are none of their business, and pay no interest on these funds, and the larger accounts are subsidizing the smaller ones. Can you buy that? Do you on this Committee feel that the hundreds of thousands of mortgagee voters who supported you think that you can buy that?

Lastly, Mr. Chairman, because of these bankers who were crying wolf, the House included a bone for the dog by authorizing a .5% service fee on interest bearing Escrow accounts, and specified the old passbook rate of 5 and a quarter percent. Now that this Committee is aware of the 219% profit that is made on a mortgage, and how little the whole business would be affected by the small interest involved in the Escrow account, I ask this Committee to consider the feelings in your hearts when you were first elected to this office. I am sure that you were determined to seek out the right thing to do in each case, and vote it! By contrast, Mr. Chairman, HB652 gives you an opportunity to increase the deposits in these Montana bank and thrift institutions by millions of dollars a year. Help them to see the light, and you will help them improve their business. I charge you to do the right thing by the voters in your Districts, and raise that Escrow interest rate to 10%, and eliminate that insult of a .5% service fee.

I wish to thank the Chair and the Committee for their indulgence, and urge them to unanimously endorse this small modicum of protection to hundreds of thousands of property owners in the state by bringing in these millions of dollars into our economy each and every year henceforth.

EX #12 3-16-87
EXHIBIT ONE



155 N. LAKE AVE. • P.O. BOX 7137 • PASADENA, CA 91109-7137

* SEE OTHER SIDE FOR IMPORTANT
* TAX INFORMATION

LOAN NUMBER 1700915

TAX ID NBR 044-16-7522

PROPERTY 102 ROLLING GREEN PLACE
ADDRESS MISSOULA, MT 59810

TOTAL INTEREST YOU PAID IN 1988	\$	12232.32
PROPERTY TAX YOU PAID IN 1988	\$	1586.04
INTEREST PAID TO YOU ON ESCROW FUNDS HELD IN 1988	\$.00
PRINCIPAL BALANCE ON 12/31/88	\$	128246.55
ESCROW BALANCE ON 12/31/88	\$	201.51

TO ALAN J. WIENER
LOIS M. DARLEY
LOIS M. DARLEY
102 ROLLING GREEN PLACE
MISSOULA MT 59803



155 North Lake Avenue
P.O. Box 7137
Pasadena, California 91109-7137
For Inquiries: 818 304-8400x3525

Annual
Mortgage
Statement
1987

Prepared for ALAN J. WIENER
LOIS M. DARLEY
Account No. 1700915

1/10/437-5500

**PLEASE RETAIN
FOR YOUR RECORDS**

Beginning Principal Balance	130,000.00	Beginning Escrow Balance	.00
Ending Principal Balance	129,198.38	Escrow Deposited	2,687.21
Principal Paid	801.62	Hazard Ins. Disbursed	638.00
Last Installment Paid	12/01/87	FHA/PMI Ins. Disbursed	.00
Accrued Late Charge	.00	Misc. Disbursement	.00
Fees Due	.00	Real Estate Tax Disbursed	1,574.34
INTEREST PAID	* 12,315.70	Interest Paid To You On Escrow *	.00
		Ending Escrow Balance **	454.87

INCLUDES INT PD TO W. FED SYL

This information is being furnished to the Internal Revenue Service. The amount shown is deductible by you on your federal income tax return only to the extent it was actually paid by you and not reimbursed by another person.

*** INTEREST PAID TO YOU ON ESCROW, MUST BE REPORTED AS INTEREST INCOME.**
**** THE BALANCE DOES NOT REPRESENT AN OVERAGE. THE AMOUNT IS FOR FUTURE TAX & INSURANCE PAYMENTS.**

THE DOLLAR IMPACT OF PROPOSED LEGISLATION
TO REQUIRE THE PAYMENT OF INTEREST
ON IMPOUNDED FUNDS PURPORTED TO
ENSURE THE PAYMENT OF INSURANCE AND TAXES
ON MORTGAGED PROPERTY

The attached charts are based upon two assumptions. The first is that a 'nominal' mortgage would involve a home that is valued between \$75,000 and \$100,000 which would entail an annual insurance premium of \$400, and an annual tax bill of \$900. Each Legislator can personally verify the credibility of these figures by a comparison with the tax and insurance bills on his or her own homestead.

The second assumption is that while property tax bills are paid twice a year in this state (half in May and half in November), for purposes of clarity the first chart shows these two payments being made in January and June so that the year starts with the impounded funds at zero, with a half property tax payment being made at the end of June, and the other half property tax payment plus the full insurance premium being paid at the end of December.

Thus, it can be determined that such impoundments could generate annual interest payments of \$25.16 to each householder if the interest rate were set at the current level of Passbook Savings Accounts. If the interest rate were set at the current Prime Interest Rate, the interest payments would total \$47.92.

Both of these interest payment amounts are based on a "nominal" bill of \$1300 annually for insurance and property taxes. When divided into twelve payments this amounts to \$108.33 per month. The amount in the ESCROW ACCOUNT column is incremented by \$108.33 each month. The June total of \$650 is then reduced by one-half the taxes, or \$450, and then incremented by \$108.33 to reach the July total.

In the second chart, which is in rounded millions to two decimal points, the first amount is based upon information from the public records. Approximately \$9.31 million of the annual county receipts from property tax payments are paid by institutions on behalf of property owners. By extrapolation: if 69% of the total equals \$9.31 million, 100% of the total would equal approximately \$13.49 million.

To extrapolate further, multiply the total impounds in the county by the interest percentage of the annual impound (1.94% of \$13.49 million or 3.69% of \$13.49 million) and it can be determined that this legislation would generate between one-quarter to one-half million dollars, before taxes, into the economy of this county each and every year.

There are two ways to estimate the statewide impact of these figures. Both methods reveal figures that are so close as to imply that the one verifies the other.

