

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 15, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: None

EXECUTIVE ACTION ON SENATE BILL 223

Motion:

Senator Thayer moved to amend SB 223.
Senator Gage moved to table SB 223.

Discussion:

Senator Gage stated that the comments that were said to him were that if you are going to get into trust indentures in regards to this bill, he would rather see the bill tabled and allow them to do a study in the interim bringing in people in the loan and bank industry and come in with a bill next session.

Senator Lynch stated that he has had the same inclinations from different interested parties.

Senator Thayer spoke against the motion to table, because for the next two years they would have the same situation that all the people testified against. The banks do not want to

separate and have a clear distinction between this trust indenture and the mortgage theory, the amendment does that.

Amendments, Discussion, and Votes:

Senator Thayer went over the amendments for SB 223 (See Exhibit 1 and Exhibit 2). The amendments on the single sheet of paper (Exhibit 1) were the amendments offered by the others during their testimony. The two page amendment (Exhibit 2) includes the single sheet amendment (Exhibit 1) plus the language that he has offered. The problem that he has had with the bill is it still leads to confusion about what you can do in terms of getting an deficiency judgement. The law the way it was before the galleria was if you made a loan on the basis of a trust indenture that under a foreclosure action the property back in one hundred and twenty days. You could not then go for the deficiency judgement. In case the property didn't bring as much as was loaned on it, the lender gave up his right to go for the deficiency. That is the way that most residential property is handled on that trust indenture basis. The galleria case was a trust indenture, but it was commercial property loaned on a trust indenture basis. The court allowed them to go after a deficiency judgement and in this later process they got into the idea of whether you would have appraisals would be the process for determining the value, which was different than an earlier process where the lenders could take it to a sheriff's sale. He agreed with the present system of appraisals because it didn't specifically outline whether or not the appraiser had to be a certified appraiser. If there was a wide discrepancy, it was up to the judge to decide and he would just split it down the middle. Going to a sheriff's sale is necessarily the best way to establish value, but he doesn't think the present system is adequate. He has outlined in the amendments the way the appraisal process would be handled. One side would get a certified appraiser, and the borrower and the lender could each get their appraiser. If the property came within ten percent of each other they could just split it and that would establish the value. Under the mortgage arrangement the lender can go for the deficiency judgement. If the property is appraised for something other than ten percent then the two parties together could select a third appraisal and agree that that would be the appraisal that would take place. The other language at the bottom of page two (Exhibit 2) attempts to clarify the difference between when a trust indenture can be used and when it can't be used. It clarifies that a trust indenture cannot be used regardless of whether the property is commercial or residential in nature. The purpose of the amendments was to give the lenders a clear way of getting their property back and a clear way of establishing a fair market value. Lenders should choose when they make the loan in the first place whether it is a trust indenture or a mortgage.

Recommendation and Vote:

The motion to table passed by a 5 to 4 vote.

EXECUTIVE ACTION ON SENATE BILL 256

Motion:

Senator Gage moved to pass the amendments for SB 256.
Senator Williams moved to do pass SB 256.

Discussion:

Senator Thayer stated that he would resist the motion to pass SB 256, the bill essentially says that if the committee passes this that the legislature is not interested in bringing down costs of healthcare in Montana. There is no need for the additional language in the bill, and he would resist the amendment.

Senator Noble stated that he found it interesting that the company that is offered the preferred provider option, the employees that have the option to take it or not take it. They have the option to take it, and get a discount on their insurance, or to not take it and go wherever it is they want to go.

Senator Lynch stated that the blues have doctors that sign up and then they are listed as one of the blue's doctors under that plan, but every doctor has a chance to sign up. They are given an equal opportunity. The hospitals do not have that option. This bill is giving the hospitals the same options to sign up just like the doctors.

Senator Franklin stated that there is an individual level in terms on how you might be concerned about individual premiums, then there is a larger picture that speaks to the fragility of health agencies that we're in, and the healthcare system.

