

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **REP. BOB BACHINI, CHAIRMAN**, on February 6, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: HB 471 and HJR 15 were heard, and executive action taken on them.

HEARING ON HOUSE BILL 471

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 88, Billings, explained HB 471 is for clarification of the trust fund laws. It is an Act to generally revise the law relating to trusts to clarify that a trust includes a trust created in connection with certain bonds; clarifying that the designation of a trust in a conveyance vests the estate in the trustee; amends Sections 72-33-108 and 72-36-206, MCA; and provides an immediate effective date. For the last couple of sessions the trust funds have had a committee studying

trust laws. They suggested to this Legislature a number of changes. This bill has two parts to it. On Page 2, line 6, some language has been added. Bruce MacKenzie, Dorsey & Whitney, Great Falls, will speak about this.

This law has to do with the establishment and using of trusts, particularly for bonds, and particularly those that have gone into default. The second part is on Page 5 where New Subsection (8) has been added. One of the problems happening in the trust business is that people who have decided to establish their own trust, and don't use a lot of legal help, end up registering their assets incorrectly. The people who are transferring them don't want to do the transferring under the conditions under which they are registered; e.g. set up the Royal C. Johnson trust, I'm the trustee for L.C. Johnson, trustee, transfer an asset into the Royal C. Johnson trust; according to present law, ownership has not been changed. It should be registered as Royal C. Johnson, Trustee. The document of Trust has the beneficiaries, or the succeeding trustees named in the trust instrument and therefore the transfer can be made even if that person is deceased. This has caused a number of problems. Professor Ed Eck from Missoula wrote this language. Each section of this bill was presented to the trust committee of the State Bar Association, and then it was presented to them in its entirety. They added some minor amendments before it was submitted to the Legislature. No opposition is expected. He introduced Bruce MacKenzie.

Proponents' Testimony:

Bruce MacKenzie, member of Dorsey & Whitney, Great Falls, represented DAD CO Companies, D.A. Davidson Corporation Trust Corporation of Montana, and Financial Aims Corporation who primarily do trust work. They are the registered trust company for Montana. HB 471 contains two amendments to the existing Trust Code of Montana. EXHIBIT 1. Circumstances require changes in bonds assets in a trust indenture, and the trustee must be able to act without the consent of all the bondholders, thereby putting himself liable or having transactions fail. The first amendment brings these trust indentures under the coverage of the Trust Code, allowing a trustee to seek judicial supervision of any modification. Such supervision would provide protection to the trustee for proceeding with a modification not presently permitted under the documents to work out of a default situation which they cannot do now. Minnesota has provided for a very similar amendment for trust indentures issued for industrial development revenue bonds and other bonds of that nature which are similar to the Title 90 bonds issued in Montana. They provide for the same change for just those specific trust indentures included under the Trust Code. It is not necessary to bring all trust escrow arrangements given as security for residential and other matters under the Trust Code. It would provide unnecessary overburden. It is only needed for these particular bonds. The First Trust Company supports this legislation and was one of the major forces behind it. There have been no negative comments from

any members of the industry. They seek this type of clarification of default.

The second change is one promoted by the Trust Law Revision Committee itself. It deals with the increasing use of revocable trusts and the practice of designating a trust name and the document conveying ownership of property to the trust name rather than the name of a trustee. Under trust law the trustee is required to hold title to all property within the trust. Conveying it to the trust name leaves it in limbo. This bill provides, in the event the individual conveys it to the trust name, the recording entities and other parties can rely on that as a transfer to the trustee itself, so actual title has been conveyed.

Opponents' Testimony: None

Questions From Committee Members:

REP. WALLIN asked how HB 471 would affect an irrevocable trust from which you get interest and income while you are still alive. **Mr. MacKenzie** said this bill would not affect it whatsoever. The Trust Code that is in place right now governs an irrevocable living trust. The only change that would be made in that particular situation is whether the individual conforming to the irrevocable living trust had conveyed his property improperly under current law to the name of the trust as opposed to the named trustee under that trust, then this bill would recognize that conveyance as a proper conveyance to the trust, and it would not disallow any benefits should they be contested at a later date. This bill cures that conveyance in a proper fashion.