The first method is to use the approximate percentage of the population of Montana inhabiting Missoula County, which is 8.39%. Thus, \$.26 million divided by .0839 equals \$3.10 million at the Passbook Rate of interest; and \$.50 million divided by .0839 equals \$5.96 million at the Prime Rate of interest.

The second method is to multiply the Missoula interest totals by the number of counties, which is 56, and divide by 4.7, which represents the factor between the average county population in Montana and that of Missoula County. Thus, \$.26 million times 56 and divided by 4.7 equals \$3.10 million at the Passbook Rate of interest; and \$.50 million times 56 and divided by 4.7 equals \$5.96 million at the Prime Rate of interest.

A PROJECTION OF WHAT INTEREST BEARING MORTGAGE ESCROW ACCOUNTS COULD ANNUALLY PRODUCE IN THE HANDS OF MISSOULA COUNTY FHA, FmHA AND VA MORTGAGORS

IN TERMS OF A NOMINAL MONTANA FHA, FmHA, and VA MORTGAGE:

Estimated Annual Insurance:	\$400.00	30.77%
Estimated Annual Taxes:	900.00	69.23%
	<u>\$1300.00</u>	<u>100.00%</u>
Divided by 12 (ea. payment)	108.33	

	ESCROW ACCOUNT	PASSBOOK INTEREST @ 5.25%	PRIME RATE INTEREST @ 10%
	=====	=====	=====
First Monthly Impound	108.33	.47	.90
2nd " "	216.67	.95	1.81
3rd " "	325.00	1.42	2.71
4th " "	433.33	1.90	3.61
5th " "	541.67	2.37	4.51
6th " "	650.00	2.84	5.42
* 7th " "	308.33	1.35	2.57
8th " "	416.67	1.82	3.47
9th " "	525.00	2.30	4.37
10th " "	633.33	2.77	5.28
11th " "	741.67	3.24	6.18
** Last " "	850.00	3.72	7.08
		=====	=====
INTEREST DUE TO HOMEOWNER: ----->>>		25.16	47.92
AS A PERCENTAGE OF TOTAL IMPOUND:		1.94%	3.69%

- * REDUCED AT END OF PRIOR MONTH BY HALF OF TAXES PAID (\$450.00)
- ** REDUCED AT END OF MONTH BY HALF OF TAXES AND ALL OF INSURANCE PAYMENTS (\$850.00)

=====

IN MILLIONS OF DOLLARS

IN MISSOULA COUNTY THE AMOUNT OF TAXES PAID BY INSTITUTIONS ON BEHALF OF HOMEOWNERS IS:	\$	9.31
IF TAXES ARE 69% OF THE ANNUAL IMPOUNDED FUNDS, THEN THE TOTAL IMPOUNDS ARE:	\$	13.49
THUS TOTAL ANNUAL INTEREST PAYABLE TO AFFECTED HOMEOWNERS IN MISSOULA COUNTY WOULD BE:	\$.26 at 5.25%
	OR \$.50 at 10%

CONCLUSION: Interest payments on these impounded funds would generate **\$260,000.00 to \$500,000.00 yearly** into the economy of this one County. These monies would be distributed among tens of thousands of homeowners.

Note: These interest payments would represent discretionary income, which in all likelihood can be assumed to immediately appear in circulation within the county.

INTEREST ON MORTGAGE RESERVES

1. Some borrowers may establish their own reserve accounts on conventional loans. Most, however, prefer the convenience of paying the principal, interest, taxes, and insurance on a monthly budgetable single payment. Further the discipline imposed by the budgeted monthly payment is attractive to some homeowners who do not exercise good savings habits to meet the debt when due. *PAY THE LENDER, BUT NOT THE COUNTY OR INSURANCE* (SIC)
2. HB-652 discourages establishment of reserve accounts for payment of taxes and insurance. Thousands of homeowners' taxes are now paid in one lump sum with a check by banks and S&L's. Without reserve funds, county tax collectors would have considerably more administrative expenses, more delinquent problems, higher collection costs, and require higher taxes.
3. The Farmers Home Administration does not require reserves for taxes and as a result counties have to sell houses to recover taxes due.
4. Interest on reserves may just be the straw that broke the camels back, as it would not be worth the hassle. HB-652 prohibits service charges making it even less attractive for all lenders in and outside of Montana.
5. An average house worth \$60,000 and average reserve balance of \$300 @ 5-1/4% = \$15.75 interest for borrowers. The banks administrative costs are higher than this. Further, the bank would have to complete a 1099 showing total interest paid for the IRS. -
6. Interest on reserves penalizes the low income. Large reserve accounts earn a profit to the bank and S&L's, but small accounts are carried at a loss. The system is similar to a progressive income tax in that the large accounts on upper income carry the smaller accounts or low income borrowers. Small reserve balances do not yield sufficient interest to offset handling costs.
7. The VA, FHA, State Board of Housing, State Board of Investments, and other public and private insuring agencies require reserve funds for home mortgages to assure timely payment of taxes and insurance premiums. Banks cannot discontinue this service even if forced by HB-652 to operate at a loss. HA!
8. HB-652's exemption for mortgage contracts previously entered into only if there is a written agreement allowing lenders to retain interest is unlikely. All previous contracts should be exempted as of the effective date. . .
9. What happens when the borrower is delinquent or if the reserve fund has a negative balance after payment of taxes and/or insurance? Can a lender impose service charges on the negative balance?
↓
PER ADMINISTRATION MAYBE!

Ex. #12

3/16/89

Judge Confirms Damages Against BankAmerica Unit

Special to THE WALL STREET JOURNAL

SAN FRANCISCO — A San Francisco judge ruled that Bank of America was "guilty of willful, calculated and deceitful conduct" when it used mortgage holders' tax and insurance prepayments to earn a profit for the bank.

