

## **MINUTES**

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

#### **COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT**

**Call to Order:** By REP. BOB BACHINI, CHAIRMAN, on March 12, 1991,  
at 7:00 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 Steppler (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:** SB 248, SB 232, SB 272, SB 169 were  
heard, and executive action on SB 248, SB 169, HB 901. SB  
272 was placed in a subcommittee.

#### **HEARING ON SENATE BILL 248**

##### **Presentation and Opening Statement by Sponsor:**

**SEN. H.W.HAMMOND, SD 9, Malta, Phillips and Valley Counties,**  
explained SB 248 is an amendment to existing law introduced at  
the request of the Securities Commissioner. It is an Act amending  
the laws relating to securities regulation; creating a new  
limited offering exemption; revising exemption procedures;  
providing for the regulation of limited offering exemptions; and  
amends Section 30-10-105, MCA. The bill amends present law to

change the number of offers that can be made to subscribers from 10 to 25 to raise capital for a small business. This problem arose in the agriculture arena of grazing associations. More people could be offered the opportunity to become subscribers, invest some money and become part of the association, and that sort of thing. Presently when you have made the allowed exemption of 10 offers, that is as many as can be made; then it is necessary to go through the Federal Securities Act. This bill allows an exemption of offerings to be increased from 10 to 25 in a consecutive 12 month time period by making application and paying \$50 to the Securities Commissioner.

Proponents' Testimony:

Robyn Young, Deputy Securities Commissioner, Auditor's Office, is in support of SB 248. The bill is designed to provide capital for Montana small businesses. It is necessary to go through the Securities Commissioner's office to change the number of offers that can be made for small business transactions. In existing law there is an exemption for a limited number of 10 offers that can be made to subscribers that allows small businesses to try to sell to only 10 possible subscribers to raise capital for the business. They have to register with the Securities Commissioner's department.

The department found they were getting quite a few complaints about the restrictions on their limited offer exemption because they only allowed 10 offers to be made in 12 months. That is 10 offers, not 10 sales. Many attorneys and small business owners were complaining it was difficult for them to raise the amount of money they needed by only making 10 offers. However, the Securities Regulations are all designed to protect investors as well. It is a dual edged sword. In order to have capital available, you have to protect the investors so they will continue to invest. The way that is addressed in SB 248 is by providing a two-tiered limited offer exemption. The existing exemption for offers to less than 10 persons is still in effect, but when they go over 10 offers and they need to make that 11th offer, they will have to file a brief application with the Securities Department. That is designed so that with the new expanded exemption they still have the ability to protect investors from fraudulent promoters most of whom are out-of-state promoters. The process will be very simple and will involve a \$50 filing fee and a one or two page form. That will allow the business to make up to 25 offers instead of just 10. At that point some of the other more complicated exemptions come into play. They believe this provides a good continuum and closes the so-called 'capital gap' as far as equity financing. The Montana Securities Department and the State Auditor's Office urge the Committee's support of SB 248.

Opponents' Testimony:     None

Questions From Committee Members:     None

Closing by Sponsor: SEN. HAMMOND thanked the Committee for the quick hearing and hoped for concurrence. REP. LARSON will carry SB 248 in the House.

EXECUTIVE ACTION ON SENATE BILL 248

Motion/Vote: REP. BOB PAVLOVICH moved SB 248 BE CONCURRED IN.  
Motion carried unanimously.

HEARING ON SENATE BILL 272

Presentation and Opening Statement by Sponsor:

SEN. BILL FARRELL, SD 31, Missoula, explained SB 272 is a bill in reply to one passed in the 1989 Legislature on industrial infrastructure and industrial tax increment districts. It is an Act defining "Industrial Infrastructure" and "Infrastructure" as used in the Tax Increment Financing Industrial Development Act.

He passed out a packet EXHIBIT 1 which explains the background of that bill and the problem the local development corporations around the state have had with its interpretation. When Urban Renewal Increment Districts and Tax Increment Industrial Districts was passed, infrastructure was not defined. Some of the communities since that bill was passed have had a problem in determining what infrastructure and what the intent of the legislation was. The front two pages of EXHIBIT 1 will explain the problem.

SB 272 has defined infrastructure to mean streets, roads, sewers, things that governmental entities normally bond and pay for as a part of the infrastructure. The idea was a base company would move into this area that was determined to be an industrial revenue park. Bonds would be sold to help those people get in there, and as they paid their property tax and the revenues came back that would go towards financing roads, streets, water lines, and the kinds of things they need to develop an industrial revenue park. However, there has been a group of people who have taken a more expanded view of it and they use it to help the people purchase their buildings, purchase equipment, write down interest rates on loans and equipment, a very expanded view. Also in this packet there are copies of the minutes when the bill went through last session. The intent of everybody from the House and Senate was that infrastructure was roads, bridges, water lines, telephone lines, things that are basic to establishing an industrial revenue park. It was not intended to purchase the buildings and buy down interest rates, refunding the money they paid back to them. There are some proponents, and some opponents.

Proponents' Testimony:

Ron Klaphake, President of the Missoula Economic Development

Corporation, is an economic development person. He stated this is a bill he and Evan Barrett disagree on. They have debated this and argued over whether public moneys, tax moneys, should be used to subsidize private industry. Unfortunately, it may not be good public policy to what he calls 'capture or sweep' all of the tax money from a new development project and somehow provide it in the form of a loan or grant or low interest rate, or interest write-down, or buildings or equipment to that private sector.

There are incentives and subsidies; it is when the incentives and subsidies go beyond what he considers reasonably helping communities that don't have industrial parks develop one, that don't have sewer or water, don't have streets, when it goes to providing, in essence, a tax holiday for that industry for up to fifteen years, he has some problems with that. The reason is because of the state tax system in Montana. Machinery and equipment is taxed almost to the point where people don't wish to make investments in the State. We are the second lowest state in the nation when it comes to value-added, and we aren't going to do it by just recruiting people from the outside. We have to do something about the businesses that are here. He is concerned because he has recently been involved in a recruitment project, and they have been working trying to lure a company into their communities. Unfortunately, the particular company they were dealing with was a wood products company. He has four very similar companies in Missoula. Three of them make particle board furniture. One was a direct competitor of this out-of-state operation which would come in. The Circle Company in Missoula has been there for 33 years and is paying \$27-30,000 a year taxes and employs 50 some people. Should we recruit a company that employs 200 people and give them a 15 year tax holiday? Their community said No. They don't think that is infrastructure. It's economic development and it's recruiting, but they don't think that is infrastructure.

This Legislature needs to define infrastructure. He doesn't care if it is defined to give up the tax holiday for recruitments because that will tell everybody in the state, including the existing businesses, exactly what is meant. Tell them what you mean so he doesn't have to ask Attorney General Racicot what the real intention of the Legislature is. If no bill is passed, he can guarantee there will be a request to review what it was the Legislature intended when the bill was passed in 1989. He has read and reread the legislative findings, and certain people had certain things on their minds when they passed that bill. He is not sure that is good government policy.

Public policy has a person who is interested in expansions of business. Expansions and retaining business in this State are as important if not more important, than recruiting outside companies. As long as we recruit outside companies with tax subsidies, we will never ever deal with the real problems of trying to develop Montana. As long as Evan Barrett can get companies to develop in his community, and as long as tax

subsidies can happen, how is he ever going to help support the changes in our tax structure to eliminate or reduce taxes on equipment and machinery. We aren't going to give it away in Missoula, and they won't give it away in some of the other places. They won't provide tax holidays by refunding one way or another tax money to new industry coming in. It is reasonable to help people get started to reduce the taxes for five years when they are first starting up because there are more costs when starting up, but eventually we are talking about a playing field with the existing industries, and if a company can come into the state and somehow not have to pay \$2.7 million worth of property taxes over 15 years, that is in fact a direct tax subsidy. If you wish to do that, please tell everybody that is your intention with regard to industrial development infrastructure.

#### Opponents' Testimony:

Cal Cumin, Economic Development Director for Yellowstone County, registers as an opponent of SB 272. Many people realize the need for tax reform in Montana, and the need to address these very broad range issues, but at the same time, economic development directors who are working in the field can't say they would like to help and do something for you, but say you are going to have to wait until tax reform occurs. There is not that much time. If they get the opportunity to help a business, an existing or new business, or an out-of-state business to come in, they have to use whatever they can at the time it is needed. They can't say we will help you in a few years when we get the tax structure straightened out.

The Tax Increment Industrial District statute on the books now is a creative tool that is just now being utilized, starting to be understood. People are learning how to use it, and see the opportunities that are there. It is existing law. To change it now is going to throw the whole thing back into disarray. It will be back for interpretation. These tax increment districts are not easy to put together. They take time.

They were working on one in Billings and Laurel. They are just in the process of trying to acquaint people with the potential of whether it can be done. Now they are faced with another change. He hated to see that happen and urged it not be done. To go back and say infrastructure is the sidewalks and streets, a new company may not consider a sidewalk a good enough incentive. When this bill went through the Senate, they had support from other organizations such as the Economic Development Corporation in Great Falls, one in Helena, in Havre the Bearpaw LDC, the Gallatin LDC, and the one in Anaconda. That represents a majority of those in the state. He urged very much this legislation not be passed.

Evan Barrett, Executive Director of the Butte Local Development Corporation, stated they try to be very proactive in getting economic development done as a community and try to assist the

State in a proactive stance to move forward to get things done. That was the thrust of comments previously made. The tax increment financing industrial districts has been talked about as being a creative tool and a powerful tool for accomplishing development within the constraints of the statutes and the tax structure as they are today. He speaks for lowering the personal property tax level. Changes are not easy to come by. It is necessary to develop our economy.

Every three or four years a new tax study comes up, but nothing happens and nothing is changed. It may be into the next century before major tax change is accomplished and economic development can take place. That is a political reality and work has to be done within that context. The use of the tax increment financing industrial district concept, in addition to allowing creative development to be done, in that time allows capital to be aggregated to be used as matching funds for things like the EDA. Lower taxes help, but when capital is aggregated up front the economic development administration can get some federal funds to help build the building that industry might go into. That building can be acquired by the industry over a 15 or 20 year period on a lease-purchase basis. That is good economic development policy.

SB 272 suggests amending the statutes in an unduly restrictive manner that will take away the flexibility local governments and local economic development organizations need to create economic growth. It will take away the creativity aspect of economic development. Every community should learn the lesson of tax increment and should learn how to use it. Butte doesn't want to be the only tax increment district in the State. He represents not only his organization, but the government of Butte Silver Bow and their tax increment financing industrial district board which has been in existence for a year and a half and has an established policy and program. It is well thought out and planned economic growth under this kind of statute.

This must be looked at in terms of either fixing this bill or killing it. If it is passed as it is today, there will be no secondary value adding industrial growth until this bill is recreated or established in a broader context. Secondary industrial value adding industries are capital intensive and they are infrastructure intensive. That means they have high property taxes. That is the impediment today saying don't come to Montana. If a tax increment concept can be used, essentially an enterprise owned concept, and there is some possibility in every community in the State, so that every community learns how to use this, then economic growth will be created and attract the value adding to our natural resource base that currently goes out of state.

A number of communities are just starting to move into this because they see the creative potential. Passage of this bill would put a stop to that and a stop to economic growth. The language in SB 272 is unduly restrictive. It will not allow

anything but sidewalks, curbs, gutters, pipes, public infrastructure, and an industry will not be attracted by that. They can get that kind of infrastructure provided essentially for nothing in other parts of the nation. Unless tax increment can be put into creative economic development use, we will not attract those industries. There is no tax holiday in this, that is a misnomer.

There are programs that are traditionally established tax increment programs that are being utilized in their program and are recommended to other communities. They suggest it be defined better, more flexibly. These programs are based on established practices in tax increment. The laws have been on the books since 1974. New language requires new adjudication, and maybe old language needs to be used. Maybe it should be tied into old language.

He is more concerned about this single piece of legislation than any in this Legislature. As far as economic development is concerned the two most important bills right now are the passage of HB 863, the Capital Company Act creating that SBICC, and either fixing or killing SB 272. That is the opinion of most of the economic development professionals in Montana. He urged significant changes be made in this bill or if that can't be done, kill it.

#### Questions From Committee Members:

REP. CROMLEY asked if there is any problem with the definition as long as it is a broad enough definition. Cal Cumin said that is correct, there would not be a problem.

REP. SONNY HANSON quoted from a statement in the 1989 testimony when you stood up on behalf of the bill that was passed at that time: You said "the State could create a platform for growth by preparing a piece of property to have everything needed right there". Isn't that in effect saying that we want the infrastructure all prepared, sidewalks, etc.? Mr. Barrett answered that was correct. He made that statement. The problem with SB 272 is that it limits it to that alone. There is nothing wrong with that, in fact it is necessary for areas to be prepared with public infrastructure. Almost all of the tax increment coming from the major industrial project they are working on now will go into public infrastructure for rail spurs, roads, sewers, gutters, etc. Some will be used for other creative means like buildings, etc. That is part of the legitimate purpose of tax increment districts. Also he said to that committee that direct assistance was part of this package. Both the direct assistance side and the public infrastructure side are what make this a creative strong package.

REP. ELLIS spoke about a similar principle. Some time ago a tractor and equipment company in Billings got a low interest loan the county commissioners signed. He build a huge expansion to his

already going tractor business, and eventually put the local business that had been in business for many years out of business. He is concerned about fairness. Here is one operator who got a low interest loan, probably half of the charges dissipated because the community signed on the program, and he has a good business, but as a result and maybe it is not a direct result, but still the fact remains, the people who used to sell International equipment are no longer in business. Mr. Barrett stated focusses only on value adding industries. Montana ranks second lowest in the nation in value adding, second only to Alaska. Montana does so little value adding, there is no competition in Montana. Some initial value adding must be created, and this is a tool for doing that. They address that in their community and do not encumber existing businesses with undue assistance in creating a competitive edge for somebody new. There is no competition with value adding industries within Montana. The question is how does Montana relate to the rest of the United States and the world. We rate very poorly and are noncompetitive. Tax increment seeks to address this. This amendment makes it so we will not be able to be competitive.

Closing by Sponsor:

SEN. FARRELL responded saying these taxes we are talking about are not a tax holiday. There are two proposals from the Butte Economic Development Corporation EXHIBIT 2A in the packet. In response to that and REP. HANSON's question about infrastructure and REP. ELLIS' question, the answer given was that was just part of it. Direct assistance was another part. If you look through those two proposals you will see their direct assistance to the corporations has a lot more to do with what their intent is than building an industrial park and putting the infrastructure in. When that is being done the school districts, the universities, all of the people that collect property taxes and distribute those throughout the state, if it is the Legislature's intent to give industrial parks a tax holiday, had better be prepared to subsidize the schools, the fire districts, the cities, the towns, all of those people who are going to lose that income tax or that property tax revenue for the next 15 years. There is a problem with the tax structure in the State of Montana. Either we reform our property taxes to attract business here, but don't fool the people by giving the money back to somebody from out of state or somebody that is going to move into an industrial park and compete against the existing businesses that are not fortunate enough to be in an industrial park. That is what will be done. Some of the existing businesses will be put out of business by making it unfair competition by buying down interest rates for people who were fortunate to move in and have the local government entity buy the building for them and pay their interest rate.

REP. LARSON will carry SB 272 in the House if it passes the Committee.



REP. BACHINI placed SB 272 in a subcommittee with REP. CROMLEY, Chairman, REP. SHEILA RICE and REP. NORM WALLIN committee members.

### HEARING ON SENATE BILL 232

#### Presentation and Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 20, Great Falls, introduced SB 232 at the request of the Department of Justice. It arises out of a problem Montana has with the growth industry that we really don't need. The industry that is growing in scope and extent in Montana is the problem of stolen vehicles. SB 232 is an Act to require surrender to the DOJ the certificate of ownership of a vehicle that is less than 5 years old determined to be a salvage vehicle; to allow the Department to issue a salvage certificate for a salvage vehicle capable of being rebuilt; to provide for the retitling of a salvage vehicle; to create a VIN inspection program; to impose a vehicle identification number inspection fee; to require the issuance of a salvage certificate for all junk vehicles; to authorize the Department to inspect the records of licensed motor vehicle wrecking facilities; to allow the Department to report to the Department of Health and Environmental Sciences violations of Title 75, Chapter 10, Part 5, MCA; and amends several sections.