REP. WALLIN asked if the valuation of that property was in error and the amount of interest the grantor expected to get out of that trust falls short of that, is there any recourse or anything that can be done? **Mr. MacKenzie** was not certain of the question. This bill would not address errors in the valuation of property. This only cures an error in the transfer of the property to the trust itself.

REP. STELLA JEAN HANSEN said on the bottom of the first page of EXHIBIT 1 it talks about title companies advising counsel that laymen who are making conveyances on their own and some lawyers are not making conveyances properly. They are putting property in a trust name rather than the name of a trustee. Is that right? **Mr. MacKenzie** said that is exactly right. **REP. HANSEN** asked if that means they could use the trust name rather than the trustee. **Mr. MacKenzie** said it means that under present law, in order for property to be properly held by a trust, it must be conveyed to the name of the trustee. Under Montana law, the party that holds title to the property in trust, the proper party, is a trustee. You cannot name a conveyance to a trust without conveying it directly to the trustee. A number of people creating their own trusts are doing it incorrectly. They are conveying the property

unbeknownst to them to the name of the trust. HB 471 cures that by saying when it is transferred to the name of the trust, you have in fact transferred it to the name of the trustee. **REP. HANSEN** asked if this pertains only to a trust that had property in trust in it and not other types of trust accounts? **Mr. MacKenzie** said that is correct. If you look at the definition of what trusts are covered under the Trust Code, it covers most personal trusts and trusts held by trust companies, individual trusts. It does not cover individual retirement accounts. When you go through the first part of the bill, the definition of what trusts are covered in Section 1, (4), 1084 defines what trusts are actually covered by the Trust Code. It is specific in its exclusive language what trusts are not covered. For example, conservators, personal representatives, custodial arrangements, business trusts, common trust funds, voting trusts, security arrangements, etc. **REP. HANSEN** was referring to business trusts or a holding trust where funds are held in a trust. **Mr. MacKenzie** said that would be covered if it is a trust created under Montana trust law. A business trust is a trust of companies that are holding all of the shares of those groups of companies in trust. For example, some Massachusetts lines are called business trusts rather than corporations.

REP. BACHINI said on Page 5 in that new language in line 18, starting with "The identity of a party serving as trustee may be established by recorded affidavit of the party, specifying his name and address", is there someone else identifying that person? **Mr. MacKenzie** explained the trustee himself would identify himself under the trust document. The trust document identifies the trustees; and in the event there is a recorded document conveying property to the trust name, then that trustee would record an affidavit with the clerk and recorder saying he is the trustee under this trust. Here is the trust document of which I am the trustee, therefore, that has the ability to convey the property directly.

REP. WALLIN asked how is the trustee given authority to finance that kind of a thing if it is not through a bank or trust company? **Mr. MacKenzie** said the investment powers are specified in the trust document itself. The trust document controls to the extent that it can remove the trustee or dissolve the trust document by law. **REP. WALLIN** asked if that meant you might have to go to court. **Mr. MacKenzie** said it means you may have to go to court to prove the trustee has not handled the trust properly. Under the Trust Code there are provisions for removal of a trustee. This bill doesn't have anything to do with that.

Closing by Sponsor:

REP. SOUTHWORTH addressed **REP. WALLIN's** question. An irrevocable trust for the most part is usually during the person's lifetime; they usually take care of the registration, etc. and usually have more legal input to set up that kind of trust. In a revocable trust, what sometimes happens is that the person setting it up,

and that is no great thing to do, registers it incorrectly. This is to address the fact that registration is correct in the minds of the persons involved.

HEARING ON HOUSE JOINT RESOLUTION 15

Presentation and Opening Statement by Sponsor:

REP. NORM WALLIN, HD 78, Bozeman, explained HJR 15 requests the Governor to proclaim the second week of October each year as Montana's official Inventors' and Innovators' Week, and the Department of Commerce is to arrange suitable observances and the public schools to take appropriate notice of that week. The Inventors' Society was interested in this piece of legislation. Last summer the Inventors Society met in Helena, the Governor was there, and they said they would like to have some time designated since there are quite a few inventors in Montana and they should be encouraged. The Governor agreed to that, but said they really should have legislation to take care of that request. Mr. Emerson, President of King Tool, wrote to remind him of this agreement. King Tool is a company in which inventors make specialized tools for doctors, dentists, small operators. This bill was written by Mr. Birkland of Lawson & Wilson. It was taken to the Governor who saw no problem. There probably will be no one dissenting.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. McCULLOCH asked why it is the second week of October. REP. WALLIN explained that was alright with the Governor.