The harsh language came in a 51-page decision by Superior Court Judge John Dearman, confirming his previously reported January decision that the ~~Bank America Corp. will must pay \$101 million to mortgage holders who made the payments called impounds, from 1958 through 1978.~~

The award, which is to be distributed to 170,000 mortgage holders, is thought to be the largest judgment on record levied against a bank in this country. If upheld, each mortgage holder would receive an average of \$594.

The judge also awarded \$3.5 million to the attorneys who filed the suit 10 years ago on behalf of Bank of America mortgage holders throughout California.

A bank spokesman called the ruling unwarranted and said the bank would appeal it.

~~The decision completes the judge's ruling that the bank misused the prepayment trust funds by lending out the money and using it in general bank operations.~~

After the 17-day class-action trial, Judge Dearman issued a two-page intended decision last January awarding mortgage holders \$47 million in actual damages and \$54 million in punitive damages.

Last May, the judge heard new arguments by the bank's attorneys, who claimed that the punitive damages shouldn't be allowed because the plaintiffs hadn't introduced any evidence of malice or fraud at the trial. But in his written final order, the judge strongly disagreed, calling the bank's misuse of the funds "malicious, fraudulent and oppressive."

Judge Dearman was appointed to the San Francisco municipal court by Gov. Edmund G. Brown Jr. in 1977 and elevated to the superior court by the governor two years later. He is the former law partner of Willie

Jim Walter 4th-Period Outlook

TAMPA, Fla. — Jim Walter Corp. expects to report an operating profit for its fiscal fourth quarter, ending Aug. 31, compared with a year-earlier net loss of \$1.3 million, Jim Walter, chairman, said.

"If interest (expense) continues to moderate, I can see a nice—not dramatic—turn-around," the head of the diversified home building concern said. He added, "I hope I'm not in a fool's paradise."

Mr. Walter didn't estimate the size of the expected profit, nor did he indicate how revenue in the period would compare with the year-earlier \$538.5 million.

TESTIMONY IN OPPOSITION TO HB 652
Before the Senate Business and Industry Committee
March 15, 1989
by
Gerry G. Hudson
2974 Millice Ave.
Billings, Montana 59102

Mr. Chairman, Members of the Committee, I am here today to testify to the likely effects of the passage of House Bill 652. When you realize the facts about making home mortgage loans in Montana, I am hopeful that you will agree that this legislation would be very harmful to all the people of Montana who will be seeking home loans in the future.

Nearly every institution in the state, whether commercial bank, savings & loan, or mortgage bank, sells their loans on a spot basis. This means that as soon as a loan is recorded it is sold on an individual basis to the secondary market. The "secondary market" is made up of private entities with enough capital to collect these individual loans into packages or "pools". The principle balances are then sold on to FNMA, GNMA, or FHLMC. (Fannie Mae, Ginnie Mae, Freddie Mac) These quasi-governmental organizations provide funds to purchase mortgages through the sale of mortgage backed securities to individual and institutional investors. The servicing of the loans (collection of payments, administration of escrow impounds, etc.) is retained by the secondary market. When a house payment is sent to the secondary investor, the principle and interest portion is passed on to FNMA, GNMA, or FHLMC and eventually the interest is forwarded to the holders of the mortgage backed securities. This system of funding home loans was designed to attract investors from capital rich areas to capital poor areas. By virtue of our population size, Montana is a capital poor area.

The secondary investor retains the risk of default and foreclosure. If a loan goes into default/foreclosure, the servicer is responsible for paying the interest on the loan, and keeping taxes and insurance current on the property until it is repurchased by the guaranteeing agency (FHA or VA) or, in the case of conventional loans, until the property can be foreclosed and resold. A state like ours carries with it an enormous risk for any secondary investor. Because of our sparse population and dependence on cyclical industries (timber, agriculture, coal and oil, etc.) we are subject to economic downturns, sudden unemployment, falling real estate values and all the other problems associated with economy's such as ours. For the last many years, the risk has been getting larger and larger. In Yellowstone County alone, FHA (HUD) is taking back about 50 homes per month at the present time. All these loans require continued payment of interest, taxes, etc., while going through the foreclosure process - all at great expense to the secondary markets.

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Lest we wrongly assume that the secondary market is "big" enough or "rich" enough to absorb the losses that have been and are occurring as a result of default/foreclosure in Montana, I would like to point out the following: In the summer of 1988, the second largest secondary investor announced without prior notification that they would no longer purchase mortgage loans originated in Montana. This investor was providing a good product at a competitive price and was questioned as to their reasoning. Their reply was that they had just completed an analysis of their default/foreclosure portfolio for the entire nation and found that a full ten (10) percent of their losses were being created in Montana. Gentlemen, we do not need to give any of our secondary markets any more reasons for pulling out of the state. A likely effect if HB 652 passes and becomes law.

Now let's examine the income and expense "side of the coin" in servicing mortgage loans. For example; the average FHA insured loan closed by my company in Yellowstone County is \$57,000. Servicing income for a loan that size in the secondary market would average about \$250. per year (a percentage of the amount of the principle and interest payment on the loan.) Proponents of this bill have calculated the interest paid to the borrower on escrows at \$25.00 per year. This is a reasonable average and it is easy to calculate an additional expense to the secondary market of about ten percent. It is reasonable to assume that no business would absorb a ten percent increase in costs without passing those costs along to the consumer in the form of higher prices. A sure result if HB 652 passes and becomes law.

It is significant to note here that many states prohibit the custodian of escrow impound accounts to place them in interest bearing accounts or otherwise invest the funds they are holding. My firm's largest investor (purchased 60% of our loan production in 1988) has such restrictions placed upon them. They are also prohibited from holding their funds in another less restrictive jurisdiction. Firms confronted with such restrictions, and this proposed law in Montana, would have but two choices: raise prices to cover interest paid out and administrative costs for the life of the loan, or cease doing business in our state. Either or both are likely should HB 652 pass.