The attorney general a couple of years ago decided to do something about this problem and brought together a number of different interest groups: the automobile dealers, the bankers, the insurance companies, the statewide Automobile Dismantlers Association, and law enforcement personnel in order to sit down and figure out what we in Montana could do to solve this problem which is becoming more serious each year. The problem is that in Montana we do not kill the title to vehicles. With the sophistication of today's car thieves they will buy a junked car of a certain make and model. They will then steal a similar automobile at a far removed site, actually in some cases from Montana, they will then bring the vehicle back into Montana and change the vehicle identification numbers and voila they have a stolen car with a good title which they then can sell to Montanans or anybody else. That can result in some very serious heartbreaks as was heard in the Senate committee. The story of an individual in Missoula who had the unfortunate luck of buying such an automobile and finding out sometime later the vehicle was stolen and it was needed as evidence. This bill will solve that problem by killing the title to a car when the car is totalled so that no one will have an incentive to buy a title and to switch the vehicle identification number plates. Apparently those VIN numbers are not only on the dashboard, but are hidden in various places on all different types and makes of automobiles.

The other thing the bill will do is set up a vehicle identification number inspection scheme. The amendments put on the bill in the Senate clearly identified that we are not going

to inspect every junked automobile in the State of Montana. That is a task that nobody can afford to do. The plan is to start at one point in time in the future after the enactment of this bill when all vehicles coming into the State will have to be inspected to make sure the vehicle identification numbers and the titles match. In order to do that it is necessary to have folks who are very well trained to spot vehicle identification numbers and spot forgeries in those VIN plates. This bill provides a method of financing in order to pay those FTEs who are going to be needed if this problem is to be stopped.

This bill is the result of a lot of work by many different concerned individuals in the automobile industry. It was extensively debated in the Senate. There were some amendments put on in the Senate that can be lived with but they aren't too happy about. This is a very necessary first step. It is a very scaled down version of a program that we need to adopt in Montana if we are: 1. going to begin to stop these stolen car thieves and the stolen car theft rings that are beginning to operate in Montana; and 2. going to begin to protect consumers in Montana. That is what the bill is about.

Proponents' Testimony:

Marc Racicot, Department of Justice, encouraged as strongly as he could the Committee to give this bill favorable consideration. It is the product of a great deal of work conducted by a number of very knowledgeable people who were involved in an auto theft and consumer fraud task force over a period of ten or eleven months. There were four full committee meetings over that time. There were county commissioners, the Butte Silver Bow County Sheriff, the Department of Health, State Farm Insurance Companies, used car dealers, the executive vice president of the AAA of Montana, salvage owners and operators in Montana, county attorneys, people representing the banking industry, attorney general's people, the Motor Vehicle Registration and Titling personnel were all members. They first met in January 1990 and conducted a number of meetings thereafter. Their goals were to try to estimate the size and scope of the problem in Montana and to make the kind of changes that are necessary to address that.

Montana has become a dumping ground for stolen vehicles because we don't kill titles, nor do we inspect vehicle identification numbers on foreign vehicles. Montana has risen significantly in the eyes of the press and become the topic of an article in the National Auto Theft magazine which did a profile in their winter issue on stolen California cars being sold in Montana by a theft ring. Seven of those vehicles ultimately ended up in Butte, Montana, and there were seven innocent victims who purchased vehicles believing they had adequate titles to support them, and in fact did not. This VIN tampering or auto fraud or odometer tampering is a highly sophisticated crime. It is not something that just any one would be competent to be involved in from an investigative point of view. This VIN number process is not only something that is on the dashboard, but there are numbers on the

door and numbers throughout the entire vehicle from the motor to various parts of the car and there are experts here who will explain that. As a consequence it is not easy for a law enforcement officer who has not been trained and does not have the experience in this particular arena to be able to inspect or detect those kind of changes in a vehicle.

Montana citizens presently have absolutely no way of protecting themselves against this kind of crime. In addition, car dealers in the State are not always capable of detecting that they have purchased stolen vehicles because it is a very, very, sophisticated business. The solutions they sought were to keep this process as simple as possible with the least amount of expense to the people of Montana, while at the same time trying to make certain that an effective solution was developed. There has generally been overwhelming support of all segments of the auto industry. Virtually every topic that could be contemplated was looked at throughout the course of these hearings conducted in Helena.

This bill has had a great deal of scrutiny. The amendments made in the Senate are not such that they will in any way make this bill less effective in terms of the ability to work with this as a positive first step toward addressing the problem of vehicle theft and odometer fraud in the State. He strongly urged this bill be given a very careful look and asked for favorable consideration because it really will protect the people of Montana in many, many ways and be a strong first step toward the consumer protection needed in this particular arena.

**Brent Sells, Police Officer for the City of Missoula,** said for the last three years he has been involved in the investigation of motor vehicle thefts, especially in his community. During those particular time frames he recovered fourteen stolen motor vehicles in the Missoula area. A conservative estimate of the value of those vehicles was a quarter of a million dollars. The last two vehicles recovered were two late model GM 4-wheel drives valued at \$41,000. Vehicle theft is a #1 property crime in this state and it is exceeding national statistics for these particular cases that have come to light. He is the particular officer who has acquired some expertise in identifying these particular motor vehicles.

It is a sophisticated crime, not every field officer has the technology or the knowledge to detect what a stolen motor vehicle is, or whether a VIN has been altered or tampered with. The problem is extremely unique. He explained what a 'salvage switch' is. Every motor vehicle has public identifying features like the plate on the dash along with some decals that are in public view. The motor vehicle industry recognizes that motor vehicle theft is a problem, they therefore place confidential VIN (vehicle identification numbers) on various components of a motor vehicle. This information is available to law enforcement officers; the general public does not have this information, therefore, it is a

useful tool for officers.

The bad guys buy a salvaged vehicle, or vehicle that is totalled, for the purpose of having a clear Montana title. When he interviews suspects and talks to them they say they just love these Montana titles. They take the VIN off the salvage or totalled vehicle and the decals, take that vehicle's components and put them on a stolen vehicle. They use the components off that salvage vehicle and that is just gravy to them. The particular case he was involved in two years ago was primarily out of Washington State. Missoula is unique, they have an insurance industry network salvage pool which is in Missoula because it is centrally located into which all salvage vehicles will go. The particular individual in this case purchased salvage from the Missoula Salvage Yard, took that salvage over to Wenatchee, WN, and looked for similar vehicles. If it was a small Ford truck or full size truck the subsequent vehicle that he would steal would be similar. He would take it to Wenatchee, take the salvage ID numbers from the Montana vehicles along with the corresponding title, apply that on those stolen vehicles, then bring them back into Montana because Montana has no inspection laws. Washington State does have an inspection law so they would be foolish if they were to resell them in the State of Washington.

The individual in this particular case was involved in bringing vehicles back and forth into Montana; the salvage out of Montana, the stolen ones back into Montana. His name was Crawford, he was 57 years old. These are not kids we are talking about, these are adults, sophisticated people that know what they are doing and their intent is to deprive a Montana citizen of their particular vehicle. He displayed some photographs involved in the Washington case. One picture is unique in that the salvage was a burned Blazer whose ID numbers were transferred onto the stolen Blazer by its side in the picture. It is very rare to get the salvage and the stolen vehicle side by side. The ones they prefer to steal are late model 4-wheel drives, luxury cars, minivans, very sought after vehicles, especially in Montana communities.

Another case involved an individual by the name of Berger. They were a husband and wife team, he is 38 years old, she is 34 years old. They are not kids who are doing this. They intend to defraud the individual motor vehicle owner. When asked why he bought Montana salvage cars, Crawford told the officer because the titles do not reflect whether the vehicle has been salvaged, they are not branded, they are not disfigured, the title stays wide open. In some cases he will take those titles and acquire loans against the titles because the financial institutions don't even view the vehicle, they take the Montana title as a very gospel fact. Crawford loves Montana titles and they are very much sought after.

When he interviewed Mr. Berger who had victimized a Butte Chevrolet dealership by taking the salvage off a 1988 burned

Chevrolet pickup for which he paid \$1300, he also got all the identifying features and the complementary title. He then stole a similar looking vehicle from a Butte dealer and sold that vehicle to a Washington State car dealer. The only bad thing about that is that Washington State did have to inspect that vehicle since it was foreign, and he got caught. During the time frame before he got caught, he also stole a late model Chevrolet Blazer from a Missoula dealer. In turn he had taken the VINs from the salvage Blazer he purchased in Missoula for \$3,700, he put those identifying numbers on a stolen 1988 Chevrolet Blazer, sold that to Billings Auto Auction and netted over \$11,000. It is a very profitable scheme. Berger sold the Butte stolen truck in Spokane, Washington, and netted \$9,900 out of that transaction. The Blazer stolen from a Missoula dealer sold to the Billings Auto Auction netted him \$11,025. In six months' work he netted close to \$20,000 for this particular scam.

The attorney general mentioned Montana unfortunately got national headlines because of a story in the National Auto Theft Journal, which is a publication that auto theft investigators keep current on the upcoming trend in investigation, published an article about stolen California cars sold in Montana by a theft ring. That unfortunately gave Montana national headlines and coverages for this particular scam.

Vehicle strip, people are stealing vehicles stripping them, taking the engines, other parts, it is becoming an epidemic problem in Montana. The victims in this particular case are the Montana citizens, the trusting people of Montana. He was unfortunately unable to bring Mr. Sturgill an individual from whom he seized a vehicle to today's hearing. He seized 12 vehicles from private individuals in the Missoula area. When he asked to inspect their vehicles, they were very willing; and when he determined it was a stolen vehicle they were somewhat surprised with somewhat hostile reactions when he seized their car. With the bills proposed at this point in time, this would eliminate this feature. He totally supports HB 232.

Daryll "Bud" Schoen, Registrar of Motor Vehicles, DOJ, Motor Vehicle Division, handed out a prepared statement EXHIBIT 3. He explained the amendments. Section 1 on Page 2 defines all the elements involved in vehicle salvage. Section 2, Page 5, lines 8 and 9 replace the outmoded term 'serial number' with 'vehicle identification number' which is the common term now used in the industry. Section 2 also contains new subsections which are the basic operating sections for the new inspection program. All new vehicles coming into the State will be inspected except those vehicles brought into the State by Montana new car dealers. All used vehicles coming into the state, and all salvage vehicles being retitled will be inspected. It also allows the Department to contract for inspection sites to inspect vehicles that are being reconstructed to be put back on the road; provides for an \$18.50 inspection fee for state inspections and salvage vehicle retitling inspections. There is also provision that the

Department may seize a vehicle if it appears to be stolen or there appears to be altered VINs or other problems with the vehicle.

Section 3 on Page 8 provides the title to salvage vehicles less than 5 years old which are considered a total loss by an insurer shall be surrendered to the Department and they shall issue a salvage certificate to an insurer. He can transfer that salvage certificate to a salvage buyer. If a salvage buyer purchases it within the first 15 days after an insurer receives a clear title from the insured, the insurer can provide a salvage receipt to a salvage buyer, then the salvage buyer shall apply for a salvage certificate. It also provides if a salvage vehicle is retained by an owner, they call this an owner keep if an insurer decides not to take possession of the vehicle and lets the owner keep the vehicle, then the owner of the vehicle may apply for a salvage certificate. It establishes a \$5 fee for a salvage certificate. It also provides salvage vehicles in the inventory of motor vehicle wrecking facilities as of October 1, 1991, would be exempt from the provisions of having to apply for salvage certificates as long as they comply with Section 75-10-513(2) which at the present time requires wrecking facilities to report quarterly to the Department all vehicles acquired by them during the previous quarter. If they want to rebuild a vehicle, the Department supplies salvage receipts to them.

Section 4 beginning on Page 11 establishes the methods of inspection of salvage vehicles, requires documentation establishing ownership of the vehicle or major parts used to rebuild the vehicle. It also provides for a 72 hour permit so a rebuilt salvage vehicle can be transported to an inspection site to be inspected. It provides for a misdemeanor penalty of up to \$500. The original bill as drafted amended 75-10-513 to delete the requirement the Department would issue a salvage receipt to wrecking facilities. On Page 13, beginning on line 4, that has been deleted, and salvage receipts will continue to be issued to wrecking facilities for salvage vehicles received by them which are exempt from the salvage certificate provisions.

Section 5 Page 15, lines 17 through 20 provides that a DOJ representative may have access to records of wrecking facilities. At the present time they have no authority to go to a wrecking facility to inspect their records to find out if they have any titles lying in the files, and if they have completed their quarterly reports as required. This would give them authority to do so.

Section 6 Page 15, line 22 contains codification instructions.

Peter Funk, Attorney General's Staff Attorney assigned to represent the Motor Vehicle Division, addressed the issue that the salvage operators of the State have raised concerning whether they will be caught up in this process in terms of vehicles which remain in their inventory in wrecking yards that are not

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subsequently sold. On the Senate side on Pages 10 and 11 of the bill there was some language inserted to cope with that concern. The vehicles in the inventories, as Mr. Schoen explained, on the affected date of the Act will not be subject to the requirements for obtaining these salvage receipts and salvage certificates.

The sentence on Page 12, line 21, in the Senate amended bill may have some confusing aspects. It reads 'A salvage-vehicle purchaser may not possess or retain a salvage vehicle that does not have a duly assigned salvage certificate.' The process reflected in the bill is that initially when these titles are turned in to the DOJ a salvage receipt is initially issued, and that vehicle can be sold by an insurer to a salvage purchaser on the salvage receipt, then the bill has a trigger embodied in it that when that vehicle is subsequently sold from the salvage purchaser to whomever, that a salvage certificate must actually be obtained.

Built into this bill is a \$5 charge for getting those salvage certificates. The brief amendment before the Committee is designed to address that concern. EXHIBIT 4. It will allow salvage operators to retain these vehicles. The titles still have to be turned in, so the law enforcement concern has been coped with, but the change in the one sentence in the bill is designed so that salvage operators can retain these vehicles without having to go through the salvage certificate issuance process which means essentially until they sell that vehicle, as long as it sits in a wrecking facility it does not need to have a salvage certificate issued. A salvage receipt is fine, but then if that vehicle is disposed of, is sold a second time, then a salvage certificate needs to be issued. That is what the amendment reflects. The first provision of the amendment deals with a line in the title. That line reads to require the issuance of a salvage certificate for all junk vehicles. That was never the intent of this legislation from the start. That is amendment 1. It just doesn't accurately reflect what the bill does. Amendment 2. concerns the sentence which has already been described.

Dean Roberts, Administrator of the Motor Vehicle for the DOJ, stated as far as the basic wrecking facility goes, this bill when the amendments are in place does not change their status under the present law. The things they have to do under present law they have to continue to do. They can continue to run on a salvage receipt. They can continue to buy vehicles off the street without a title, as long as it doesn't come from an insurer. The wrecking yard can still make the same business decision when buying a car off the street or from someone's backyard he has always made. He can buy that car without a title, but if he sells it the buyer will request a title, and he will have to get a title for it. Or if he has a title he can turn that title in to the DOJ just as he can now by law and get a salvage receipt and that vehicle can run on that salvage receipt.

This bill is primarily a consumer protection Act. When you get

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the title, you should be assured you own that vehicle. All seven vehicles that article talked about in an APB from Butte, were inspected by law enforcement officers both highway patrol and by Butte local law enforcement. This is a sophisticated crime, and takes some kind of sophisticated enforcement. Once an APB looked at those VINs, they discovered immediately they were fraudulent VINs. That means you must keep up on this crime. It is no different than a drug crime, you have to have investigator people who know what they are doing because the criminal is very sophisticated.

This bill is basically constructed as simply and economically as possible and the entire cost is covered by fees charged to those using and needing the service. There is no general fund impact from this bill and it has the potential of hundreds of thousands of dollars in savings and protection to the Montana vehicle owners. He urged Committee support of SB 232.

Jon Dilliard, Program Officer for the Motor Vehicle Recycling and Disposal Program in the Department of Health, presented prepared testimony EXHIBIT 5. The Department of Health and Environmental Sciences (DHES) supports the intent of SB 232. They do agree and believe there is a problem with motor vehicle titling fraud and vehicle theft. Something needs to be done to correct that problem and protect the citizens of Montana. They have a concern about the current structure proposed, and the current amendment being proposed to the Montana Motor Vehicle Recycling Act that is contained in Section 5 of this bill. The DOJ's desire to allow their representatives access to motor vehicle wrecking facilities to help prevent the possibility of titling fraud and theft is completely understandable. They have no objections.