Senator Bruski stated that if the hospitals can afford this twenty five percent discount to preferred providers, why can't they offer a discount to all of their services.

Senator Lynch asked if of the eleven states that have passed legislation on this, there is not one PPO in any one of them. Wyoming eliminated any PPO in Wyoming, are they absolutely gone.

Dave Barnhill stated that it doesn't eliminate PPO by passing this legislation.

Amendments, Discussion, and Votes:

Bart Campbell went over the amendments (See Exhibit 3). The language is saying that because there are legislative findings that the state has compelling interests in preventing against preferred provider agreements from discriminating against willing providers, and to ensure that the willing providers be given the opportunity to meet the terms that the legislature will establish that any willing provider can enter into the preferred provider agreement.

Senator Lynch asked what would happen if this language was not in the bill.

Bart Campbell stated that this language almost like a whereas, it is really like a description of intent. If it weren't in the bill, it wouldn't effect the bill.

Senator Thayer stated that it is very substantive.

Recommendation and Vote:

The amendments to SB 256 failed 5 to 4 votes.

SB 256 do passed on a 5 to 4 vote.

HEARING ON HOUSE BILL 16

Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll, house district 92 in Billings, sponsor of the bill, stated that this bill requires that all printing done in the state of Montana by the lowest responsible bidder; providing that if there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state. The bill will strengthen the printing industry in Montana, and the printer will be able to buy some of the equipment that they need to be further into the industry of printing. The fiscal note says that it will cost more money, but in effect if they do their job right we'll get less printing.

Proponents' Testimony:

Chuck Walk, executive director of the Montana newspaper association, spoke in favor of the bill. It addresses the immediate need for Montana printers to become more competitive with larger out of state providers in obtaining printing work from our own state government. It could be an important factor in the future development in rebuilding of a printing industry in the state that is admitted trouble. If it encourages one Montana printer to buy a new piece of equipment and hire one or two more employees, that he might not have done without this legislation, it would have served a worthwhile purpose. It would eventually result in more in state printers obtaining and enlarging there operations to become competitive with each other, instead of advocating business to out of staters it will be considered a model piece of economic development legislation.

Christian Macka, on behalf of Don Judge representative of Montana state AFL-CIO, spoke in support of house bill 16 (See Exhibit 4).

Bob Hiser, on behalf of the united workers union, spoke in favor of the bill. Montana tax dollars should be spent in Montana if at all possible. This bill has the potential of providing jobs in Montana.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Thayer suggested that if this is being billed as a economic development bill, a sunset should be put on it. It would encourage those people to hurry up and make good on what they are saying will happen. It will give them two years to get their investment made to do their printing.

Senator Noble commented that a lot of the out of state printing that was done, was some of the multi colored brochures that they said they couldn't get done in the state.

Jerry Driscoll responded by saying that the maps that is given away at tourist stations, the law books are printed out of state. Some of the historical society's literature is printed out of state.

Closing by Sponsor:

Representative Driscoll closed by saying that if the committee wished to return the bill to its original form and leave the language at the language at the bottom out that would be fine. There are certain things that will never be printed in Montana, like the lawbooks because we don't have the capabilities to do so. No matter what the fiscal note says, if the appropriations doesn't give them anymore money then the answer is zero, and they print less.

EXECUTIVE ACTION ON HOUSE BILL 16

Motion:

Senator Noble moved that HB 16 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that HB 16 be concurred in passed unanimously. Senator Thayer will carry the bill to the senate.

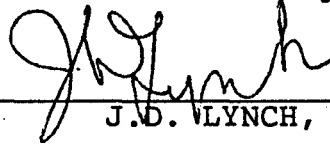
ADJOURNMENT

Adjournment At: 11:30 a.m.


SENATE BUSINESS & INDUSTRY COMMITTEE

February 15, 1991

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J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

Business & Industry COMMITTEE

DATE 2/15/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch			

Each day attach to minutes.