As stated earlier, most loans are sold outside Montana and with them goes the servicing. HB 652 could result in having to retain the servicing within the state. A procedure such as this would require the ability to package groups or pools of loans and sell them directly to FNMA, GNMA, or FHLMC. However, this would require an immense amount of capital while the loans are being gathered into pools large enough to sell directly. Pooling loans is in itself a very risky business. During the sudden market shift in April, 1987, one of the largest and most sophisticated mortgage poolers in the nation lost in excess of 250 million dollars in a single day! I can't think of too many institutions in this state who would be

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willing to compound their risks in mortgages in this fashion. Also, to be a FNMA, GMNA, or FHLMC direct seller/servicer one must meet very strict requirements by those organizations. Net worth, longevity, and volume requirements would restrict all but the very largest institutions from participating. My firm would not be qualified to participate and be put at an extreme competitive disadvantage or forced to cease operations.

Proponents of this legislation would have you believe there is a bandwagon of consumer sentiment on which to jump. Such is simply not the case. Since the early 1970's, only 13 states have passed laws requiring interest on escrows and none of those states have laws as restrictive as the one proposed here. Virtually all of those states are in densely populated, high-growth, low risk areas where there are factors which would compensate secondary markets for the added costs of doing business. California for example, has the broadest law covering only 1 to 4 unit family dwellings and the mandated interest rate is only 2%. Other rates run from "not stated" to a high of 5.25%. Each state has varying restrictions which serve as compensating factors. This type of legislation has not been considered seriously for the last five years in any state legislature, except in Montana.

Proponents would also have you believe that this law has the implied "blessings" of the HUD Regional office in Denver. To say "in effect they would have no problems with HB 652" is to say that HB 652 does not contradict or supersede FHA regulations for insuring mortgage loans. The fact is, HUD does not participate in the secondary mortgage markets. Other than approving companies to originate and service mortgages they do not regulate the secondary markets. HUD's only function in the marketplace is insuring loans against default. Therefore, HUD's opinion of "no problem" with the law is understandable since it in no way falls under their jurisdiction.

If this legislation was in fact compared with existing enactments from other states the most restrictive portions were included here. Montana would be only the fourth of the Western states to enact such legislation. The others are California, Oregon and Utah. The authors of this bill have indeed put teeth into the law and they are teeth which would destroy the system which succeeds in keeping mortgage money flowing freely into Montana. It is not the solution for the procedural, administrative problem of escrow account adjustment as suggested by the chief proponent of this bill in the House committee hearing.

Proponents have attempted to refute arguments put forth during the 1983 session when similar legislation was being considered. I submit to you, Gentlemen, that six year old arguments, either pro or con are not reliable. We all know that 1989 Montana is not economically the same as the 1983 Montana. Our economy has changed (in our part

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of the state that means worsened), underwriting of mortgage loans has become more strict and real estate values have fallen. We are not the same Montana as we were in the late 70's and early 80's when we were "rolling high." The arguments must be fresh, well considered and pertinent to the world in which we are living and buying homes today.

Proponents would also have you believe that this is an issue of PAC's. It simply is not. To rely on and raise so popular and emotionally divisive an issue as political backing is to cloud the realities of the effects of this legislation. This would fall short of doing what is best for all the people of Montana.

In closing, please let me say that I am aware that the secondary mortgage market system is not perfect. Problems, and occasionally, abuses do exist. I concur that there probably isn't a mortgagee in the state who wouldn't like to have interest paid on escrow impounds - I would. But the trade-offs are too great! I care more that our already precarious relationships with secondary investors be fostered rather than assaulted. I care that future consumers of home mortgages will not have to pay higher prices to off-set minimal returns. I care about keeping mortgage money flowing freely into Montana at prices that are competitive with the rest of the nation. And, finally, I concur that House Bill 652 will have a very definite impact on Montana's economy - it will, in one way or another, adversely affect every future home seeker in the state.

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Computation of Probable Borrower Cost
of
5.25% Interest Paid on Escrow Impounds

Average interest paid annually to borrowers whose taxes are \$1,300 per year and insurance premium is \$400 per year = \$25.00 annually.

30 Year mortgage x \$25.00 = \$675.00

Administrative costs of computing average monthly balances, reporting requirements, additional communications, etc. Approximately \$3.00 per month.

30 Year Mortgage x 12 months/year = 360 x \$3.00 = \$1,080.00*

Annual interest payment to borrower	\$ 675.00
Administrative costs	1,080.00
TOTAL REAL COSTS	\$1,755.00

Conservatively speaking, House Bill 652 would add a total of \$ 1,755.00 in real costs in obtaining a new mortgage loan. These figures are based on approximate taxes and insurance premiums for a moderately priced home (\$60,000 price range.) Higher taxes and insurance escrows would add to these costs.

* While administrative costs are prohibited by this law, they are nevertheless added "real" cost and as such would be reflected in higher initial loan costs (expressed as discount points).**

** Expressed in discount points, an added cost of \$ 1,755.00 on a \$60,000 mortgage loan = 2.95 discount points (2.95%).

If a given interest rate were to cost 2 discount points in the normal marketing of a mortgage loan, this law would more than double the cost to the home seeker to 5 discount points.

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INTEREST ON TAX AND INSURANCE ESCROW ACCOUNTS
State Requirements

<u>State</u>	<u>Rate</u>	<u>Application</u>
CALIFORNIA	2 %	Real property containing 1 to 4 family residence.
CONNECTICUT	5.25 %	1 to 4 unit, owner occupied residences & co-ops. NOT required if the loan is sold within 1 year of origination.
IOWA	Min. is pass-book rate.	Applies only to banks, S & L's, credit unions, industrial loan companies.
MAINE	3 %	1 to 4 unit owner occupied res.
MARYLAND	Passbook or 3 %	Out of state loan purchasers are exempted and if the loan is FNMA, GNMA, or FHLMC.
MASSACHUSETTS	Not stated	1 to 4 unit owner occupied homes. First mortgages only. Some reporting exemptions.
MINNESOTA	5 %	1 to 4 unit owner occupied, except FHA, VA, FmHA and conventionals with higher than 80% loan.
NEW HAMPSHIRE	5 %	Single family homes.
NEW YORK	2 %	1 to 6 family owner occupied.
OREGON	Min. 4.5 %	Loans less than \$100,000 owner occupied only.
RHODE ISLAND	4 %	1 to 4 unit owner occupied, except FHA, VA, FmHA and privately insured conventional loans.
UTAH	5.25 %	1 to 4 unit owner occupied, except FHA, VA, FmHA and privately insured conventional loans.
WISCONSIN	5.25 %	Not required if the escrow funds are held by a third party in a non-interest bearing account.