The DHES is concerned about the provision that the DOJ inspections and violations noted will be turned over to the DHES for handling. The increased workload caused by the violations discovered in the DOJ inspections and turned over to the Junk Vehicle Program may completely overwhelm the enforcement capabilities of their program. If enforcement is not made, what good is the inspection? Even if the Junk Vehicle Program were to increase their enforcement capabilities to handle the increase in enforcement needs, the additional burden on their program's earmarked funds will hasten the need for a program fee increase or end the program due to inadequate funding.

Additionally, the concept of having one government agency enforcing the findings of another government agency may critically hamper the effectiveness of the enforcement that occurs. Since there will be no control over the DOJ inspectors by the Junk Vehicle Program personnel that are involved in the enforcement, there is a real possibility of miscommunications, misunderstandings, and lengthy delays in any enforcement, and development of hard feelings between two government agencies. As an alternative the DHES suggested a change in the proposal that would further advance record keeping and the enforcement of this



section of this Act. The proposal would allow the DOJ and its representatives the ability to seek civil penalties and other enforcement actions against motor vehicle wrecking facilities as a result of their inspections and the violations discovered. By doing this it would increase enforcement and the ability of this program to help cease motor vehicle titling fraud and to help keep the record keeping for the titlings of Montana vehicles clear.

He passed out an amendment **EXHIBIT 6** proposing to give the DOJ the same ability to pursue civil penalties the DHES currently handles the Motor Vehicle Recycling Disposal Act. The DHES understands need for the proposed legislation in SB 232, and is in full agreement with the concept presented. The minor changes suggested would help to improve the law and make it an understandable and workable solution to the problem.

**Mark Johnson, President of the Montana-Wyoming Independent Auto Dealers Association**, which is a group of independent auto dealers in the State here and in Wyoming, urged support for SB 232 as amended. There is a necessity in Montana for VIN inspection. They would like to see it go further, but this is the first step in solving the problem we are having with auto theft.

**Jim Manion, Executive Vice President for the AAA in Montana**, also served on the Attorney General's task force that addressed this particular problem which resulted in SB 232, agrees with Dean Roberts entirely that this is consumer protection legislation. It addresses a very real problem and the winners as the result of this legislation will definitely be the consumer and auto owner and potential auto purchaser in Montana. He also urged support of this legislation.

**Steve Turkiewicz, Executive Vice President of the Montana Auto Dealers Association**, said the title on a Montana motor vehicle is a very valuable document. In the system we have now it is not unlike having a blank check floating out there with the signature of an individual on it. SB 232 is absolutely necessary to rip up that blank check. They urge support for this bill.

**Mike Varone, Vice President of Norwest Bank**, also served on the Attorney General's task force for consumer fraud. He is past Chairman for the Retail Committee for the Montana Bankers' Association. As the others have said, this is a consumer's bill. They support SB 232 100% and urge passage.

#### Opponents' Testimony:

**Henry E. Lohr, Owner and Operator of Hank's Salvage and Recycling, and Towing, Townsend, MT**, opposes SB 232. When these vehicles are determined to be salvage, they could just brand the title, either mark it salvage or wrecked or whatever instead of going through a whole lot of work. It was mentioned that could be done. They do that in Washington, and they still sell the

vehicle. Some are saying it will knock down the value of the vehicle, so let's take care of that.

Another thing the bill does not address is the abandoned vehicles. When they get a vehicle in the yard and an individual can't pay for the towing or it is wrecked and he doesn't want it, what kind of paper work is needed from that individual? How many people carry the title to their vehicle with them? The car may be from out-of-state. He had one car come in from Georgia, the owner said he would send the title, but he has not done so in two years. He has them from Canada with the same problem. This bill does not mention what type of documentation is necessary for this type of problem.

The fiscal note mentions about two different departments doing inspections, isn't one sufficient to do this? He has no problem with two different inspections, but if we satisfy one, are we going to have to satisfy two? These are some of the points to be looked at when executive action is considered. This has been amended quite a bit before. A lot of these points have not been addressed.

Loretta A. Miller, owner of Greenmeadow Auto Salvage with her husband, Helena, handed out her testimony EXHIBIT 7. She is in a strange situation because she is not really opposed to this bill, but is opposed to a lot of things in it. She is also part of the Montana Auto Dismantlers and Recyclers Association who did sit on the task force. There are several things in SB 232 that they have concerns with, the major one is with the number of titles this bill will draw in. They are missing a substantial number. Of the 120 cars their salvage car brought in in 1989, 12 of them came from an insurance situation, either through the salvage pool in Missoula or directly from an independent adjuster or an insurance company. Percentages of the vehicles they brought in that had titles were low. She recently bought a 1988 Ford pickup from Georgia that had no insurance through a repossession company. That title would never have gone through this system unless she turned it in in her quarterly report.

Because of the interchange of parts now, five years limit on these vehicles is too short a time. Pickup bodies for years have had a 7 or 8 year interchange. The Chevy pickup runs from 1973 to 1979, Fords are 1973 to 1980s. In 1980 Ford changed. They ran that body style until 1987, so after 5 years they are still getting 1988 pickups. A 1985 title vehicle and the 1988 vehicle will look exactly the same. Without a thorough inspection you would never know the difference. Because of the cost of retooling, manufacturing companies are also doing that now with cars. The Ford LTD runs from 1979 to 1987 with only changes in tail lights and grill. The body parts, doors, fenders, are basically all the same. Five years is not a long enough time to go back.

The inspection structure in the bill also concerned her. When she

first read the bill it looked like there was a two-tier system to do the same thing. One tier inspected out-of-state vehicles coming in just strictly for VIN compatibility with the title and all the public VINs. That inspection was to be done by trained department employees. In Section 2, paragraph 7 it appears the same employees won't be able to inspect the salvage vehicles which are also only being inspected for VIN compatibility. Those inspections should be conducted by the same people, so two different sets of employees would not have to be trained to do the same thing. It would be better to allow one set of employees to be much better trained, since as Detective Sells pointed out, this is a very sophisticated crime and investigators need to be thoroughly trained.

She was today told Paragraph 7 only allows the department to rent a facility where they may have to do a hoist, etc., it did not mean the DOJ officials will be doing the inspecting. That wording may need to be looked at.

Another concern is in Section 3 requiring a salvage receipt be issued for every vehicle that an insurance company totals. She thought it should be a salvage certificate and not a salvage receipt as written in her testimony. They only request 3 or 4 salvage certificates a year. She wanted to bring a salvage certificate that she requested two weeks ago for a 1970 Datsun she sold that somebody is going to work on, but she has not received it as yet. A certificate is on a plain piece of white paper with some black printing on it. It would be very easily altered. The fewer salvage certificates out there, the better off we are. Issuing a salvage certificate for every totalled vehicle is unnecessary and dangerous. She had 134 vehicles brought into the yard last year, this would require an extra 134 salvage certificates at \$5 apiece, that is a lot of vehicles and money. If they are so easily altered, they will be more fun for the thieves.

If the insurance company can sell the salvage vehicle to a salvage buyer on just a salvage certificate, that should be the only required paper work kept in her yard. If she has a properly executed salvage receipt that shows the vehicle has been properly purchased and the insurance company has sent in the paper work, she should not need the salvage certificate until she sells the vehicle.

She cannot meet the requirement in Section 3, paragraph 3, line 15 that a salvage certificate must be issued before any vehicle is disposed of, because she does not get a title with every vehicle. The wording could be better if it was "Prior to the sale of the salvage vehicle..."

Lines 22, 23 and 24 were just about complying with vehicles that do not come in with titles. Even with the changes recommended, there must be a simpler system this state could use to tag a lot more titles and make it very much harder for people to steal

vehicles. She supports any attempt to stop the stolen vehicle program, but is not sure SB 232 is the way to do that.

Questions From Committee Members:

REP. BACHINI wanted response from a proponent on Ms. Miller's testimony. Mr. Funk said some of the things Loretta Miller said he agrees with. 1. We want a system which is similar to what many other states have. This bill says vehicles which need to go through the issuance of the salvage certificate process are those vehicles totalled by an insurer. The Senate added the language regarding those vehicles that are five years old or newer. When the bill started out it simply said vehicles totalled by an insurer, that is about half of the total number of vehicles, maybe much less than that, that fall within the definition of salvage on any given year. The consensus of the committee that met to put this legislation together was that we have to make an effort to start somewhere, and that the five-year old and newer vehicles are the most desirable in terms of theft, coupled with the fact that most of those vehicles or a lot of them are insured because of their existing value, and the fact that they are so new. In a perfect world we might have a bill before you which says something like 'any individual who owns a vehicle which is determined to be a salvage vehicle has an obligation to surrender the motor vehicle title'. That means everybody in the State. He can't deny that would be a better bill from law enforcement viewpoint. The question is, can we impose a requirement like that on every citizen in Montana in one legislative session? That was not the consensus of the committee, they felt that would be going overboard for a new type of system like this.

Concerning the other comments made about the inspection which perhaps could be viewed as a two-tiered inspector issue, that is not at all the intent of the bill. The intent is simply to allow the department to rent a 'facility' which is the language of the bill, when a hoist or something like that is needed to inspect a vehicle. They are going to have to use existing facilities to do some of the inspections.

REP. BACHINI asked about the two agencies being involved in inspections. Mr. Funk said it probably makes the most sense to have either the DHES or the DOJ as the sole entity involved in this situation. Unfortunately, the DHES has been built into it in terms of some of the screening requirements put in at the time the screening was adopted for wrecking facilities, and because DOJ is charged with the whole titling and registration process, the system doesn't make any sense unless we can have the ability to regulate vehicle titles from their birth until their death, and there really isn't any way to do that unless they have some access to the records of the wrecking facilities themselves. Under this proposal what happens with a title after a vehicle is totalled is critical. Prior to the implementation of this process, it really didn't matter if the DOJ had any access to licensed wrecking facilities throughout the state. There is a

statutory requirement now that records be sent to them and they issue salvage receipts for those vehicle. There isn't much reason for their inspectors to be on-site and never review records, but under this new proposal unless there is that ability it can't be effective because of the importance of reviewing the documents that involve the surrender of those titles.

**REP. SCOTT** asked hypothetically if somebody bought a pickup within the five-year time frame, and he fixes it up, needs a motor which he buys from a wrecking yard, replaces the doors, windshields, a dash because his has been damaged right where the identification plate is located. He has a valid title for the vehicle, but he has no VIN numbers that will match the title. He doesn't have the bill sheet from the manufacturer to prove that the transmission and rearend have the same serial numbers that match the title. What does this person do? **Mr. Schoen** explained if a person has an existing vehicle with an existing title and is going to do some major changes to it, if the dash is replaced or the door where there may be a VIN and doesn't report it to anyone, he will just keep on driving until he is stopped to have that vehicle checked to see if identification numbers match. If he buys any component parts from a salvage yard, he could get the title or the salvage certificate for the parts bought from the salvage yard. He could call them parts. **REP. SCOTT** asked if this bill is trying to prevent the sale of these certificates, etc., who would he report this to? **Mr. Schoen** answered if he buys just a door or a hood, or dashboard, he could foreseeably put those parts on a vehicle and go buy a notice. If he buys a cab or a major component part to strip and repair a vehicle, then he would get a salvage certificate or the salvage receipt for the frame or the cab, and then he would have to have the vehicle inspected to prove he has legal ownership of those parts.

**Mr. Roberts** explained basically this bill does not deal with that problem directly. That is the same problem we have today. If in fact he has his public VINs and they are Montana titled VINs, nobody is probably going to discover that. It would be discovered if he tried to sell that car in Washington. They would do a VIN inspection just as we will do on vehicles from out-of-state. On this issue all we are trying to do is kill titles at this particular time on five years old or newer vehicles that are sold as totals, basically to insurance companies. That is where the most sophisticated crime occurs in buying those totalled vehicles that have been damaged beyond repair in most cases. What they are buying is that piece of paper. If he buys a new dash for a 1970 van he owns, under present law he has to go to the registrar's bureau and get that titled. He does that through the bills of sale he gets from a wrecking facility. If a kid buys a vehicle from a wrecking facility, and it has a salvage certificate, when he puts that car all back together from different parts he bought from a wrecking facility (the title had been killed), then he is going to have to have what is called a 'rebuilt' inspected again. He must have bills of sale for the component parts of that vehicle because if that isn't required, you get what is called a

'chop shop' operation. If you talk to any reconitioner or basically body shop, those are the people they compete against all the time. Those are people who buy stolen parts, if you don't want it rebuilt with stolen parts, bills of sale must be obtained. That is a common type procedure that is done all over the country with inspection laws.

**Ms. Miller** responded because she sells those parts to repair the vehicle, right now there is a strong move in their industry to move to the computerized inventory system. She already does have that, so when she sells that young man a dashboard out of a vehicle or a door off a vehicle, her computer automatically prints the VIN of the vehicle that door or dashboard came off of, so the VIN on his dashboard should respond to the VIN on his bill of sale. If she were a good typist and typed the number in correctly, he should have a correct record of the parts he bought. What really concerns her is when **Mr. Schoen** said they give a salvage certificate for a cab or a body or frame or door. They don't, they give invoices, receipts, bills of sale. If she gives somebody the salvage certificate for a cab, and somebody else wants to buy the frame of her truck, what do they get? So unless they buy a complete vehicle they don't give them a salvage certificate. The young man's problem should be taken care of with the receipts he receives if he tucks them in with his title or something, he will have proof that he owns that truck and he also has parts that he has legal tracings to.

**REP. BENEDICT** said it seems like there are a lot of questions raised by the opponents. Some of them might have been handled or solvable within the framework of the bill. Was there adequate representation from salvage operators on the task force that prepared the bill? **Mr. Funk** said they had as a member of the task force the only state association of the Recyclers and Dismantlers. From the time this bill was first written several months before the legislative session began through this hearing, they have had that organization's support. In both the Senate and here two individual members of that statewide association testified in opposition to the bill. He does not know how many members there are in that statewide group, but he would like to have that figure so you could see what the numbers are, because in their hearing, basically they had the support of the state association but there are two individuals who are members of that association who have not been convinced their association stand is agreeable for them.

**REP. LARSON** asked if he was the person who testified that there wouldn't be any impact on the general fund. **Mr. Roberts** said he had. That fiscal note is wrong. In the Senate there were some changes made in terms of fees, etc., and a new fiscal note was requested yesterday. It has been given to the Legislative Council and the Committee doesn't have a copy yet. Their concern is that they would not ask for any more money than would be received through the fee process. They lowered the rebuilt fee which is in the Senate version of the bill from \$75 to \$18.50. So everything

across the board costs \$18.50.

**REP. LARSON** asked when an insurer sells a totalled vehicle, does he convey the title himself? **Mr. Roberts** said he has three choices under this bill. The insurer who totals a vehicle for whatever reason has to turn in the title to the Department. When the committee met there were a lot of questions about what a totalled vehicle was. That is where they got into the whole issue about what a rebuilt was, etc. That is why it is triggered by the insurer only and is not triggered by other means. There was a long discussion about that. Basically, any car that is of any value, and those are the ones that thieves steal, is going to be insured, either through an insurance company or self insured as is done by companies such as Montana Power Company, Great Falls Gas, MDU, etc. which are also included in this as insurers. The insurance company can total the car. In some cases when you have a totalled car if you are a mechanic the insurance company sells it back to you cheaply after they have already paid you for it. You can keep that car. In that case the insurance company must notify the department they have let you keep that car, but in the bill the department has the right to get that title from you if they so desire. Even though they have the right to get that title, unless they think you may go out and steal another car and do the same kind of crime, they may and let you keep it.

The second way is for the insured himself to at that point sell the car. He wants to dump it quickly, so he takes it to the auction yard or to a wrecking facility, and sells that car to them. He then would have to fill out a receipting process. He sends the department a copy of that receipt, he gives a copy to the wrecking facility. At that time he didn't have the title yet, so he does that. The department then knows who has the car and where the title is. When the wrecking facility receives the title, it would be given to the department.

In the other scenario the insurance company, after they have the title and all the liens are satisfied which is very important to the wrecking facilities since they can't give these cars up in any way until those liens are satisfied, has to make sure that is happening. The insurance company would get the certificate, turn the title in to the department. It is all triggered by the insurance industry. It is their responsibility to tell the department about that vehicle, so they can kill that title.