Amendments to Senate Bill No. 223
first Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 14, 1991

1. Page 4, line 8.

Following: "by"

Strike: "clear and convincing"

Insert: "a preponderance of the"

2. Page 4, line 11.

Following: "purposes"

Insert: "in the foreclosure proceeding. The successful bid is conclusive for vesting or confirming title to the real property purchased at the foreclosure sale, subject to the debtor's right of redemption, and for establishing the judgment debtor's right to docket a deficiency"

Strike: "A"

Insert: "Any challenge to the conclusive effect of the bid based on a"

3. Page 4, line 12.

Following: "be"Strike: "presented to"

Insert: "filed with"

Following: "court"

Insert: "that conducted the foreclosure proceeding"

4. Page 4, line 14.

Following: "sale"

Insert: "A copy of the sheriff's return must be sent to the judgment debtor's last-known address. This section may not bar the judgment debtor's right to subsequently assert an affirmative claim of fraud or collusion that is not otherwise barred by the applicable limitation provisions of the law."

5. Page 4, line 19.

Strike: "levy on"

Insert: "realize upon"

Amendments to Senate Bill No. 223
First Reading Copy
Requested by Senator Thayer
For the Committee on Business and Industry

Prepared by Bart Campbell
February 12, 1991

1. Title, line 14.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

2. Title, line 15.

Following: "71-1-222,"

Insert: "AND 71-3-317,"

3. Page 4, line 8.

Following: "(3)"

Insert: "(a)"

Following: "by"

Strike: "clear and convincing"

Insert: "a preponderance of the"

4. Page 4, line 11.

Following: "purposes"

Insert: "in the foreclosure proceeding unless the defendant or defendants personally liable for the debt object. If there is an objection the defendant or defendants personally liable for the debt shall appoint a certified appraiser and the party foreclosing shall appoint a certified appraiser. If the two appraisals of the property subject to the foreclosure are within 10% of each other then the fair market value is the average of the two appraisals. If the two appraisals are not within 10% of each other then the two appointed appraisers shall appoint a third certified appraiser and his appraisal constitutes the fair market value of the property subject to the foreclosure.

(b) If there is no objection, the successful bid is conclusive for vesting or confirming title to the real property purchased at the foreclosure sale and for establishing the judgment creditor's right to docket a deficiency"

Strike: "A"

Insert: "(c) Any challenge to the conclusive effect of the bid based on a"

5. Page 4, line 12.

Following: "be"

Strike: "presented to"

Insert: "filed with"

Following: "court"

Insert: "that conducted the foreclosure proceeding"

6. Page 4, line 14.

Following: "sale."

Insert: "A copy of the sheriff's return must be sent to the judgment debtor's last-known address. This section may not bar the judgment debtor's right to subsequently assert an affirmative claim of fraud or collusion that is not otherwise barred by the applicable limitation provisions of the law."

7. Page 4, line 19.

Strike: "levy on"

Insert: "realize upon"

8. Page 5, line 20.

Following: line 19

Insert: " Section 2. Section 71-1-317, MCA, is amended to read:

"71-1-317. Deficiency judgment not allowed. (1) When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, no other or further action, suit, or proceedings shall be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on such note, bond, or other obligation regardless of whether or not the property subject to the foreclosure is commercial or residential in nature.

(2) When a trust indenture executed in conformity with this part is foreclosed by judicial procedure a judgment may not be had for any deficiency against the grantor or his surety, or the successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on the note, bond, or other obligation regardless of whether or not the property is commercial or residential in nature."