Source: "State Legislative Compilations" published by the Mortgage Banker's Association.

INTEREST ON ESCROW ACCOUNTS

DATE 3/16/89BILL NO. HB 652

(Third Reading Bill As Amended)

Edman

This bill requires interest, 5-1/4% simple interest paid on the average month-end balance escrow accounts unless "prohibited by federal law or regulation." This would apply to any real estate loan which covers a residential structure of not more than four housing units, at least one of which is the primary residence of the borrower.

As amended the lender can charge for the administration of the reserve account an amount not exceeding 0.5% of the annual remaining balance of the account (for example \$1.50 on a balance of \$300).

Suggested amendments:

1. Amend so that if the lender advances money for taxes, insurance, or other escrow items, the lender is allowed to charge interest on those advances at the same rate for the period the advances were outstanding.
2. Make the bill applicable only as to escrow accounts created on or after the effective date of the bill. Section 4, the applicability date, now reads ""Applicability -- nonimpairment of contracts. (This act) does not apply to a reserve account established prior to (the effective date of this act) if the lender and borrower entered into a written agreement that authorized the lender to retain the interest on the reserve account."

Thus if the agreement did not reserve to the lender the right to retain the interest the act would apply to all existing escrow accounts. I would doubt that any escrow agreement so provided. In fairness the act ought to apply only to escrow accounts created on and after the effective date.

3. An exemption for escrow funds placed in non-interest bearing demand accounts at banks.
4. An exemption for escrow accounts required by a state or federal regulatory authority.
5. An exemption for escrow accounts maintained in connection with loans made, guaranteed, or insured by a state or federal governmental lending or insuring authority, such as FHA, VA, FmHA, or state housing finance authority.
6. An exemption for mortgage loans that are sold within one year after the date of the mortgage by the original lender neither affiliated with nor owned in whole or in part by the purchaser of such mortgage.
7. An exemption for the maintenance of an escrow account if the loan exceeds 80% of the lender's appraised value of the property.

15-105032-3/16/89

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE, AS A MATTER OF INTRODUCTION, MY NAME IS A. J. KING. I AM A REAL ESTATE LOAN OFFICER FOR THE VALLEY BANK OF KALISPELL THE VALLEY BANK IS A HOME-OWNED COMMUNITY BANK WITH ASSETS OF APPROXIMATELY \$60 MILLION DOLLARS. THE VALLEY BANK REAL ESTATE DEPARTMENT CARRIES REAL ESTATE LOANS, PRIMARILY HOME LOANS, TOTTALLING \$10.7 MILLION DOLLARS. WE HAVE ALSO MADE AND CONTINUE TO SERVICE \$6.4 MILLION DOLLARS IN REAL ESTATE LOANS WHICH HAVE BEE SOLD INTO THE NATIONAL MARKET UNDER THE AUSPICES OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION OR FREDDIE MAC. THE VALLEY BANK EMPLOYS TWO FULL TIME REAL ESTATE OFFICERS, INCLUDING MYSELF AND COLLEAGUE, DANIEL J. HENSLEY, WHO IS IN THE AUDIENCE TODAY, SECRETARIES AND SUPPORT PERSONNEL.

I AM APPEARING BEFORE YOU TODAY TO SPEAK IN OPPOSITION TO HOUSE BILL #652. IN DOING THIS, I HAVE COMPLETED RESEARCH WITHIN OUR BANK WHICH SHOWS THAT REQUIRING INTEREST TO BE PAID ON RESERVE ACCOUNTS WILL COST THE BANK A GREAT DEAL OF MONEY IN 1988, THE VALLEY BANK HAD 218 RESERVE ACCOUNTS WITH INDIVIDUAL AVERAGE MONTH-ENDING BALANCES OF \$383.80. THE COST TO MAINTAIN THESE ACCOUNTS AND PROVIDE THE SERVICE TO OUR CUSTOMER IS \$1,100.00. THE FEDERAL RESERVE BANK PUBLISHES A BOOK CALLED FUNCTIONAL COST ANALYSIS WHICH DETERMINES THE AVERAGE COST FOR MAINTAINING SERVICES WITHIN BANKS OF VARIOUS SIZES. WITHIN OUR PEER GROUP, IT WOULD COST VALLEY BANK APPROXIMATELY \$17,000.00 ANNUALLY TO PAY INTEREST ON RESERVE ACCOUNT IF WE WERE TO INVEST THESE RESERVE FUNDS INTO U.S. TREASURY SECURITIES WE WOULD HAVE AN ANNUAL YIELD OF APPROXIMATELY \$6,000.00 DOLLARS. SUBTRACTING THIS INCOME FROM THE COST OF PAYING INTEREST AND MAINTAINING THESE ACCOUNTS THE VALLEY BANK WOULD HAVE A LOSS OF \$11,000.00. IF THIS LAW PASSES, OUR ONLY ALTERNATIVE TO FUND THIS LOSS WOULD BE TO RAISE INTEREST RATES OR NOT OFFER THE SERVICE.