**REP. LARSON** asked if it wouldn't be simpler to give the insurance companies a rubber stamp and when they sell the wreck as a total just have them stamp the title and communicate to you they are going to stamp the title? **Mr. Roberts** said that is about what is happening, but because of a title argument, and because it is so secure, you don't want somebody else putting your name on anything. There isn't a state in the Union that would accept that system. In all 50 states titling documents are sacred including all the new federal requirements concerning odometer statutes, etc. That is basically what we are doing. All that is being said

is that you have to turn that title in. That is exactly what is being done, but we are going through the proper legal procedure to kill that title. Instead of an insurance company stamping that, if it was stamped in the wrong place, and somebody tried to buy that vehicle, another state could say they won't accept it. The title is a very sacred official document in all 50 states.

REP. CROMLEY has had the occasion to be involved when a damaged vehicle has been restored and sold as undamaged. This legislation does not deal with that case. Mr. Funk said unless the original vehicle was totalled within the definition of the bill, this bill really doesn't do much to get at that situation. That is title branding, a concept which many other states use, was discussed in great detail within the attorney general's task force that met on this issue and was ultimately rejected as being one of those additional steps in this type of process that perhaps our state and government wasn't ready for yet. The way essentially that it works in Washington State and other states that brand titles, is they still have the issuance of a salvage certificate. It is not just the situation where they take that existing title and stamp it as saying this car is rebuilt. When the car is totalled they kill the title, they issue a salvage certificate. When the car comes back to life, a new title is issued in the inspection process that exists in our bill. In Washington State at that time when the new title is issued, it has a big black stamp across the face of the title that says 'Rebuilt, Reconstructed, etc.' That is a consumer protection issue. Probably a little bit different angle than this bill in terms of theft, but it is a consumer protection angle. The task force thought that is the type of process that is needed if consumer protection is going to be built into the bill. The task force could not reach agreement amongst the various groups involved on how to implement that type of a title branding scheme. It was a topic which was discussed at great length and many different ideas were put on the table. In any event it is an idea that would get at the problem mentioned by you but was rejected by the committee as being a part of the process at this point in time.

REP. CROMLEY had questions about definitions defining various parts of a car, but he doesn't see where parts of the car are used at all in this section. Mr. Funk explained there was additional language in the bill concerning inspections that would have as originally drafted involved those definitions. They are involved on Page 11, Section 4 of the bill which speaks in general terms about retitling salvage vehicles. On lines 12 and 13 it talks about the source of component parts used to rebuild a vehicle. The definitions themselves are not included in the text of the bill, but the idea behind having the definitions is to define that phrase 'component parts', and to further identify what an inspector may be looking at.

REP. WALLIN asked if a person totalled his car and told the insurance company he couldn't find the title, misplaced it, lost it truly and honestly, and then later on he discovered he had the



title, but he meanwhile had applied for a duplicate title, would there be a way that could fall through the cracks and that car be sold to one of these outfits in an innocent sort of way. Mr. Roberts said it could, but they would have the record from the insurance company which obviously would have the VIN number on the record. There may not be a title number even though it would be on the registration receipt if they had it, but it would have the VIN and their system would allow them to find that title by VIN or by any number of ways they now use. That wouldn't change. It would be pretty difficult for that to fall through the cracks. They also have the ability by law presently to cancel the title that was issued erroneously. It is not likely that a consumer then would get stung by that kind of system.

REP. WALLIN theorized that a person wrecked his car and didn't want to total it. He told the insurance company he would fix it at home. He later changes his mind and sells it to a salvage yard. Is there a big crack there? Mr. Roberts said the insurance company is going to determine whether that car is totalled or not, whether the owner keeps it or not, that is going to be a decision made by the insurance company. If they decide to total that vehicle, they are going to notify the department of that even if the owner keeps the title, so they are going to know and will request that title be turned in to the department. They will issue a salvage certificate during that repair stage. It can run on that salvage certificate, it can be sold on that salvage certificate, but that vehicle cannot be titled again in Montana unless it is inspected as a rebuilt at that time even if he doesn't do anything with it. REP. WALLIN said the insurance company wouldn't know the owner had changed his mind. Mr. Roberts agreed that one would fall through the cracks because the insurance company didn't consider it a total. Somebody has to be the trigger of the system, and they are allowing the insurance industry to trigger that system, and therefore that may fall through the cracks. You may be correct because the insurance company decided it wasn't a total. If it is not a total, then they are not concerned about it. That is true in most states. The question becomes who determines totals. In most states insurance companies determine totals.

REP. BENEDICT understood there is to be another fiscal note. It says in this old one a reduction in the motor vehicle recycling and disposal program state special revenue account may reduce grants to counties. Is that taken care of with the increase in VIN fees? Mr. Roberts answered it is not. Where the reduction comes from is if you ran illegal wrecking facilities out of business. He doesn't find that a real problem if they are reduced. The DHES got into this business during the Ladybird Johnson Act, when the wrecking facilities had to be fenced. Grants to counties would only be reduced if wrecking facilities who weren't complying with the law were shut down.

REP. STEPPLER asked why was five years included in this? Ms. Miller testified that vehicles go for five to seven years or

longer. SEN. DOHERTY answered as he remembered the debate on the Senate floor, SEN. AKLESTAD and Mr. Lohr were very instrumental in getting that in. There was some discussion about moving it to three years from a law enforcement perspective. Mr. Funk rejected that. If the Committee wanted to change it to 10 it would be alright with him, but there might be discussion from other people. He thinks it is too short a time, but given political realities of the world, they felt the bill was a lot more important to get at any level than to have it die over fighting about whether it was three years or five years.

Closing by Sponsor:

SEN. DOHERTY thanked Loretta Miller for coming and raising some questions the Committee should be aware of. Under the new system the salvage certificate will be what they refer to as a secure document and alteration would be very difficult to not detect. REP. CROMLEY's question is a good one. The next step for consumer protection could be accomplished in the next session. This legislation only comes into effect once a car is totalled and the trigger that would bring about this whole process is being given to the insurance industry. That is where it ought to be since those people deal with these problems on a daily basis. There will not be two tiers, the same inspectors will be doing the same inspections for different purposes, whether it is a new vehicle coming into the State or a rebuilt.

This is a good bill. It is a necessary first step. It isn't a grandiose scheme by anybody anywhere to build up a large empire of vehicle inspectors. It is a moderate first step at beginning to deal with a very, very serious problem in Montana. He would hope the Committee would concur with this legislation.

HEARING ON SENATE BILL 169

Presentation and Opening Statement by Sponsor:

REP. STEVE DOHERTY, SD 20, Great Falls, explained this bill is the other legislation the Attorney General's task force of various interested individuals came up with. It covers other issues that needed to be dealt with in Montana. SB 169 is a clean up bill. It does a number of things. In Section 1 insurance companies have information in their files they believe would suggest theft or fraud in automobile cases. They would like to tell local law enforcement about that information. They have been unwilling to do so because of their concern about liability and privacy issues in Montana. Section 1 provides them a shield of protection from liability for those instances where theft or fraud might be involved if they shared that information with law enforcement agencies.

Section 2 would allow the department of motor vehicles to assign people identification numbers in certain cases. Sections 3 and 4

bump the penalty provisions in current law from misdemeanor to felony for either altering, or tampering with the VIN or altering any odometer readings. The reason for that is there is really no other purpose for altering a VIN unless involved with crime. Usually automobiles are worth more than the misdemeanor penalties. The second thing is odometers will not be changed unless it is done to misrepresent the value or the amount of wear and tear on the car. The task force people thought the only purpose for doing that would be to defraud somebody, and that is a serious crime. There are other proponents, people from the Attorney General's office and the Department of Justice.

#### Proponents' Testimony:

Daryll "Bud" Schoen, Registrar of Motor Vehicles, Motor Vehicle Division, said SEN. DOHERTY covered the bill very well. At the present time the current statutes only allow the department to assign vehicle identification numbers to traders. Oftentimes stolen vehicles are recovered where the thief has taken or removed the VIN plates and they do have to assign identification numbers to vehicles in that situation as well as rebuilt, etc. They would like to find the manufacturer's original identification number so they could replace the public VINs with the manufacturer's VINs. They would just duplicate the manufacturer's VINs, and place it on the vehicle. The bill also provides for a fee for assigning a vehicle identification number.

Brent Sells, Missoula Police Department, on behalf of members of his law enforcement community, and of the department, strongly supports this bill. It is really needed and recommended.

Dean Roberts, Administrator of Motor Vehicles Division, Department of Justice, supports this bill.

#### Opponents' Testimony:     None

#### Questions From Committee Members:

REP. WALLIN said dealers buy cars at auction in Billings and other places. They have signs that say mileage not guaranteed. They buy them with the understanding they can resell them. Are they at liberty then to say when they resell the car they are not guaranteeing the mileage? How is this situation taken care of? Mr. Roberts said the National Odometer Fraud legislation and on the title, there is a place for that that basically says about this odometer "I don't know that it is accurate", but they have to declare that.

#### Closing by Sponsor:

SEN. DOHERTY said he thought the Committee understands the bill. He asked concurrence. REP. SHEILA RICE will carry SB 169 and SB 232 in the House.

EXECUTIVE ACTION ON SENATE BILL 169

Motion/Vote: REP. WALLIN moved SB 169 BE CONCURRED IN. Motion was unanimously adopted.

EXECUTIVE ACTION ON HOUSE BILL 901

Motion: REP. SHEILA RICE moved HB 901 DO PASS. REP. RICE also moved the amendments EXHIBIT 8, 8A, and 8B.

Discussion: REP. RICE explained there are three sets of amendments. One from the Department of Commerce, EXHIBIT 8; one from the Department of Revenue EXHIBIT 8A; and one from the Great Falls Capital Corporation EXHIBIT 8B, in rough draft.

REP. RICE said EXHIBIT 8 would be explained by Andy Poole, Department of Commerce. They received the quarterly reports from the capital companies a short while ago. The capital company with the largest share of tax credits which are approximately three million dollars has now invested all of their funds in Butte, MT into hotels and motels throughout the state. Basically, it is a good idea to look at where capital company money is invested to see if after five years the company has invested at least 70% of the capital base of the capital company in qualified investments, to see in fact what has happened with that money; and secondly, so they can share in the expense of the regulation of the Montana capital companies in Montana. Because they have three million of the eight million dollars in tax credits which are available, the second part of that amendment would mean they would pay three-eighths of the cost of regulating Montana capital companies. He thinks it is a good amendment for that reason.

REP. BACHINI wanted each amendment to be considered separately rather than taking them as a whole. The first amendment has been explained by Andy Poole, DOC. The Chairman asked for discussion on EXHIBIT 8.

REP. HANSON wanted a statement as to the effect of these amendments. REP. RICE said this set of amendments has been reviewed and approved by REP. BARDANOUVE. Mr. Poole said he had reviewed all of these amendments. This particular amendment had been seen and approved by the sponsor.

Motion/Vote: REP. SHEILA moved the first amendments EXHIBIT 8 be adopted. They were unanimously adopted.

Motion: REP. RICE moved the second set of amendments EXHIBIT 8A prepared by the Department of Revenue be adopted.

Discussion: REP. RICE explained the essence of this amendment deals with the provision of HB 901 that allows tax credits not

used properly to be recaptured. The DOC struck all of the language dealing with recapture and instead made it a penalty on the capital corporation itself. In essence the State of Montana still gets the dollars back, but instead of recapture from the investor, it is a penalty on the capital corporation. Essentially, it achieves the same purpose with a different set of words, or a different type of language. Jeff Miller, DOR, said they prepared this amendment EXHIBIT 8A in response to concerns expressed the other day about the lack of clarity in the situation as to when a credit could be recaptured, etc. As it is now structured the penalty would be paid by either the capital company or the investors for failure to make a qualified investment. It is a situation of trying to recover a credit that was not ultimately used as was intended. It is a simple amendment that simply says in the instance where there is failure to make qualified investment, the penalty in the amount of credit that was not properly taken will be assessed against either the capital company or the investor. This situation came about because they actually had a situation where a capital company did not make qualified investments. When the department chose to pursue the penalty against the capital company, it was defunct. There were no moneys left in the capital company. Under this situation they would be able to proceed against either the investor or the capital company.

REP. BACHINI said the questions are for 1 through 7 on the amendment. REP. BARDANOUE had signed off on EXHIBIT 8A.

Discussion on amendment 8A:

REP. ELLIS said usually on income tax when you find out you owe more than you thought you did, they recover interest also. What is the reason why they didn't address that particular part in these amendments? Mr. Miller answered interest is provided for in current law at the rate of one percent a month.

Vote: Second set of amendments EXHIBIT 8A were unanimously adopted.

Motion: REP. RICE moved the third set of amendments EXHIBIT 8B be adopted.

Discussion on EXHIBIT 8B:

REP. RICE explained they had been discussed with REP. BARDANOUE, and he approved. The ones crossed out he obviously didn't approve. On page 3, insert after line 23, (c) a debt or equity financing of an acquisition of a non-Montana business which will be relocated in Montana. The original language of the bill states only existing profitable businesses can be bought if you are using it for expansion capital. This says a profitable business could be bought even if located out of state and brought to Montana which makes sense because that is what capital corporations are about. They create jobs in Montana.

At the bottom of that page (6) A capital company may invest tax credit funds in a profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted towards the investment percentage criteria set forth in this section to the amount to be used for expansion of the business. This is a slight expansion and a rewording of the original bill language saying a profitable business purchase had to be used for expansion. This is a carefully crafted compromise approved by REP. BARDANOUVE.

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The department shall determine, within ten business days of submission of a report satisfactory to the department, whether the proposed investment is qualified under this chapter before the investment can be made by the capital company. They wanted to have the department turn the reports around as quickly as possible. Ten days was agreed upon with the department.

Mr. Verdon asked if it was intended to strike subsection 6 and replace it with new language? REP. RICE said that was correct, and was approved by REP. BARDANOUVE.

REP. BACHINI asked if he would like to respond to the explanations. Mr. Poole answered REP. RICE has explained them as he would. They concur with all of them.

#### Discussion on EXHIBIT 8B:

REP. BENEDICT asked if any of the amendments conflict or are they coordinated. Mr. Poole answered the first amendment deals with moving out-of-state companies into Montana. That is appropriate. The second amendment is worded slightly differently from the original wording. The department has no problem with that because the second sentence of that paragraph gives the department the ability to limit the investment to, or the use of tax credits for, that investment only to the amount used for expansion of the business. That is almost identical wording in the bill right now. The third amendment which says this has to be turned around within ten days is agreed to by the department. They don't have any problem with that. They will develop a form which capital companies will report to the department on which explains their investment and what they are doing with that. They think ten days is sufficient time to turn it around.

REP. BENEDICT said you are approving of the third set of amendments. Are all three of the amendments coordinated, do they dovetail good, do they conflict in any way? Mr. Poole said they don't conflict. Each of the amendments deals basically with a different area, so there is no problem.

REP. STELLA JEAN HANSEN said she is concerned about the ten days in view of what has happened to these capital investment

companies already. Will just a form be sufficient? Mr. Poole answered basically what the department is being called on to do is not to assess the risks from an investment standpoint as an investor would, looking at how profitable the business might be, etc. The department will review the investment proposal on the basis of how well it meets the criteria which is outlined in the Act. That can be done fairly easily by giving specific financial statements to people who are involved in the business, some indication that they ought to try to get bank financing. Through documentation they expect to get pretty much all the department needs to determine whether the investment proposed was the kind of investment which is intended by this Act. They are not particularly concerned about that at all.

REP. HANSEN asked if they were doing that prior to this. Mr. Poole said they were not doing that prior to this. Basically, the existing legislation does not require the capital companies to tell the department anything before they do it. It does require them to file quarterly reports after the fact, and then an examination of the investment is done after the fact. That is part of the problem. These things happen, if the department comes in after the fact and finds out about it, then it is a problem not only for the department, but also for the capital company and the investors who are involved in that capital company. The department thinks this is a very good amendment and it will get rid of a lot of confusion and problems there have been with the existing Act.

Mr. Verdon asked for clarification of the last sentence on the last page. That is trying to say the capital company cannot make the proposed investment unless the department determines within ten days after submission of report satisfactory to the department that the proposed investment is qualified under this chapter? Mr. Poole said that is the intent of this legislation. There doesn't appear to be any problem with that particular language. The capital company will report their proposal to the department; within ten business days the department will tell them whether their proposal is a qualified investment under the Act, an investment which allows them to meet the percentage criteria which is outlined in 301. Mr. Verdon asked they cannot make that investment unless you approve it? Mr. Poole said if they are going to use tax credits, that is exactly what the department wants to have happen. Mr. Verdon reiterated the last sentence should read: The capital company may not make the proposed investment unless the department has determined within ten business days of submission of a report satisfactory to the department that the investment is qualified under this chapter. Mr. Poole said that was fine. REP. RICE said that could be approved in concept as part of these amendments.