Renumber: subsequent sections

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/15/91 Bill No. SB223 Time 10:00

NAME	YES	NO
Senator Bruski		X
Senator Franklin	X	
Senator Gage	X	
Senator Hager		X
Senator Noble		X
Senator Thayer		X
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: TO TABLE

Amendments to Senate Bill No. 256
First Reading CopyRequested by Senator Lynch
For the Committee on Business and IndustryPrepared by Bart Campbell
February 5, 1991

1. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 33-22-1702 AND"

2. Page 2, line 24.

Following: line 23

Insert: "Section 2. Section 33-22-1702, MCA, is amended to read:

"33-22-1702. Purpose -- legislative finding. (1) The legislature finds that the health and welfare of all Montanans is significantly influenced by the availability of affordable health care services and the delivery of those services. The legislature further finds that the state has compelling interests in preventing preferred provider agreements from discriminating against other willing providers and in assuring that willing providers be given the opportunity to meet the terms and conditions of established preferred provider agreements.

(2) The purpose of this part is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers to:

~~(1)~~(a) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or

~~(2)~~(b) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan.""

Renumber: subsequent section

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/15/91 Bill No. SB 256 Time 10:00

NAME	YES	NO
Senator Bruski	Y	
Senator Franklin	X	
Senator Gage		X
Senator Hager		X
Senator Noble		X
Senator Thayer		X
Senator Williams	X	
Senator Kennedy		X
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: TO PASS AMENDMENTS

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/15/91 Bill No. SB256 Time 10:00

NAME	YES	NO
7 Senator Bruski	X	
6 Senator Franklin	X	
5 Senator Gage		X
4 Senator Hager		X
3 Senator Noble		X
2 Senator Thayer		X
1 Senator Williams	X	
8 Senator Kennedy	X	
9 Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Williams
Motion: Do Pass

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/15/91 Bill No. HB16 Time 10:00

NAME	YES	NO
Senator Bruski	Y	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: BE CONCURRED IN.



SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 2/15/91
BILL NO. SF HB16

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

**TESTIMONY OF DON JUDGE ON HOUSE BILL 16, BEFORE THE SENATE
BUSINESS COMMITTEE, FEBRUARY 15, 1991**

Mr. Chairman, members of the committee, I'm Don Judge of the Montana State AFL-CIO, and I'm here in support of House Bill 16.

We believe that all of the work performed with Montana tax dollars should be done in Montana by Montana workers, whenever possible.

We have one of the top-rated workforces in the nation, and we believe the state should make every effort to use the talents and skills of those workers at all times.

This kind of preference for Montana workers should be implemented wherever possible when state taxpayers' dollars are being used.

Business people across the state are pushing people in their communities to buy locally and to buy Montana-produced goods, and we certainly agree with them. The state has spent a great deal of energy and some funds promoting Montana-made goods and services, so it's only appropriate that they follow their own advice and print their material in-state.

The amendment that was added to this bill allows for an exception if the in-state-bidder does not exceed a nonresident bidder by 8% or if there is not a responsible in-state bidder. Although we are not entirely happy with this amendment, it seems to be a workable compromise.

We urge the committee to approve House Bill 16 and keep the state's printing work in Montana.

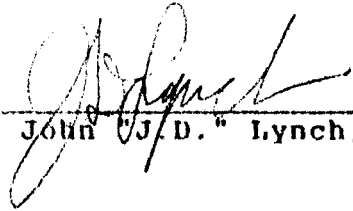
Thank you.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 16 (third reading copy -- blue), respectfully report that House Bill No. 16 be concurred in.

Signed: 
JOHN "J.D." LYNCH, Chairman

MA 2-15-91
Ad. Coord.

EB 2-15 1:05
Sec. of Senate

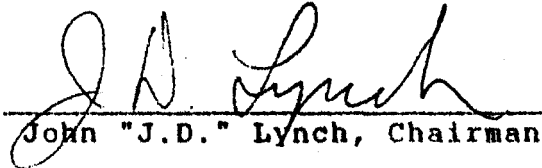
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 256 (first reading copy -- white), respectfully report that Senate Bill No. 256 do pass.

Signed: _____


John "J.D." Lynch, Chairman

ML 2-15-91
Asst. Coord.

SB 2-18-91 8:25
Sec. of Senate