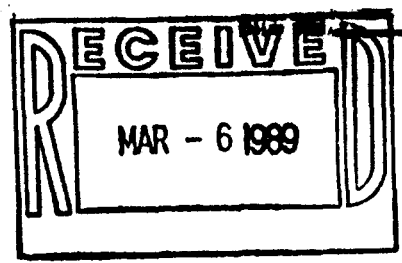
SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 15
DATE 3/16
BILL NO. 46 052

EX. #15 HB 652
3-16-89

IF THE SERVICE IS NO LONGER OFFERED, THERE IS A STRONG LIKELIHOOD THAT SOME CUSTOMERS WOULD NOT PAY TAXES AS THEY COME DUE. THIS WOULD RESULT IN A LOSS OF TIMELY REVENUE TO OUR CITY AND COUNTY GOVERNMENTS.

FOR THESE REASONS, WE DO NOT THINK THE HOUSE BILL #652 IS GOOD LEGISLATION AND WE URGE YOU TO VOTE AGAINST IT.

THANK YOU.



DATE: March 3, 1989

TO: Collette Maxwell, FFM

FROM: Randy Ulberg, Client Services

RE: Estimate for Special Processing Interest Paid on Reserve Accounts

I reviewed your request with our Systems and Programming department and based upon your specifications, a new screen would have to be designed, tested and interfaced with the existing loan system. In addition, interfaces with the Customer Information System and IRS reporting systems are required.

The estimate to implement your requested enhancements is 80 hours minimum at the rate of approximately \$56.00 per hour. Please review the estimate and advise me of how you wish to proceed. We will need to allocate a block of time as soon as possible.

If you have questions, please feel free to call.

Randy

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4480.00	T	

South 155 Stevens, Spokane, WA 99204, 509-455-5750

DATE A 11/3/16
BILL NO A 11716652

ACCT	TYPE	DATE	AMOUNT	BALANCE	PAYMENT	REMBT	CHARGE	PAYMENT
4574	5	12/10/17	208.49	208.49				
4590	5	12/10/17	77.15	77.15				
4584	5	12/10/17	184.58	184.58				
4730	5	12/10/17	189.25	189.25				
4730	5	12/10/17	169.42	169.42				
4730	5	12/10/17	263.78	263.78				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
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4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				
4730	5	12/10/17	159.53	159.53				

COUNT 50 NAME 50 764,350.44 RES-PAY 2,520.53 F-1 16,134.91 RES-PAY 1,330.00 TOT-PAY 1,330.00

NET 77.15 3.58PT 70,000.55 TOT 0.00 RES-PAY 30.40

STARTING 1011 TOWNSHIP-2/4-17-14

ACCT	TYPE	DATE	AMOUNT	BALANCE	PAYMENT	REMBT	CHARGE	PAYMENT
5045	5	12/10/17	185.64	185.64				
5105	5	12/10/17	185.10	185.10				

COUNT 5 NAME 50 124,721.83 RES-PAY 472.03 F-1 1,100.35 RES-PAY 235.57 TOT-PAY 235.57

NET 185.64 3.58PT 170,000.55 TOT 0.00 RES-PAY 30.40

STARTING 1011 TOWNSHIP-2/4-17-14

ACCT	TYPE	DATE	AMOUNT	BALANCE	PAYMENT	REMBT	CHARGE	PAYMENT
4830	5	12/10/17	4095.88	4095.88				
5045	5	12/10/17	9668.98	9668.98				
5045	5	12/10/17	17901.54	17901.54				
5105	5	12/10/17	54576.62	54576.62				

COUNT 5 NAME 50 124,721.83 RES-PAY 472.03 F-1 1,100.35 RES-PAY 235.57 TOT-PAY 235.57

NET 185.64 3.58PT 170,000.55 TOT 0.00 RES-PAY 30.40

LINE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
101	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
102	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
103	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
104	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
105	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
106	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
107	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
108	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
109	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22
110	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22	12/01	11/22

with
 3-16-89

10-8-82

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EX #17

3-16-89

CONV-DOT-S/F

MEMBER	INTR RATE	DATE DUE	LAST DATE	PRINCIPAL BALANCE	RESERVE BALANCE	PAYMENT	ESCAPED PAYMENT	CHARGE	TOTAL PAYMENT	STACUS	DATE	CONV-DOT-S/F
92149	10.0000	12/01	11/21	22796.78	██████████	914.46	205.54	.00	1118.00	A	11/21	
52182	10.0000	12/01	11/22	27285.00	██████████	285.70	109.50	.00	394.00	A	11/22	
62143	10.0000	12/01	11/23	24330.00	██████████	437.95	96.05	.00	533.00	A	11/23	
62144	10.0000	12/01	11/23	45470.00	██████████	437.95	96.05	.00	533.00	A	11/23	
62145	10.0000	12/01	11/21	38415.35	██████████	437.95	139.41	.00	577.00	A	11/21	
52146	10.0000	12/01	11/15	34917.48	██████████	437.95	106.52	.00	544.00	A	11/15	
62147	10.0000	12/01	11/23	29338.55	██████████	437.95	180.05	.00	617.00	A	11/23	
92148	10.0000	12/01	11/21	22796.78	██████████	914.46	205.54	.00	1118.00	A	11/21	
52149	10.0000	12/01	11/22	27285.00	██████████	285.70	109.50	.00	394.00	A	11/22	
62150	10.0000	12/01	11/23	24330.00	██████████	437.95	96.05	.00	533.00	A	11/23	
62151	10.0000	12/01	11/23	45470.00	██████████	437.95	96.05	.00	533.00	A	11/23	
52152	10.0000	12/01	11/21	38415.35	██████████	437.95	139.41	.00	577.00	A	11/21	
52153	10.0000	12/01	11/15	34917.48	██████████	437.95	106.52	.00	544.00	A	11/15	
62154	10.0000	12/01	11/23	29338.55	██████████	437.95	180.05	.00	617.00	A	11/23	