Vote: The third set of amendments EXHIBIT 8B were unanimously adopted.

REP. LARSON said the Auditor's Office contends the language on

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

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Page 2, lines 17-20 is too broad and makes capital companies a lender of last resort. If anything, the language should be restricted to disqualify conventional debt plans that would be available through financial institutions. They suggested after 'displace' on line 19 to strike 'other sources of equity or debt financing that are available to the project, and is:' and insert 'conventional sources of debt financing that might be available through financial institutions or state funded debt financing programs'. Conceptually, it is more housekeeping. REP. BACHINI asked if the other departments had seen this proposed amendment. REP. LARSON did not think they had seen it. REP. BACHINI asked other departments present for their opinion. Mr. Poole said there may be a potential problem with this. Because the word 'equity' is amended out of the legislation, a person who owns a business in total, that is equity financing. You could purchase that business in its entirety and replace all of that equity financing. It is actually buying an existing profitable business. He has no problem with the underlined portion of the amendment, but has a problem with it getting rid of the equity work in that particular clause.

REP. BACHINI suggested that we leave this amendment out at this time. In the meantime the department can work with the Auditor's Department and maybe with a little more time that amendment could be placed on the floor of the House or the Senate.

REP. LARSON withdrew his proposed amendment.

Motion/Vote: REP. BACHINI said the motion is now HB 901 DO PASS AS AMENDED. Motion was adopted unanimously.

REP. BACHINI announced March 13 the Committee would hear HB 905, SB 323, SB 433, and will take executive action on HB 46 and HB 53, plus HB 169.

ADJOURNMENT

Adjournment: 10:45 a.m.

  
\_\_\_\_\_  
REP. BOB BACHINI, CHAIRMAN

  
\_\_\_\_\_  
JO LAHTI, SECRETARY

BB/jl



**BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE**

DATE March 12, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 248 (third reading copy - blue) be concurred in .

Signed: Bob Bachini  
Bob Bachini, Chairman

Carried by: Rep. Larson

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 169 (third reading copy - blue) be concurred in .

Signed: \_\_\_\_\_

*Bob Bachini*  
Bob Bachini, Chairman

Carried by: Rep. Rice

HOUSE STANDING COMMITTEE REPORT

March 13, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 901 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Bachini, Chairman

And, that such amendments read:

1. Title, lines 8 and 9.

Strike: "FOR RECAPTURE OF TAX CREDITS UNDER THE ACT"

Insert: "THAT INVESTORS ARE SUBJECT TO THE PENALTY FOR FAILURE TO  
MAKE QUALIFIED INVESTMENTS"

2. Title, line 13.

Strike: "AND"

Insert: ", "

3. Title, line 15.

Following: "INVESTMENT"

Insert: ", AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY  
FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION"

4. Page 3, line 19.

Strike: "or"

5. Page 3, line 23.

Following: "company"

Insert: "; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana"

6. Page 8, line 24.

Strike: "(1) Except as provided in subsection (2), if"

Insert: "If"

7. Page 9, line 4.

Strike: "company"

Insert: "investor"

8. Page 9, lines 6 through 12.

Strike: subsection (2) in its entirety

9. Page 11, line 7.

Strike: "A"

Insert: "Investors in a"

10. Page 11, line 10.

Strike: "taxpayers"

Insert: "investors"

11. Page 11, line 14.

Following: "if the"

Insert: "investors or"

12. Page 11, line 25.

Following: "(6)"

Strike: "An"

Insert: "A capital company may invest tax credit funds in an"

13. Page 11, line 25 through page 12, line 1.

Strike: "may be financed by tax credit funds to the extent that the funds are"

Insert: "only if a substantial portion of the investment is to be"

14. Page 12, lines 2 through 4.

Following: "business." on line 2

Strike: remainder of line 2 through "meeting" on line 4

Insert: "The department may limit the amount of the investment to be counted toward"

15. Page 12, line 5.

Strike: "outlined"

Insert: "set forth"

Following: "section"

Insert: "to the amount to be used for the expansion of the business"

16. Page 14, lines 2 and 3.

Strike: "for which tax credits will be claimed. The"

Insert: "to be made from its capital base. The capital company may not make the proposed investment unless the"

Strike: "shall determine"

Insert: "determines, within 10 days of submission of a report satisfactory to the department,"

17. Page 14, line 4.

Strike: "whether"

Insert: "that"

18. Page 14, line 5.

Strike: "before the investment is made"

19. Page 16, line 9.

Following: "investments"

Insert: "and after at least 5 years have elapsed since the date  
the capital company was qualified"

20. Page 16, line 12.

Following: "chapter."

Insert: "Fees for the administration of this chapter must be  
assessed to each qualified Montana capital company in a  
ratio proportionate to the tax credits allocated to the  
capital company divided by the total tax credits allocated  
to all qualified Montana capital companies."

EXHIBIT 1

DATE March 12, 1991

HB 272

Ref #1

INDUSTRIAL INFRASTRUCTURE  
TAX INCREMENT DISTRICT

Background

In the waning days of the session, the 1989 Legislature adopted the Tax Increment Financing Industrial Development Act, now-codified at 7-15-4298 and 7-15-4299. That Act gives municipalities the authority to create "industrial districts for industrial infrastructure development projects" to and to use tax increment financing with the district pursuant to the tax increment provisions of the Urban Renewal Law, 7-15-4282 through 7-15-4293

Issue

Neither the urban renewal law nor the industrial infrastructure law define "infrastructure" or "industrial infrastructure". One view, perhaps the more conservative view, has been to define "infrastructure" to mean streets, roads, sidewalks, water, sewer, storm sewer, bridges and other improvements owned, operated and provided by a governmental entity. Consistent with that, "industrial" infrastructure would mean "infrastructure" designed and constructed to specifications required for industrial uses or user.

Under the scenario, the tax increment derived from an industrial tax increment district, i.e., the taxes paid by the newly located industry, would be used directly or pledged to the payment of bonds issued to finance the infrastructure required in order for the business to locate within the community. Thus, the business would not have to pay special assessments to finance these improvements or the cost of public improvements in addition to its regular property taxes.

The original proponents of the legislation take a much broader view of the legislation, and in particular, the infrastructure. They hold that "industrial infrastructure" means the privately-owned land, building plant and equipment that constitutes the business. On the basis of that definition, they believe that the tax increment can be pledged, given, loaned or granted directly to the business to defray all or a portion of the company's costs of acquiring land, constructing of the building, buying equipment, etc. They likewise believe that the statute give them the authority to return any taxes paid by the business to the business in the form of "infrastructure" of grants.

Examples of how they construe the statute is evidence by the enclosed materials.

Aside from the frustration of not being able to conclude from the language of the statute what the legislature really intended when it authorized the statute, the results of such a wide range of interpretations are troubling from an implementation point of view. Montana communities are, in essence, competing with one another for economic development projects and those who consult with an attorney as to what the statute authorizes them to do are finding they are not on a level playing field with those communities who take an expansive view of the power granted or do not ask for legal advice

While it is arguable on the basis Hollow and White cases that such an expansive use of the tax increment for private purpose might conflict with the constitutional requirement that taxes shall be levied "public purpose", if the legislature clarifies that "infrastructure" means public improvements, the constitutional issue may not have to be faced. If on the other hand, it was an is the legislature's intent to allow tax increments to be used in the more expansive manner, it would be extremely useful for the legislature to clearly state that and then, if necessary the constitutional issues can be raised in the courts.

WF/fdh



1  
DATE March 12, 1991  
BB 272

MINUTES

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

Call to Order: By Chairman Gene Thayer, on April 12, 1989,  
at 10:00 a.m., room 312-2, State Capitol

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: Chairman Thayer called to order,  
a joint hearing, for SB 472, of the House Business and  
Economic Committee and the Senate Business and Industry  
Committee. Chairman Thayer asked House Chairman  
Pavlovich to preside, while he presented the bill.

HEARING ON SENATE BILL 472

Presentation and Opening Statement by Sponsor: Senator  
Thayer, Senate District 19, stated SB 472 was the  
result of more than a year's work. He said various  
development communities around the state had been  
working on the bill, including Butte, Anaconda, Great  
Falls, and Billings. He said the legislation was  
patterned after the tax increment legislation that was  
adopted about 10 years ago. He stated the bill was an  
act authorizing municipalities to create tax increment  
financing industrial districts to assist in financing  
necessary industrial infrastructure to encourage the  
attraction, growth, and retention of secondary, value-  
adding industries. He said, in the interest of time,  
he would turn the testimony over to those who would  
explain the workings of the bill.

List of Testifying Proponents and What Group They Represent:

Evan Barrett - Executive Director, Butte Local  
Development Corporation  
Butte-Silver Bow Chamber of Commerce  
Dr. Dennis Winters - Montana Marketing Development  
Kaye Foster - Billings Chamber of Commerce  
Yellowstone County Economic Development Offices  
City of Billings  
Senator J.D. Lynch - Senate District 54, Butte, Silver  
Bow, Anaconda, and Deer Lodge  
Alex Hanson - League of Cities and Towns  
Jim Tutwiler - Montana Chamber of Commerce  
Rob Morawick - Missoula Chamber of Commerce

List of Testifying Opponents and What Group They Represent:

Julie Hacker - Missoula County Freeholders Association

Testimony: Evan Barrett thanked the two committees for suspending the rules, and hearing this bill jointly. He said they had worked long and hard with economic development groups, the chambers of the cities, with tax increment experts, and with the bond councils to develop this bill. He said the bill was designed to meet a real need which existed in Montana. He said the question was, how Montana could be competitive in the economic world today, and it was a serious issue. He said, that for every 1,000 industrial expansions taking place in the country, there were 15,000 communities competing for those expansions. He stated, when trying to envision how to develop Montana economy, there were a only few ways we could accomplish it. He cited the primary job, was to bring money, into Montana, from the outside. He termed that function as what economic growth truly was. He said they had reviewed the alternatives available.

Mr. Barrett said our real opportunities for economic growth were built around our natural resources; energy, oil, gas, mining, and forest products. He termed the options were in how to create more money for Montana with those resources. He said we could simply produce more, but supply and demand would become a factor. He stated the other alternative, was to do more with the resources. He said that brought the value adding concept, and SB 472 provided the mechanism whereby Montana could structure for attracting value adding industries. He said secondary value adding industries required intense capital and significant infrastructure. He said the

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

EXHIBIT 1 April 12, 1989

DATE March 12, 1991 Page 3 of 11

SB 272

state could create a platform for growth, by preparing a piece of property to have everything needed, right there. He said most Montana communities were not blessed with the infrastructure in place, and this bill was designed to give a vehicle for developing that infrastructure.

Mr. Barrett said the bill was simply an expansion of the use of taxable increment financing. He said Montana's current biggest need was economic development, and it could be provided through a focus on infrastructure development. He stated SB 472 would allow local communities to locate an area, define it as a tax increment district, and acquire an anchor tenant to create a property tax base. He described the next step as reapplying the property tax to the necessary development, of the designated district, to be used in attracting secondary value adding industries. Within the bill, the money would provide for administration, and feasibility studies of industrialization within that district. He said the bill also provided for the opportunity for direct assistance. He said the tax increment financing of the district allowed a capacity for the community to apply direct assistance if they wished. The bill contained a section describing the uses of tax increment funding. He said the bill allowed bonding provisions for the tax increment law, to be used for the same development purpose.

Mr. Barrett offered amendments to the bill. (See Exhibit #1) He said he believed the bill would help communities compete for value added businesses. He said this was a needed economic development tool for our state, and urged passage of the infrastructure development plan.

Dr. Dennis Winters said his travels around the state had always brought one same question, as to whether they were going to survive? He said they also asked if they could add value to their resources here, and create jobs. He said he wanted to present the concept of value added so everyone could have the same basic concept.

He asked if anyone knew of any place in the world, which had as many resources as Montana? He stated we had more resources than almost any other place in the world. He said we had to take our resources, and turn them into manufactured products. He said we had the talc for paper, clothing, silverware, ceramics, and plastics, and we were not producing those products in

Montana. He said Montana had to take over the process of diversifying, and developing an economic force of our own. He said every secondary business we developed, could employ people. He said we produced cattle, pigs, and sheep, but there currently wasn't a packing plant in the state, so all of the secondary products were being produced somewhere else. He said we wouldn't have a packing plant, because there wasn't a tendency for a plot in the state, to commit to develop one. He said the secondary business development was necessary for developing a market in Japan, because they weren't interested in buying from us, until the meat was cut up. He said that if we wanted to keep people in Montana, they had to invest in the secondary infrastructure. He said we had to build a secondary infrastructure before we could attract secondary industry. He stated that came in the form of sewer systems, electrical lines, sanitation treatment plants, and all the necessities for business. He stated SB 472 tried to give local communities the opportunity to add value to industry, by providing a pot of money to begin from.

Kaye Foster said Mr. Barrett had presented his plan before all of the groups she was representing, and they were enthusiastically supporting the concept proposed in SB 472.

Senator J.D. Lynch said he wanted to echo the appreciation Mr. Barrett expressed to the Senate Business and Industry Committee, and Chairman Thayer. He said he saw SB 472 as a very viable option for increasing Montana's economy, and asked the committee to find favor with the bill.

Alex Hanson said they supported the bill. He said the bill expanded the tax increment plans in urban renewals for industrial development, which was very critical. He said that if you looked at tax increment finances around Montana, they proved themselves as working. He said they raised the value of the tax increments. He said the improved tax value in those districts would improve all tax levels in the state, and result in better towns. He said the bill answered some needs in Montana today, because infrastructure played a vital role in the creation of jobs and the development of industry.

Mr. Hanson spoke of legislatures interim study of infrastructure, endorsed two years ago. He said they had a speaker from North Carolina who said one of the

key ingredients for development was the ability to provide infrastructure. Some of the larger companies had come to North Carolina and said that if the state could provide the basic infrastructure they needed, the companies would locate in North Carolina. North Carolina provided the necessary infrastructure, and has moved from one of the poorer developed areas, to where their property and their state is booming. Mr. Hanson said he thought we had to try duplicating that performance in Montana, and he felt SB 472 was a very important first step in that direction.

Jim Tutwiler said they strongly supported any initiative which encouraged and fostered value added development. He gave some statistics that measured the amount of growth in value added economies, in competing states and Montana. He said that during a ten year period, from 1977-1986, the map of growth in value added industry for Washington State was a plus 74%, in Idaho it was a plus 82%, in North Dakota it was a plus 50%, in South Dakota it was a plus 124%, in Montana it was a plus 13%. He stated the comparison made it clear that Montana needed to increase that growth, and SB 472 offered that possibility.

Rob Morawick said they wanted to lend their support of SB 472, they thought value added was the way of the future in the state. He said they would like to help it along in any way possible.

Julie Hacker said they were a group of tax payers who stood opposed to SB 472. She read exhibit #5 into the record. She said they understood and believed that the added value concept was essential to the state's economy, but tax increment financing was not the way to achieve that goal, because it diverted funds from other agencies that were already established. She said they believed economic development projects should stand on their own, and be fully on the tax rolls within a five year period. She asked for a no vote for SB 472.

Questions From Committee Members: ~~Senator Lynch said they had 200 acres in Butte which was not paying any taxes. He said the way to attract business was to have that sewer line in, and the water line in.~~ By attracting new business your whole tax structure would be improved. He asked if she didn't feel that eventually, by getting new business, it would reduce her taxes by getting more new people paying taxes? Mrs. Hacker said, through this bill the tax increment district could go for ten or twelve years, but once they have

sold bonds, that money was tied up indefinitely until the bonds were retired. She said she believed the problem was bigger than any small solution, and she thought the bill was a small solution. She said it was not the answer to Montana's problems. She said they supported economic development, but she felt they were taking money collected for one purpose, and using it for another.

Representative Simon asked Julie Hacker if she understood that Section 8 referred to increasing the taxable value, so the amount of money paid to the school districts, and all the other services, was the same amount of taxes that had always been collected. He said the only incremental money, was money collected from the taxes paid for the new added value which was above and beyond what was being collected now. He said the cities and counties will not lose a dime of present taxes. He asked her if she realized the present taxable value was froze?

Julie Hacker said she understood that, but they felt a project should be able to stand on its own, and within 5 years be 100% back on tax rolls.