REP. BENEDICT asked how many inventors there are in Montana. REP. BACHINI mentioned they were called to a meeting of the Inventors in Havre and he was surprised at the number of people who do a lot of inventing. It was quite interesting, so he would imagine there are quite a few in Montana.

REP. BARNETT added that King Tool has always set up what is called the Inventors' Hall of Fame, and this would be something that would add recognition to that.

Closing by Sponsor:

REP. WALLIN closed.

EXECUTIVE ACTION ON HJR 15

Motion/Vote: REP. STEPLER moved HJR DO PASS. Motion carried unanimously.

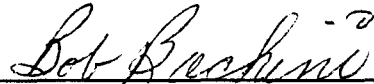
EXECUTIVE ACTION ON HOUSE BILL 471

Motion/Vote: REP. CROMLEY moved HB 471 DO PASS. Motion carried unanimously.

REP. BACHINI passed around the Resolution drafted by Mr. Verdon opposing imposition of a tax on people returning to Canada. Committee members who wished to do so could sign it. He had received information from Mr. Brooks, of the Montana Retail Association, regarding the significant amount of business Canadians do in the Kalispell area. Other areas in Montana also benefit a great deal from Canadian trade. It is very important the federal government reconsider border fees because it would be detrimental to the United States-Canadian Free Trade Agreement. Whatever form this Resolution takes, all the Congressmen will be sent a copy.

ADJOURNMENT

Adjournment: 8:45 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, Secretary

BB/jl

2:10 PM
2/6/91
112

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

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Mr. Speaker: We, the committee on Business and Economic Development report that House Joint Resolution 15 (first reading copy -- white) do pass .

Signed: _____

Bob Bachini

Bob Bachini, Chairman

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 471 (first reading copy -- white) do pass .

Signed: _____

Bob Bachini
Bob Bachini, Chairman

Exhibit 1
2-6-91
HB 471

MEMORANDUM

TO: House Business and Industry Committee
FROM: Bruce MacKenzie
DATE: February 5, 1991
RE: House Bill 471 - Testimony of Bruce MacKenzie

House Bill 471 provides two amendments to the existing Trust Code of Montana (the "Code"). The first amendment expands the definition of "trusts" and makes the Code applicable to trust indentures created for the purposes of issuing industrial development, health facility, mining impact, renewable resource or conservation program bonds pursuant to Title 90, M.C.A. Bonds issued under these sections of the law require a trust indenture pursuant to which a trustee acts on behalf of all bondholders in enforcing the terms of the bonds and security agreements. There are times during the life of the bonds, either due to a default or as a result of change in circumstances, that modifications to the trust indenture or other security documents are necessary. Often, these modifications may not be permitted under the terms of the documents and the trustee would be exposed to breach of fiduciary duty if it consented to the modifications without the consent of all bondholders. Such consents are practically impossible. The trustee is then left with the Hobson's choice of going forward with the modification and being exposed to liability or refusing the modification and having the transaction fail completely.

By amending the definition of "trusts" to bring these trust indentures under the coverage of the Code, a trustee would then be allowed to seek judicial supervision of any modification. Judicial supervision would provide protection to the Trustee for going forward with a modification not presently permitted under the documents. [See provisions of Montana Code Annotated Section 72-33-413 (modification of termination) and 72-35-301 (proceedings concerning trusts)].

The second amendment deals with the increasing use of revocable trusts and the increased practice of designating a trust name and the document conveying ownership of property to the trust. Title companies have advised counsel that laymen who are making conveyances on their own, as well as some lawyers, are conveying property to a trust name rather than the

Ex. 1

2-6-91

HB 471

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February 5, 1990

name of a trustee. The amendment appearing in Section 2 cures this problem by stating that the designation of the name of the trust vests the estate in the name of the trustee of that trust.

Both amendments have the approval of the Montana Bar Association Trust Law Revision Committee.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

BAM:dk-g
1039b

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 471

DATE Feb. 6, 1991 SPONSOR(S) Rep. Royal Johnson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce A. MacKenzie	DADCO	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.