0925

1ST FEDERAL SAV-MISSOULA BR 01 MORTGAGE TRAIL BALANCE AS OF 11/30/88 RW 11/30/88 09.20 PAS

CONV-DOT-S/F

MEMBER	INTR RATE	DATE DUE	LAST DATE	PRINCIPAL BALANCE	RESERVE BALANCE	PAYMENT	ESCAPED PAYMENT	CHARGE	TOTAL PAYMENT	STACUS	DATE	CONV-DOT-S/F
92171	10.37500	12/01	11/28	100886.22	██████████	914.46	205.54	.00	1118.00	A	11/28	
52172	11.00000	12/01	11/22	29949.38	██████████	285.70	109.50	.00	394.00	A	11/22	
62173	10.12500	01/01	11/22	46527.35	██████████	437.95	96.05	.00	533.00	A	11/22	
62174	11.00000	12/01	11/21	38415.35	██████████	437.95	139.41	.00	577.00	A	11/21	
52175	10.25000	12/01	11/15	34917.48	██████████	437.95	106.52	.00	544.00	A	11/15	
62176	10.25000	12/01	11/23	29338.55	██████████	437.95	180.05	.00	617.00	A	11/23	

INTEREST ON MORTGAGE RESERVES

EXHIBIT NO. 18

DATE 3/16/89

BILL NO. HB 652

1. Some borrowers may establish their own reserve accounts on conventional loans. Most, however, prefer the convenience of paying the principal, interest, taxes, and insurance on a monthly budgetable single payment. Further the discipline imposed by the budgeted monthly payment is attractive to some homeowners who do not exercise good savings habits to meet the debt when due.
2. HB-652 discourages establishment of reserve accounts for payment of taxes and insurance. Thousands of homeowners' taxes are now paid in one lump sum with a check by banks and S&L's. Without reserve funds, county tax collectors would have considerably more administrative expenses, more delinquent problems, higher collection costs, and require higher taxes.
3. The Farmers Home Administration does not require reserves for taxes and as a result counties have to sell houses to recover taxes due.
4. Interest on reserves may just be the straw that broke the camels back, as it would not be worth the hassle. HB-652 prohibits service charges making it even less attractive for all lenders in and outside of Montana.
5. An average house worth \$60,000 and average reserve balance of \$300 @ 5-1/4% = \$15.75 interest for borrowers. The banks administrative costs are higher than this. Further, the bank would have to complete a 1099 showing total interest paid for the IRS.
6. Interest on reserves penalizes the low income. Large reserve accounts earn a profit to the bank and S&L's, but small accounts are carried at a loss. The system is similar to a progressive income tax in that the large accounts on upper income carry the smaller accounts or low income borrowers. Small reserve balances do not yield sufficient interest to offset handling costs.
7. The VA, FHA, State Board of Housing, State Board of Investments, and other public and private insuring agencies require reserve funds for home mortgages to assure timely payment of taxes and insurance premiums. Banks cannot discontinue this service even if forced by HB-652 to operate at a loss.
8. HB-652's exemption for mortgage contracts previously entered into only if their is a written agreement allowing lenders to retain interest is unlikely. All previous contracts should be exempted as of the effective date.
9. What happens when the borrower is delinquent or if the reserve fund has a negative balance after payment of taxes and/or insurance? Can a lender impose service charges on the negative balance?

HB-652

INTEREST ON RESERVES

by MONTANA BANKERS ASSOCIATION

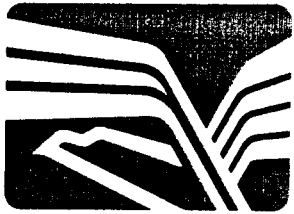
SENATE DOCUMENTS INDUSTRY
EXHIBIT NO. 19
DATE 3/16/89
BILL NO. HB652

- Q. When and why were mortgage reserves created?
A. During Depression to control tax delinquencies and prevent foreclosures. Tax and insurance reserves required by FHA since 1934, VA, State Board of Investments and Housing.
- Q. Where are most mortgages held?
A. By the secondary market. Most are with out-of-state mortgage companies. The State Board of Housing has 11,000 mortgages and the State Board of Investments has 3,000 mortgages.
- Q. What could happen to secondary market with HB-652?
A. Out-of-state sources of investment capital could dry up or certainly become more costly as mortgages in the 37 states protected by non-interest bearing escrows become more attractive. Supply of mortgage money goes down and interest rates or price of the money goes up.
- Q. Who benefits from these reserves?
A. Lenders and mortgage companies are assured taxes will be paid thereby protecting their loans. Borrowers are assured taxes and insurance will be paid even in hard times. Counties are assured taxes will be paid on time in lump sum for millions of individual homeowners and checks will not bounce.
- Q. Why not let each homeowner pay taxes when due?
A. Borrowers typically DO NOT save and would have to borrow at 12%+ interest to pay taxes. Lenders and mortgage companies would have to research county records to make sure taxes were paid to protect liens. Counties would have raise taxes to cover additional staff and increased administrative costs.
- Q. Do lenders or mortgagees make money off reserves?
A. A 1973 study by the general accounting office (GOA) showed a "net loss per unit under a fully allocated cost analysis." GOA study said Federal government could and should charge for this service.
- Q. What do the homeowners want?
A. A 1973 study by VA of 207,565 homeowners showed 83.6% were satisfied with non-interest bearing escrow accounts vis a vis direct payments to counties. Survey showed particular benefit for homeowners with limited financial resources.
- Q. What happens when borrowers are delinquent?
A. Deficiencies with borrowers occur frequently so lenders usually advance funds to cover the taxes. Late payment fees are charged sometimes to offset special handling.