Representative Stella Jean Hansen asked if tax increment money was to produce more taxes within a district, would this project have to be within the tax increment district? Mr. Barrett said no, the funds would have to be used for project economic infrastructure development projects within the district, that are for the district. He said that except for a small amount of money which might be used for administration, the money have to go back into the district.

Representative Hansen asked, if you issued bonds for an industrial park that was outside the tax increment district, would that fit the parameters of tax increment law? Mr. Barrett said yes, there could not be an overlapping of an existing urban renewal tax increment district with an industrial district. He said that was included in the statutes. He said that area must be zoned for heavier life industry, and that generally takes it out of downtown areas.

Representative Hansen said it would not be of any use to a community unless they had that kind of a situation within their increment district. Mr. Barrett said no, it was very useful for communities that didn't have a tax increment district. He said any community that had an industry wanting to come in, could draw up an

increment district before that industry came in, then they could make further development. He said they didn't need to have an existing urban renewal increment district to do an industrial increment district.

Representative Hansen asked the present duration for increment money? Mr. Barrett said it was basically it was a ten year statute, unless it was extended by bonding.

Representative Wallin asked where added value came in, because most industrial parks he thought of were warehouses? Mr. Barrett said the industrial parks didn't have added value now, and there were a number of reasons new value adding needed pursued in a rational way. He said one of the critically important tools was to have the infrastructure. He said most communities were not positioned for growth for that. He said the secondary value adding industry was the process of making the products, and that was where your light support industry went. He said that if a little guy wanted to start a value adding industry, he couldn't do it without the infrastructure. He said today's world market required more, than our previous satisfaction of being exporters of commodities.

Representative Blotkamp asked for an explanation to the tax increases and responsibilities? Mr. Barrett said, basically, you created a tax increment district, obtained your base tenant, collected taxes, and the tax money could be used to put in roads. He said maybe the 2nd year you could add the water system, the 3rd year could provide a sewage treatment plant, and so on. He said, through all this, communities were trying to attract other businesses, each of which added to the capacity to strengthen the infrastructure. He said the property taxes in that district were kept for use in that district, to enhance the development of that district.

Representative Blotkamp asked if those who owned the property, paid the taxes? Mr. Barrett told him yes.

Senator Williams asked, if a business started on the outside edge of the district, what would their taxes be? Mr. Barrett said the infrastructure may or may not raise the value of that particular property. He said any business started outside of the tax increment district, increased in value just as it normally would, and the taxes went for all of the usual things, not into the increment district.

Senator McLane asked if this was just for starting a company, or could a business expand into this district? Mr. Barrett said an expansion into the district would be fine, because it applied to any growth in the district.

Representative Simon asked if Montana had any zoning that was not light, or heavy industrial? Representative Simon said, on page 3, section 3, line 22, it said zoned for light or heavy industrial. He said that if we had other types of industrial zoning beyond that, it seemed those words were superfluous. Mr. Barrett said they could be left out and that would be fine.

Representative Simon said pages 8 and 9, section 9, concerned the different types of land acquisition. He said they all sounded like land acquisition to him, and he was trying to understand the difference between land acquisition and acquisition of infrastructure deficient areas. Mr. Barrett said there was no difference between number (1) and (6), but originally it was to stand alone in a section of the law, so there was reason to state it. He said that since that original drafting, it had been melded into existing statute. He said (8) allowed local governments to assemble land for development and then resell it, keep it, lease it. He said it gave power, similar to powers found elsewhere in chapter 42, which were not shown in this bill.

Representative Simon asked if a value added park, would accept an industrial company that wasn't a value added type company, into the park? He asked if they were to be turned down, were they required to pay full taxes to be applied to the total taxing districts, and be excluded from the tax increment district? Mr. Barrett said the bill, as it was, would not preclude a non value adding entity from being included in increasing the value of the district. He said he felt they would improve the tax valuation of the district. He said the bill stated the purpose of the district must be to attract secondary value adding industrialization, and the money must be invested primarily in the infrastructure.

Representative Simon asked if the first person who applied to the district wasn't a value adding company, would the district sponsors be liable for suit, for violating the intent of the law. Mr. Barrett said he thought local governments could set up any series of regulations, establishing what the purpose of the park would be.



Mr. Barrett told Representative Wallin he didn't think the provisions of this bill applied to high tech parks. He said the infrastructure was totally different, and their requirements were different. He said you could take an empty, existing industrial park, apply this, and utilize the resources in increment, if the infrastructure was adequate. He said there were some benefits to existing parks, but the primary benefits were to places where there was no development. He said it was also possible to take an existing industrial park that wasn't full, and do an expansion of their infrastructure.

Closing by Sponsor: Senator Thayer said this was a good hearing, and he appreciated the cross reference of support. He presented a letter of support from the Gallatin Development Corporation, exhibit #6, and one from the Great Falls Chamber of Commerce, exhibit #7.

He said that if they did nothing, and didn't pass a bill like this, we would just be standing still. He said that if there was a piece of land that was not utilized, no one benefited, and this bill set up a vehicle that would attract industry, and provided an anchor to get the cycle started. He said Montana had so many raw products, that we could have a lot of small companies employing 10 to 20 people. He said the bill was a good vehicle and he recommended it, with the proposed amendments. (Exhibit #1)

Announcement: House Chairman Pavlovich thanked the Senate for including them in the hearing. He stated the House Committee could not take executive action on SB 472, until the bill reached the House, and the rules were suspended. He adjourned the House committee.

#### DISPOSITION OF SENATE BILL 472

Discussion: None

Amendments and Votes: Senator Lynch made a motion to adopt the Amendments, in exhibit #1, to SB 472. (Exhibit #1) The motion Carried Unanimously.

Discussion: Chairman Thayer said the language of "light or heavy industrial" was common language, and maybe it was in there to differentiate. He said that when you get into zoning matters, terms of this type are probably necessary.

Recommendation and Vote: Senator Lynch made a motion SB 472 DO PASS AS AMENDED. The motion Carried Unanimously.

DISCUSSION OF HOUSE BILL 765

Announcement: Chairman Thayer said Speaker Vincent had sent word to ask the committee to hold up executive action on HB 765, they would have to take action on Friday. He said he suspected the administration was offering some amendments, and a compromise was trying to be worked out. He said the House would have to suspend the rules to accept that bill anyway, so he thought this was the committees opportunity to accommodate the bill, by allowing time for compromise.

DISPOSITION OF SENATE JOINT RESOLUTION 21

Discussion: Senator Lynch told Senator Williams he thought the cost of the studies would be about \$8,000, because the Council was recommending that only three studies be funded.

Recommendation and Vote: Senator Lynch made a motion SJR 21 DO PASS. Senator Williams seconded the motion. The motion Carried Unanimously.

DISPOSITION OF HOUSE BILL 600

Recommendation and Vote: Senator Williams made a motion HB 600 BE CONCURRED IN.

Discussion: Chairman Thayer said the testimony was that the administration felt that this would not be cost effective, and that it may cause some problem. They had expressed that it may be the right direction, but the wrong vehicle, and needed a lot of work.

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

EXHIBIT

April 12, 1989

DATE March 12, 1991

Page 11 of 11

~~HB 600~~ SB 272

Recommendation and Vote: Senator Lynch made a Substitute Motion HB 600 BE NOT CONCURRED IN.

Chairman Thayer asked if that was a debateable motion?  
Senator Lynch said yes.

Discussion: Senator Williams said this may not be the vehicle, but we need something, within the state, for someone to come in and do some economic development or value added. He said there were a lot of obstacles to get over.

The Question was called for. The motion Carried, with Senator Williams opposing, the motion HB 600 BE NOT CONCURRED IN.

ADJOURNMENT

Adjournment At: 11:30 a.m.

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

GT/ct

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Chairman Pavlovich, on April 19, 1989, at  
11:05 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon, Legislative Council  
Terri Dore, Committee Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL 472

Presentation and Opening Statement by Sponsor:

Sen. Gene Thayer, District 19, stated that this bill amend the current statute regarding tax increments for the benefit of downtown redevelopment districts. This bill takes the same idea and applies it to industrial parks. Opposition was received in the Senate because it was felt that one community would have an unfair advantage over existing parks that are not fully occupied and struggling financially. Another concern in the Senate was that there was not a clear cut stopping point and it might erode some of the tax base. An amendment has been prepared but Sen. Thayer did not feel that the bill would be passed this session if it was amended from its present form given time restraints.

Testifying Proponents and Who They Represent:

Evan Barrett, Executive Director, Butte Local Development Corporation  
Kay Foster, Billings Chamber of Commerce and City of Billings  
Alec Hansen, Montana League of Cities and Towns  
Laurie Shadoan, Bozeman Chamber of Commerce, City of Bozeman and Gallatin Development  
Grace Edwards, Yellowstone County Commission  
Ray Gulick, self  
Phil Campbell, Montana Education Association

Proponent Testimony:

Evan Barrett stated that this bill would attract secondary value added industry. Added value resources comes in incremental steps. The first step is go beyond the primary production into secondary value added industry and then into light support industries. Municipalities do not have the infrastructure and capital required to build these industries. This bill would provide incentives for this development.

Kay Foster expressed the support of the Billings Chamber and the City of Billings. There are value added industries that want to relocate in Montana but the costs are extraordinarily high.

Alec Hansen supports this measure because tax increment financing has worked well for downtown development. The incremental value increases the taxes collected on that property.

Laurie Shadoan urged support for this bill and added that Bozeman is considering using the measure in a project already underway.

Grace Edwards expressed support for this bill.

Ray Gulick supports this measure. EXHIBIT 1.

Phil Campbell stated that his organization supports the concept of this measure but would like to see the bill amended. When the increment period is expired and an extension is granted, the taxing jurisdiction, i.e., the schools, should have a voice in the extension of that concept. There has been a case recently in Great Falls where an extension was granted but the taxing jurisdiction did not benefit from the increased taxable value because of the extension.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Wallin asked Sen. Thayer if the bill could be amended from "district" to "area". Sen. Thayer responded that present law prevents districts from overlapping. The bill is tailored to economic development and should not be used for general development such as housing. Mr. Barrett added that he did not see how that bill could be used for such development because of present law.

Rep. Simon asked Sen. Thayer how value added industry could be separated from non-value added. Sen. Thayer said that it would not be possible. There is no reason to turn away

other business. Many of the spin-off businesses may not be value added. This bill is a vehicle intended for building industry in Montana but no one should be excluded. Rep. Simon asked Sen. Thayer if this bill would be unfair competition to existing industrial parks. Sen. Thayer said that he did not see that as a problem because any parks that are not full at this time, those municipalities would be reluctant to create another park. Mr. Barrett added that the key point is that the local government would be creating the district and they would probably not create another but it would be local policy.

Rep. Simon asked Sen. Thayer if there was any way to prevent existing parks from creating a smaller one within their boundaries and freezing their tax base. Sen. Thayer said that those parks could use the increment under this bill. Mr. Barrett added that many parks would be bound by requirements from their bonding company.

Rep. Hansen stated that an industrial park would be inappropriate in the midst of the downtown redevelopment. Sen. Thayer stated that the parks could not overlap. The same method of financing is being used but it cannot be created in those districts.

Rep. Wallin asked Sen. Thayer if a shopping center could be created by the use of the tax increment system. Sen. Thayer stated that it might be able to be done but it would be complicated. Zoning usually would have be light or heavy industrial. Rep. Dave Brown added that it would be terribly difficult with the zoning requirements of this bill.

Rep. Hansen stated that hotels and other industry could also be appropriate. Rep. Brown responded that they could be but would probably not be the first industry but would be added later.

Closing by Sponsor: Sen. Thayer closed.

#### DISPOSITION OF SENATE BILL 472

Motion: Rep. Thomas moved that Senate Bill 472 BE CONCURRED IN.

Discussion: Rep. Simon remarked that he was in favor of amending the bill to add a clear stopping point and to assure that the taxing jurisdiction would benefit from the system. Rep. Thomas stated that it is not the role of the schools to set tax policy. Rep. Glaser responded that the school would not get the funds. Rep. Simon stated that \$2 of every \$3 goes to the schools and this bill might increase the total number of dollars available.

Amendments, Discussion, and Votes: None. The amendment was discussed but it was felt that the bill would die if amended because it could not get through both house before the end

HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

April 19, 1989

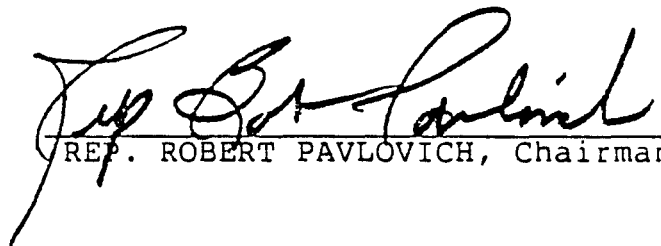
Page 4 of 4

of the session. It will be possible to amend the bill in the next session.

Recommendation and Vote: The motion that Senate Bill 472 BE  
CONCURRED IN CARRIED with Reps. Glaser and Steppler  
opposing.

ADJOURNMENT

Adjournment At: 11:50 a.m.



REP. ROBERT PAVLOVICH, Chairman

RP/td

8811.min

EXHIBIT 1  
DATE March 12, 1991  
SB 272

**DRAFT**

Tax Increment Financing for Industrial Districts (TIFID)

APPLICATION FOR ASSISTANCE

Name of Business \_\_\_\_\_

Mailing Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent/Contact \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Business Type (e.g. manufacturing, mineral processing, food production, etc.)

\_\_\_\_\_

\_\_\_\_\_

Project Description (including specifics about product or products being produced or processed; plant size; number of employees to be hired; the extent to which Montana resources will be used and total project cost) (additional pages may be added)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Financing: Please list all projected financing sources including private equity, conventional financing, other state, local or federal sources. The list should include the source, the amount and how the money will be used. The proposed use of any tax increment funds should be included.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# DRAFT

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Tax increment financing assistance requested including type, amount and purpose\* (please consult program criteria for background)

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\* Please note that Butte-Silver Bow may require those portions of the project to be funded by tax increment dollars to follow local procurement regulations regarding competitive bidding for construction contracts.

Please attach the following to this application\*:

- A business pro-forma analysis (historical and/or projected)
- Plans and specifications, if available for the plant construction including probable location
- A breakdown of all project costs (land, building, equipment, public improvements, etc.)
- Documentation of participation of other lenders
- Financial statements of those principals who intend to provide equity.

\*This information will be treated confidentially.

## TIFID FINANCIAL ASSISTANCE PROGRAMS

The Butte-Silver Bow "Tax Increment Financing Industrial District" (TIFID) program directs new tax dollars which accrue from new development within the boundaries of a designated industrial district to assist further development within that district. These new tax dollars or "tax increments" are determined by measuring an increasing taxable valuation against a specified base taxable value. Montana law enables local governments to use the resulting new tax revenue for development and redevelopment activities.

Butte Silver Bow's various TIFID's are governed by a special TIFID Board of Directors, appointed by the Butte-Silver Bow Council of Commissioners and the Chief Executive.

Butte-Silver Bow offers a number of programs which make use of TIFID dollars to promote public and private infrastructure development. Private companies, corporations and individuals (hereinafter referred to as the developer) who wish to locate a business within a designated TIFID may be eligible for participation in these programs. A brief description of the TIFID programs and eligibility criteria follows.

## TIFID Program Elements

Public Infrastructure Improvements

**Tax Increment Financing Bonds:** Butte-Silver Bow may finance large scale public infrastructure development (rail spurs, utilities service, sewage treatment, sewer lines, water, land and buildings) through the sale of tax increment bonds. Tax increment revenues would be pledged to pay bond principal and interest annually for the term of the bond. The size and term of the bond would depend on tax increment revenues available. While Montana law provides that tax increment districts may only be authorized for ten years, the time period may be extended to coincide with the term of a tax increment bond. This financing method can be used only for those improvements which will be substantially publicly owned.

**Annual Tax Increment Appropriations:** Butte-Silver Bow may finance smaller public infrastructure improvements from its annual tax increment receipts by appropriation. Funds available each year would be determined by the size of the annual increment and any prior commitments (such as bond debt service requirements and administrative costs).

**Conventional Financing:** Butte-Silver Bow may borrow funds from commercial lending institutions in order to finance public infrastructure improvements. Principal and interest on the loan

# DRAFT

would be paid by annual tax increment revenues. A conventional loan agreement would not, however, extend the authorized 10-year time period for a TIFID.