- Q. What administration is required for mortgagees?
- A. (1) Collect taxes and insurance 12 times per year and segregate and account for these items.
- (2) Obtain tax bills and other special assessments from counties and insurance premium bills from agents in a timely fashion, which often requires follow-up procedures.
- (3) Pay tax bills to the counties and insurance premiums to the agents as required. (In most instances, taxes are remitted semi-annually.)
- (4) Analyze the escrow sufficiency at least once a year to determine whether the amount of the monthly payment is sufficient. The monthly payment does not remain the same year after year. Real Estate taxes may increase or decrease, insurance premiums change, and new assessments are added.
- (5) If a borrower's obligations change - or are expected to change - the monthly payment should be raised or lowered accordingly and the borrower must be notified. Montana Law now restricts reserves to 110% of actual taxes and premiums paid.
- (6) Calculate whether a deficit exists and, if so, arrange for the borrower to cure such a deficit either by a lump sum payment or by higher periodic payments.
- (7) Answer all questions and complaints regarding the escrow in general and increases in the monthly payment requirement in particular.
- (8) Distribute to the borrower a statement of taxes and insurance premiums paid for the calendar year for income tax reporting purposes.
- Q. How much is charged by banks today?
- A. Most escrows for contracts for deed run \$5 to \$10 per month plus \$5 to \$9 for taxes and insurance (3 times a year)
- Q. What would HB-562 allow?
- A. 1/2% which would be \$2.50 on a year-end balance of \$500.
- Q. What will lenders and mortgagees do if HB-652 passes?
- A. Refuse to handle escrow accounts and/or charge higher interest rates on new mortgages.

CONCLUSION:

This bill would cause repercussions to thousands of mortgagors, now and in the future. Ramifications of this bill should be given careful study before action is taken.



WESTERN FEDERAL SAVINGS BANK

of Montana

March 16, 1989

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 20
DATE 3/16/89
BILL NO. HB 652
Steve Gross

Senate Business and Industry Committee
State Capitol
Helena, Montana 59601

Re: HB 652 - Requiring a Lender to Pay Interest on Mortgage Reserve Accounts

Dear Mr. Chairman and Members of the Committee,

Western Federal would like to point out to the Members of this Committee some possible adverse effects from the passage of HB 652.

As with any business enterprise, the cost of doing business is passed along to the consumer by the business in its pricing structure. The additional cost of paying interest on reserve accounts might have to be passed along to the borrower in the form of a higher interest rate to borrowers on new originations. In that event, there would be no advantage to the borrower in receiving interest on his reserve account if he were, in fact, paying more interest on his loan.

Because of Montana's relatively sparse population and low volume of mortgage originations, the additional cost and servicing requirements of paying interest on reserve accounts could discourage secondary market investors from buying Montana mortgages when there is a choice of buying loans in another state that does not have this requirement.

Some lenders may discontinue reserve accounts. Since we do, in essence, collect taxes and pay them to the County Treasurers in a timely fashion, discontinuance of reserve accounts could result in less timely payment of taxes to the various counties, and increase their administrative burden.

Because of these concerns, we ask this Committee to reject HB 652.

Thank you.

Sincerely,

Stephen C. Gross
Stephen C. Gross
Eastern Division President

Convenient Montana Offices

- | | | | | | | | |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Missoula Offices
Box 4547
Missoula, MT 59806
(406) 721-3700 | Hamilton Office
P.O. Box 673
Hamilton, MT 59840
(406) 363-3730 | All Helena Offices
P.O. Box 1726
Helena, MT 59624
(406) 442-6142 | East Helena Office
P.O. Box 1226
East Helena, MT 59635
(406) 227-8164 | Bozeman Office
P.O. Box 1027
Bozeman, MT 59771
(406) 587-5174 | All Great Falls Offices
P.O. Box 2327
Great Falls, MT 59403
(406) 454-3473 | Lewistown Office
P.O. Box 1105
Lewistown, MT 59457
(406) 538-5427 | Conrad Office
P.O. Box 1444
Conrad, MT 59425
(406) 278-7551 |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|

Amendments to House Bill No. 645
Third Reading Copy

For the Committee on Business and Industry

Prepared by Mary McCue
March 16, 1989

1. Title, line 6.
Following: "PAWNBROKERS"
Insert: "AND SECONDHAND DEALERS"

2. Title, line 7.
Following: "PAWNBROKERS"
Insert: "AND SECONDHAND DEALERS"

3. Title, lines 9 and 10.
Following: "THEFT"
Strike: remainder of line 9 through "MCA" on line 10

4. Page 2, lines 17 through 25.
Strike: section 1 in its entirety
Renumber: remaining sections

5. Page 3. line 2.
Following: "property."
Insert: "(1)"

6. Page 3, line 3.
Strike: "or"
Insert: ", "
Following: "or secondhand dealer"

7. Page 3.
Following: line 8
Insert: "(2) A pawnbroker, junk dealer, or secondhand dealer who allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days commits the offense of theft, as defined in 45-6-301."

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jerry L. Hudson	Intermountain Mortgage Co - Billings	HB 652		X
ALAN WIENER	HB 652 - ESCROW INTEREST	HB 652	X	
STEVE GRASE	WESTERN FEDERAL SAVINGS	HB 652		X
Terry Minow	MT Ed of State Employees	HB 719	X	
Dow Judge	MT STATE AFL-CIO	HB 719	X	
CHIP EDMANN	MT League Fin Inst	HB 652		X
Lisa Blanford	Leg. Auditors	HB 719		
JAMES T. MILLAR	MONT JOINT RAIL LABOR LEGIS COUNCIL	HB 626	X	
Ch. Hunt	Mont Ry Lb.	HB 650	X	
Ch. McLaughlin	Valley Bank	HB 650		
Tom Hopgood	Mont Assoc Realtors	SB 652		✓
Ch. Murray	Mont. Rail Link	HB 626		✓
Pat Kern	Burlington Northern	HB 626		✓
Raymond West	UTU	HB 626	X	
Steve Mandeville	self	HB 652		X
MIKE MCKEE	FIRST FEDERAL S+L - MISSOIA	HB 652		X
Les Berry	BWRR	626		X
Randy Johnson	Montana Grain Growers Assoc	654		X
Arac Hawn	MUCF	650	X	
Ch. King	Kalispell	652		X
Ben Dewberry	Kalispell	652		X