## Private Infrastructure Development

**Direct Financial Assistance:** Butte-Silver Bow may provide a developer with direct assistance in meeting its private infrastructure needs (land and land improvements, buildings, equipment, processing facilities and other private infrastructure). Fund availability would be determined by annual tax increment receipts less any prior commitments. Further, no more than 80% of increment coming from a specific developer may be used for direct financial assistance to that developer. Funds may not be used for the purchase of inventory or for operating capital. Direct assistance will fall into a number of specific programs:

**Loans:** Butte-Silver Bow may provide debt financing to qualifying private concerns for a period not to exceed the authorized life of the TIFID. The specific loan terms will be negotiated by the developer and Butte-Silver Bow.

**Interest Write-Down Program:** Butte-Silver Bow may pay a portion of the interest costs on a conventional loan in order to reduce the cost of borrowing for qualifying developers. The amount of interest reduction would be determined by the size of the project and the availability of increment. Interest payments would be paid directly to the commercial lender.

**Industrial Revenue Bonds:** Under certain circumstances Butte-Silver Bow will issue industrial revenue bonds for private infrastructure development. While the developer would be the obligor in this program, Butte-Silver Bow may enter into an agreement to reimburse the developer for all or part of the annual debt service costs.

## Other Development Programs:

Butte-Silver Bow may provide assistance in the form of non-infrastructure grants, loans and/or staff time to qualifying companies. TIFID funds and personnel may be used to prepare business plans, market studies and general research. This assistance may be provided at the request of a private concern or at the initiation of the TIFID Board of Directors, staff, the Butte Local Development Corporation or the Butte-Silver Bow Council of Commissioners as part of an industrial recruitment program.

## Eligibility Requirements

In order to be eligible for assistance under the Butte-Silver Bow TIFID program, the following criteria must be met:

1. The developer which will benefit from the program must plan to locate within an authorized TIFID area (maps attached).

EXHIBIT 1  
DATE March 12, 1991  
SB 272

**DRAFT**

2. Any developer which wishes to apply for tax increment assistance must be willing to sign an assessment agreement. An assessment agreement is a document which obligates the developer to pay all property tax obligations for the period during which the increment is being used to assist the developer, but no longer than the authorized life of the TIFID in which the development is located. This obligation remains in effect, even in the event that the developer closes or moves its facilities. Further, depending on the nature of the assistance the developer may have to agree to continue to pay its taxes at least at a rate which was in effect at the time the agreement is executed.

3. Specific criteria which will be used to evaluate applications for assistance (sample application attached) will include but not necessarily be limited to:

*Job Creation:* Developments which result in more jobs will be rated higher

*Taxable Valuation (Amount of New Taxable Value from the Development):* In most cases, developers who contribute more to the community's tax base will be eligible for greater assistance.

*Value-Adding:* Those concerns which make use of Montana's mineral, agricultural and timber resources will rank higher than those which do not.

*Leverage Ratios:* Tax increment funds may not be used to finance the entire cost of development. Those investments of tax increment financing which result in a larger infusion of private capital or other public capital will be rated higher.

Applications will be reviewed initially by the TIFID staff which will in turn make its recommendation to the TIFID Board of Directors. The Board will review the staff reports and the applications for final action. The Council of Commissioners will receive regular reports from the TIFID Board and staff regarding all appropriations. Final agreements and contracts will be signed by the Chief Executive of Butte-Silver Bow with the approval of the Council of Commissioners. The Butte-Silver Bow budget office will provide financial management and auditing as required.



# BUTTE LOCAL DEVELOPMENT CORPORATION

EXHIBIT 2 of 1  
DATE March 12, 1991  
~~SB~~ SB 272

DATE: November 21, 1990

TO: Rick Jones, Business Recruitment Officer  
Montana Department of Commerce

FROM: Evan Barrett, Executive Director

COPY: Jack Lynch, Butte/Silver Bow Chief Executive

SUBJ: Response to Furniture Manufacturing Prospect

This response is for the scaled-down approach to the project. Some basic assumptions within this proposal are as follows:

- 50,000 sq. ft. building,
- \$1 million of equipment.

We have utilized various grants, loans, tax increment financing, special interest rates, interest rate write-down programs, subsidies, and other creative financing to put together this attractive package.

## Building Proposal

Butte/Silver Bow would construct a new 50,000 sq. ft. building for the company. Butte/Silver Bow would own the building and land and lease the same to the company on exceptionally good terms as discussed below. The lease would provide the company with an option to purchase.

The building would be a Butler steel building according to the dimensions outlined by the company. It would be insulated on both walls and roof at R-19, making it extremely energy efficient. The numbers discussed in this memo reflect the cost of that kind of building. A concrete core wall building or concrete block building could also be constructed, though the projected cost might vary slightly. The building is easily expandable to a larger facility as originally outlined by the company.

Enclosed are some photographs of examples of Butler steel buildings and an example of a Butler core wall building, all of which were constructed by the firm we would anticipate constructing this building.

The building would be constructed on land within the Butte Industrial Park. The land is fully developed providing all services on site. It has available paved roads, curbs, gutters, sanitary sewage, and domestic water as well as electricity and natural gas. A rail spur is available on the specific 11.5 acres designated for this company.

The 50,000 sq. ft. facility built to specification for the company would be leased to the company for \$72,000 per year for the first five years (12 cents/sq. ft./month, \$1.44/sq. ft./year). However, a subsidy would be provided which would reduce the cost to the company to \$49,000 per year (8.1 cents/sq. ft./month, 98 cents/sq. ft./year).

In years six through ten, the lease would cost \$82,000 per year (13.7 cents/sq. ft./month, \$1.64 sq. ft./year). However, a subsidy would be provided which would reduce the cost to the company to \$35,000 per year (5.8 cents sq. ft./month, 70 cents/sq. ft./year).

Lease costs beyond year ten would be negotiable, but would reflect the cost prior to year ten with some adjustment for inflation.

Two thirds of the gross cost of the lease over the first ten years would be applied against a future purchase of the building. Thereafter, \$20,000 per year of the lease cost would be applied against any future purchase. The company could not exercise the option to buy earlier than year six.

#### Financing of Equipment

We have assumed the purchase of \$1 million of equipment. We have further assumed that the company would have to provide \$250,000 toward the purchase of that equipment. The remaining \$750,000 could be borrowed from a local bank. Through the use of Montana Board of Investment programs, and local interest rate write-down programs, we could package this debt at an interest rate of 4% for ten years. Be assured that the 4% figure is accurate, not a typographical error.

#### Transportation

Butte is uniquely situated to provide the maximum transportation advantage to a firm seeking to reach US markets. Furthermore, the same transportation infrastructure provides tremendous savings on in-bound traffic of supplies and materials.

Please see attached material showing the reach by both rail and highway from Butte. Such reach is available because of the presence of intersecting interstate highways (I-90 east/west and I-15 north/south), and the presence of both east/west and north/south main line rail carriers (Union Pacific and Burlington Northern). Presence of this transportation infrastructure is unique in Montana and very rare throughout the west.

The presence of all this transportation infrastructure results in competitive freight situations that allow a company to reach major US markets at astonishingly low costs. We will be glad to discuss the specifics of such freight rates with the company during direct discussions.

Please refer to attachments A, B, and C which show the market reach by rail and highway. Further, please see attachment D, Butte's Community Profile which describes the community, but also more thoroughly describes the transportation services available in Butte.

In addition to the aforementioned transportation advantages, Butte/Silver Bow should have in place, by the end of 1991, a Foreign Trade Zone (FTZ) which may be of use by the manufacturing company in reducing the tariff impacts of incoming goods, should the company or any of its inputs come from outside of the United States.

\* \* \*

In summary, Butte/Silver Bow is willing to provide this package because of our unique abilities in creative financial packaging. The same creativity and enthusiasm that has gone into the construction of this package for the company will be applied to making the company successful once it locates in Butte/Silver Bow.

Butte/Silver Bow has received national recognition, including "All America City" designation, for its economic development efforts. We hope that the prospective furniture manufacturing company will give us the opportunity to put our "All America" economic development team to work for them.

We look forward to hearing back from you or directly from the company.

Thanks.

phc

EXHIBIT 1  
DATE March 12, 1991  
SB272

MONTANA SENATE  
Fifty-Second Legislature

HOUSE BILL 120

2ND-RDG - CONCUR

YEAS: 40  
NAYS: 7  
NV : 2  
EXC : 1

RCS# 705  
3/11/91  
1:55 PM

YEAS: 40

Aklestad	Doherty	Jergeson	Stimatz
Anderson	Farrell	Keating	Svrcek
Beck	Gage	Kennedy	Swift
Bengtson	Grosfield	Lynch	Thayer
Blaylock	Hager	Nathe	Towe
Brown	Hammond	Noble	Tveit
Bruski	Harding	Pinsonneault	Van Valkenburg
Burnett	Harp	Pipinich	Vaughn
Crippen	Hockett	Rea	Williams
Devlin	Jacobson	Rye	Yellowtail

NAYS: 7

Bianchi	Franklin	Halligan	Mazurek, Pres.
Eck	Fritz	Waterman	

NOT VOTING: 2

Koehnke	Weeding
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EXCUSED: 1

Manning





# BUTTE LOCAL DEVELOPMENT CORPORATION

EXHIBIT 2 A  
DATE March 12, 1991  
HB 272

DATE: January 3, 1991

TO: Norm Peterson, Canbra Foods  
Telefax #: 403-328-7933

FROM: Evan Barrett, Executive Director  
Telefax #: 406-723-5345

COPY: Bob Burpee, Keith Johnson, Jim Bell, Jack  
Lynch, Janet Cornish, and Gary Rowe

SUBJ: Proposal Regarding Industrial Revenue Bonds, etc.

Thank you for meeting with us on December 11, 1990 to discuss how we can move ahead on the Industrial Revenue Bonds (IRB) and other aspects of financing the Butte/Silver Bow/Canbra/Heartlight arrangements.

During the past several weeks we have been able to determine that manufacturing continues to be eligible for tax exempt status on IRBs, at least until the end of 1991. Because of that, the interest rate on IRBs would be significantly lower than if they were taxable bonds, yielding more bond proceeds.

## Basic Premises

1. Canbra's taxes are now \$109,000, of which \$107,000 is available for the TIFID.
2. When Canbra has enough of its own employees on line, it will qualify to have that tax amount reduced by \$10,000 per year.
3. However, by constructing the margarine lines during 1991 the taxes will be raised approximately \$20,000, yielding a tax level of approximately \$119,000 (\$109,000 minus \$10,000 plus \$20,000) with approximately \$117,000 being available to the TIFID.

Ex. 2A

3-12-91

HB 272

4. The TIFID will have to retain approximately \$15,000 (or less than 15%) for administration of the district.
5. The TIFID can allocate \$102,000 of existing and future taxes to debt service payments on the bonds.
6. The debt service can be divided into serving the debt on two separate bonds: an IRB of Canbra's (carried on Canbra's books) and a TIFID bond (a responsibility of the TIFID and not carried on Canbra's books).
7. The life of the district can be extended through the issuance of the TIFID bond (a copy of the statute is attached for reference). According to the statute the life of the tax increment district is either ten years or the amount of time it takes to retire bonded indebtedness to which the tax increment is pledged as debt service.

For example, the tax increment district, through the floating of 25 year bonds, could extend the life of the district to 25 years, giving Canbra "infrastructure, assistance" programs for that time-frame.

### The Bonds

#### Industrial Revenue Bond

An IRB could be issued with Canbra as both the beneficiary and the party responsible for paying off the bond; i.e., the debt is carried on Canbra's books. For example, if the term of the bond was 25 years; and the interest rate was an estimated 8% and the payment by Canbra on the bonds was \$67,842 per year; the yield of the bonds would be approximately \$732,500. The TIFID could provide \$67,842 in an annual "infrastructure assistance grant" to Canbra, yielding a net negative effect of the transaction on Canbra of zero. Canbra could include compiler's notes not only on the IRB responsibility, but also on the "offsetting" infrastructure assistance grant provisions on the other side of the ledger.

The total bond proceeds of \$732,500 would be distributed as follows: \$600,000, principal payment to Canbra; \$112,500, interest payment to Canbra; and approximately \$20,000, issuing costs.

#### TIFID Bond

Butte/Silver Bow could issue a TIFID bond to which the increment could be pledged, thus extending the life of the district for a length of

time equal to that of the bond term. The bond could be in the amount of approximately \$369,000; the term could be for 25 years; the interest rate could be an estimated 8%; and \$34,158 per year of tax increment could be pledged to pay the TIFID bond. The bond proceeds could be distributed as follows: approximately \$20,000 for issuing costs; \$110,000 to the Port of Montana for asbestos removal (the ultimate beneficiary of which is Canbra); \$30,000 to the Port of Montana for diesel tank removal and remediation (the ultimate beneficiary of which is Canbra); \$90,000 to the Butte Local Development Corporation for the land costs and interest payments thereon (the ultimate beneficiary of which will be Canbra); and \$119,00 to the Port of Montana as a partial payment on the remaining amount owed to the Port on the MAFIC building.

#### Future Issues

When Canbra installs its refinery, the refinery will be assessed at the actual cost of the facility (it is much easier to establish the value of new property than it is to anticipate an assessed value of existing property). The millage to be applied in the tax formula for the new property would be the existing millage at that time. However, Butte/Silver Bow could provide "infrastructure assistance grants" which would create a net effect of using a millage of 360 rather than the current millage rate. The taxable valuation percentage applied to the new property would be 4%, assuming that Canbra met the state employment requirements to trigger such a taxable percentage level. Butte/Silver Bow could again provide "infrastructure assistance grants" which would create an effect of taxes based upon the 4% taxable valuation percentage, even if there were an arbitrary increase in taxable valuation percentage by the State.

As new taxes came into the district as the result of the refinery or other new machinery and equipment (over and above the initial land, building, existing improvements and the anticipated margarine lines) the money could be allocated by the TIFID according to the following priorities:

1. To the Port of Montana for the remaining debt on the MAFIC building, plus interest;
2. To Canbra (in "infrastructure grants") to offset, as much as possible, the \$60,000 per year of unanticipated tax overage that has already begun.

Ex. 2A  
3/12/91  
HB 272

Summary

This proposal involves Canbra carrying a smaller debt service on its books for a smaller IRB, while still being able to benefit from most of the proceeds, including some of the positive benefits from the proceeds from the TIFID bond.

Although Canbra would have to continue to pay its taxes as they are currently being assessed, this proposal could insure that there was money soon available to repay Canbra all of the principal and interest payments due on the \$600,000 building down-payment which Canbra provided, insure that the asbestos removal takes place at no out-of-pocket cost to Canbra, takes care of the Port of Montana and Canbra on the removal of the diesel tanks, pays off the attached land to the benefit of Canbra, and provides a partial payment to the Port of Montana on the remaining debt on the building. It could assure a longer life of the district than we originally had discussed.

It also provides the possibility for Canbra in the long run to offset the initial \$60,000 per year unanticipated tax overage, although that could come after the Port of Montana receives the remaining costs of the MAFIC building in those future years.

Finally, "infrastructure assistance grants" related to taxes collected from the construction of the refinery can be used not only to provide funds to the Port of Montana and to Canbra as discussed in the paragraph above, but also can provide "infrastructure assistance grants" which would have the effect of the original contract -- the net negative effect of 360 mills and a 4% taxable valuation figure.

This is just a rough outline of the proposal. Not only will the contract have to be revised, but there may some other "paper transactions" necessary to facilitate this package. We can work out the details, hopefully in the very near future.

Please let us know as soon as possible what your thoughts are on this matter. Thanks.

phc

SENATE BILL 232 AS AMENDED

*Exhibit #3*

PREPARED BY: DARYLL E. (BUD) SCHOEN  
CHIEF, REGISTRAR'S BUREAU  
MOTOR VEHICLE DIVISION  
DEPARTMENT OF JUSTICE

Date: March 11, 1991

EXHIBIT 3  
DATE March 12, 1991  
SB 232

Section 1 Beginning on Page 2 this new section defines the elements involved in vehicle salvage.

Section 2 Page 5, Lines 8 and 9 replaces the outmoded term serial number with the term vehicle identification number.

Pages 6, 7 and 8 contain the new subsections which are the basic operating sections for the new inspection program and provide for the inspection of the vehicle identification number on all new vehicles brought into the state, except those sold by a Montana new car dealer, all used vehicles brought into the state and all salvage vehicles which are being retitled. Allows for the department to contract for inspection sites and establishes an inspection fee of \$18.50. There is also a provision for the seizure of any vehicle which has an altered VIN or which appears from the record to have been stolen and the vehicle can be held until legal ownership has been verified.

Section 3 Beginning on Page 8 provides that titles for salvage vehicles less than 5 years old acquired by an insurer be submitted to the department within 15 days of the time the title is obtained and that a salvage certificate will be issued within 5 days by the department to the insurer as an ownership document for the salvage vehicle. This section also provides for the sale of a salvage vehicle within the 15 days mentioned above, and provides for a "salvage receipt" to be issued by the insurer to a salvage purchaser who shall apply for the salvage certificate. (The insurer is still responsible to submit the title to the department.) All titles submitted by an insurer shall be clear of any liens.

This section also provides that if a salvage vehicle is retained by an owner, the owner may be required to obtain a salvage certificate.

This section establishes a \$5 fee for a salvage certificate.

Salvage vehicles owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991 are exempt from this part if the vehicles have been reported to the department as required by 75-10-513(2).

Ex. 3

3/12/91

SB 232

**Section 4** Beginning on Page 11 establishes the methods of inspection of salvage vehicles and requires documentation establishing ownership of the vehicle and/or constituent parts. There is also a provision for a 72-hour permit allowing the vehicle to be moved to an inspection facility.

This section also provides for a misdemeanor penalty of a fine not to exceed \$500 for failure to comply with the provisions of the act.

Page 13, Beginning on Line 4 - The original bill as drafted amended 75-10-513 to delete the requirement that the department would issue a salvage receipt to wrecking facilities (Line 16 through 20). That amendment has been deleted. The department will continue to issue salvage receipts to wrecking facilities for salvage vehicles received by them which are exempt from the salvage certificate provisions.

**Section 5** Page 15, Lines 17 through 21 provides that a department of justice representative may have access to the records of wrecking facilities.

**Section 6** Page 15, Beginning on Line 22 contains codification instructions.

Amendments to Senate Bill No. 232  
Third Reading Copy (Blue)  
Requested by the Department of Justice

*Exhibit #*  
EXHIBIT 4

DATE March 12, 1991

SB ~~232~~ 232

Prepared by Peter Funk  
March 11, 1991

1. Title, lines 13 through 14.

Following: "FEE;" on line 13

Strike: remainder of line 13 through "VEHICLES;" on line 14

2. Page 12, lines 21 through 24.

Following: "\$500." on line 21

Strike: remainder of line 21 through "certificate." on line 24

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

Exhibit #5



STAN STEPHENS, GOVERNOR

FAX #(406) 444-1499

STATE OF MONTANA

OFFICE 836 Front Street  
LOCATION: Helena, Montana

MAILING Cogswell Building  
ADDRESS: Helena, MT 59620

Solid and Hazardous Waste Bureau  
(406) 444-1430

March 12, 1991

5  
March 12, 1991  
SB 232

DHES TESTIMONY ON S.B. 232  
CREATE JUSTICE DEPT SALVAGE AND MOTOR VEHICLE  
INSPECTION/IDENTIFYING PROGRAM

The Department of Health and Environmental Sciences supports the intent of the legislation proposed by the Department of Justice in S.B. 232. However, we do have concerns about the structure of the change being proposed to the Montana Motor Vehicle Recycling and Disposal Act contained in Section 5 of this Bill.

The Department of Justice's desire to allow their representatives access to motor vehicle wrecking facility records to help prevent the possibility of vehicle titling fraud or theft is completely understandable. However, the Department of Health and Environmental Sciences is concerned about the provision that violations noted during a Department of Justice inspection of a motor vehicle wrecking facility's records will be turned over to the Department of Health and Environmental Sciences for enforcement. It is our belief that the increased workload caused by the violations discovered in Department of Justice inspections and turned over to the junk vehicle program, may completely overwhelm the enforcement capabilities of our program. Even if the junk vehicle program were to increase our enforcement abilities to handle the increase, the additional drain on the program's earmarked funds will hasten the need for program fee increases or result in the discontinuation of the program due to the lack of adequate funds. Additionally, we feel that the concept of having one government agency enforcing the findings of another government agency may critically hamper the effectiveness of any enforcement that occurs. Since there will be no direct control of the Department of Justice inspectors by the Junk Vehicle Program's personnel involved in the enforcement of their findings, there is a real possibility of mis-communications, mis-understandings and lengthy delays in enforcement efforts. Such problems could easily result in conflicts between the two agencies that could further complicate



the situation.

As an alternative the department would like to suggest a change in the proposal that would further advance record keeping compliance at motor vehicle wrecking facilities and thereby reduce the chances of titling fraud. This change would be to provide the Department of Justice with the ability to seek civil penalties for the violations identified by their inspections of motor vehicle wrecking facility records as is currently provided to Department of Health and Environmental Sciences and our inspectors. With both departments having the legal authority to pursue enforcement for detected violations it would help prevent lengthy delays in enforcement, prevent one agency's legal unit from becoming overwhelmed with enforcement requests and would ensure better overall compliance with all of the Act's requirements. Also, by allowing each agency to enforce the violations noted by its own inspectors, it would allow each to have the direct input and assistance of their inspectors in developing an enforcement action.

In closing, the Department of Health and Environmental Sciences understands the current need for the proposed legislation in S.B. 232 and is in full agreement with the concept being presented. However, the department does feel that the minor change we have suggested above would help to improve the law and make it an understandable and workable solution to the problem.

jv\leg91\test2sb.232

Amendment to H.B. 232

Prepared for the House Business and Economic Development Committee

Section 5, page 15

Line 20 delete: Authorized representatives of the department of justice  
may report violations of this part to the department.

insert: NEW SECTION. Section 75-10-541, MCA is amended to read:  
"75-10-541. Injunction -- action to collect civil  
penalty. (1) The department, through the attorney  
general or the county attorney of the county in which a  
facility is located, may sue to enjoin the operation or  
maintenance of a motor vehicle wrecking facility or  
graveyard either permanently or until compliance with  
this part, the rules of the department, or an order  
issued pursuant to this part has been demonstrated.

(2) The department, through the attorney general  
or the county attorney of the county in which a facility  
is located, may sue in district court to collect a civil  
penalty as provided in 75-10-542.

(3) The Department of Justice, through the attorney  
general or the county attorney of the county in which a  
facility is located, may sue in district court to collect  
a civil penalty as provided in 75-10-542 for violations  
to 75-10-512 and 75-10-513 (2)."

Exhibit #7

Joetta H. Miller  
Green Meadow Auto  
Salvage  
458-9204 458-6111

SENATE BILL 232

EXHIBIT 7  
DATE March 12, 1991  
# 232

SB232 attempts to regulate the flow of titles on vehicles which have been used to get a legitimate Montana title for stolen vehicles. I beleive that it falls short of its mark.

I have a major concern about the percentage of titles that will be turned into Deer Lodge as a result of SB232. In 1989, we bought 121 vehicles. Only 12 of those or just 10% came from an insurance company or an insurance salvage auction. In 1990, we acquired 134 cars of which only 20 or 15% came from an insurance company or an auction. Of the 4 vehicles we bought in 1990 that were 5 years and newer, only 1 came from a situation in which the insurance company would have had to send in a title. The other vehicles were from sources that did not involve insurance companies so their titles would never have been sent to Deer Lodge. In the last 2 weeks I bought a 88 Ford Pu through a repossession company on which the man had no insurance. There are a great many cars on the streets that only carry liability insurance so if one of those vehicles is totaled that title does get sent in either. As you can see, there is a substantial number of titles that are being over looked in this bill.

Because of the overlap in the interchange of parts the 5 year limit is too short. Pick up parts and body styles remain the same for 5 to 8 years. In recent years, the cost of retooling a factory has limited the number of changes the car manufactures make each year also. They now only change body style every 3 to 5 years. So those

people wanting to steal a vehicle simply pick a title to a vehicle a couple years older so it stays outside the reach of SB232 and there is no problem getting that title.

The structure of the inspection system appears to be a 2 tier system which does the same thing on both tiers. Paragraph 6 of Section 6 establishes inspections for vehicles from out of state, which are only inspected for VIN compatibility. This inspection will be done by trained department employees. In paragraph 7 of the same section, it appears that those same employees will not be able to inspect salvage vehicles, which are also only being inspected for VIN compatibility. The training that Department employees are given to authenticate the VIN on an out-of-state vehicle should be the same training that is needed to inspect rebuilt vehicles because many of the stolen vehicles come into Montana after they are built to get the title. The cost of both inspections is the same as established in paragraph 8. If the same personnel perform all of the inspections, the state general fund would retain the money instead of sharing it. Since only one set of inspectors is necessary, fewer inspectors would need to be trained and they could be more thoroughly trained. If my interpretation is correct, paragraph 7 and paragraph 8b of Section 2 could be deleted from the bill.

Another area of concern is Section 3. This section requires that a salvage receipt be issued for every vehicle that an insurance company totals. At present we only request 3 or 4 salvage receipts each year for vehicles that need to be retitled. Issuing a salvage certificate for every totaled vehicle is unnecessary and is dangerous. A salvage certificate is evidence of ownership and easily turned into a title. It is in present form an easily altered document. SB 232 provides that

EXHIBIT 7  
DATE March 12, 1991  
SB 232

an insurance company can sell a vehicle to a salvage buyer on a salvage receipt if they do not have the salvage certificate from the state at the time of the sale. If the salvage receipt is very complete with the salvage buyer identification, the vehicle information, and the title information, the salvage buyer could use that receipt as proof of purchase to request a salvage certificate on only those vehicles that need to be retitled. By its nature as a receipt, it could not be used to retitle a vehicle. Deer Lodge would also receive a salvage receipt on any owner retained salvage so they would be aware of any totals that the owner retains and does not send in the title.

On line 15 of paragraph 3 in Section 3 there is a requirement that before any vehicle is disposed of, there must be a salvage certificate issued. This is a requirement that can not be met with every vehicle because not every vehicle comes to a salvage yard with a title. It is also unnecessary unless the vehicle is resold. "Prior to the sale of the salvage vehicle..." may be better wording than "Prior to the disposing of the salvage vehicle..."

Lines 22, 23, and 24 again require a salvage certificate for every vehicle acquired by a wrecking facility after October 1, 1991. This is another provision that is impossible to comply with because some of the vehicles we acquire do not come with titles. The requirement at present to get a salvage certificate is that Deer Lodge receives a properly executed title prior to or along with the request for a salvage certificate.

Even with these changes, I believe that there are simpler, quicker and more efficient ways to increase the number of titles in this state that can be flagged so it becomes very difficult to retitle a stolen vehicle in the State of Montana.

EXHIBIT 8  
DATE March 12, 1991  
RE 901

*Exhibit # 8*

AMENDMENTS TO HOUSE BILL 901  
1st Reading Copy

Prepared by the Department of Commerce  
March 8, 1991

1. Title, line 13,  
Following: "SCHEDULE"  
Strike: "AND"  
Insert: ", "
2. Title, line 15,  
Following: "INVESTMENT"  
Insert: "AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY  
FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION"
3. Page 16, line 9,  
Following: "investments"  
Insert: "and at least 5 years have elapsed from the date the  
capital company was qualified"
4. Page 16, line 12,  
Following: "chapter."  
Add: "Fees for the administration of this chapter shall be  
assessed to each qualified Montana capital company in a  
ratio proportionate to the tax credits allocated to the  
capital company divided by the total tax credits allocated  
to all qualified Montana capital companies."

*Copy 1 of 14*

Ex 3 42440 8A

DATE March 12, 1991HB 901

**Amendments to House Bill 901**  
**1st. Reading Copy**

**Prepared by the Montana Department of Revenue**  
**March 8, 1991**

These amendments are offered in lieu of proposed language to permit recapture of Capital Company Credit. The language in the existing bill is unclear as to when or in what circumstances an investment was "never risked by the capital company."

1. Title, line 8.  
Following: "PROVIDING"  
Strike: "FOR RECAPTURE OF TAX CREDITS UNDER THE ACT"  
Insert: "THAT INVESTORS SHALL BE SUBJECT TO THE PENALTY FOR THE FAILURE TO MAKE QUALIFIED INVESTMENTS"
2. Page 8  
Following: line 22  
Strike: "(1) Except as provided in subsection (2), if"  
Insert: "If"
3. Page 9, line 4.  
Following: "the"  
Strike: "company"  
Insert: "investor"
4. Page 9  
Following: line 5  
Strike: subsection (2) in its entirety
5. Page 11, line 7.  
Following: "(3)"  
Strike: "A"  
Insert: "Investors in a"
6. Page 11, line 10.  
Following: "to the"  
Strike: "taxpayers"  
Insert: "investors"
7. Page 11, line 14.  
Following: "if the"  
Insert: "investor or"

*Handwritten signature: David*  
*Handwritten signature: [unclear]*

Proposed Amendments to H.B. 901

page 2, amend lines 18 - 20 to read as follows:

does not violate any of the provisions of this chapter, is not made in a business for which conventional bank financing is available on terms acceptable to the business and in an amount equal to the amount of the investment, and is:

*Should be done by administrative rule!*

page 3, insert after line 23

(c) a debt or equity financing of an acquisition of a non-Montana business which will be relocated in Montana.

} OK

The requirement in this subsection (5) to preclude qualified investments in businesses for which conventional bank financing is available shall not apply to public capital companies (i) which could become subject to regulation by the federal Investment Company Act of 1940 in the event investment securities (as defined by that Act) are acquired and (ii) whose investment criteria formally adopted by its equity holders prior to January 1, 1991 require that a substantial portion of its capital funds be invested in majority-owned businesses.

} No!

page 9, amend lines 6-12 to read as follows:

(2) If a capital company does not invest its capital base in accordance with section 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distributed funds an amount not to exceed the lesser of (a) the amount of the tax credit received by the original investor or (b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment. Dividends or distributions made in accordance with applicable law shall not be subject to recovery unless the capital company shall not have invested its capital base in accordance with section 90-8-301.

Dept of Revenue  
amends  
this

page 11, line 25 and

page 12, lines 1-5 are amended to read as follows:

(6) A capital company may invest tax credit funds in a profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted towards the investment percentage

OK



3-12-91

HB 901

criteria set forth in this section to the amount to be used for expansion of the business.

page 12, insert after line 5

~~This subsection (6) shall not apply to public capital companies (i) which could become subject to regulation by the federal Investment Company Act of 1940 in the event investment securities (as defined by that Act) are acquired and (ii) whose investment criteria formally adopted by its equity holders require that a substantial portion of its capital funds be invested in majority-owned businesses.~~

NO!

page 14, amend lines 1-5 to read as follows:

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The department shall determine, within ~~five~~ business days of submission of a report satisfactory to the department, whether the proposed investment is qualified under this chapter before the investment can be made by the capital company.

10

5898m

OK if  
changed to 10 d

*[Faint, illegible handwritten notes]*

# HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

BUSINESS & ECONOMIC DEVELOPMENT

COMMITTEE

~~SB 236~~  
BILL NO. SB 248

DATE MARCH 12, 1991

SPONSOR(S) ~~SEN. JOHN HARRIS~~

SEN. H.W. HAMMOND

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PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Robyn Young	State Auditor/Securities Dept	248		X

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# HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

SB 232

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

BILL NO. SB. 169

DATE MARCH 12, 1991 SPONSOR(S) SEN. DOHERTY

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DARILL (BUD) SCHIDEN	DOJ - MV DIV.	232 169		✓
MARK JOHNSON - Helena	MWIRDA -	232 169		✓
Don Roberts	DOJ mv. Div			✓
MARC RACICOT	DOJ	232 169		✓
Mike Vardon	Northwest Br + MSA	232 169		✓
Jacqueline N. Merrill	Am. Ins. Assoc.	232 169		✓
(Steve) Turkiewicz	Nr. Auto Dealers Assn	232 169		✓
Letta F. Miller	MADRA Montana Auto Dismantlers & Recyclers	232	✓	
Don Willard	MT. Dept. of Health	232		✓ with amendment
Jim MANION	AAA MONTANA	232 169		✓
Gene Phillips	Flag'l Assoc Ind Ins Alliance Am. Ins	232 169		✓
Steve Browning	State Farm Insurance	232 169		✓
Peter Furr	Dept. of Justice	232 169		✓

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Henry E. Lohr.

Hank's Salvage & Recycling

Bill oppose  
232 X