

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on January 22, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Daryl Toews (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ed Kennedy

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: SB 132, SB 161
Executive Action: SB 111, SB 132, SB 161

HEARING ON SB 132

Opening Statement by Sponsor:

Senator Stang, Senate District 26, brought SB 132 before the Committee at the request of the Public Service Commission (PSC). He stated under existing law, the PSC must establish commercial units and standards for public utility products and service and also provides for the examination and testing of appliances used to measure those units and standards. The PSC has implemented the statute through administrative orders and tariffs. SB 132 is intended to clarify MCA 69-3-108 and resolve a difference in

opinion between the legislative auditor and the PSC. Senator Stang said the PSC has followed the statute which has existed since 1913 and permits the standards of public utilities be set by administrative order and tariff. He said the auditor follows the statute requiring standards to be provided by administrative rule. He stated SB 132 would clear up this difference.

Proponents' Testimony:

Martin Jacobson, Montana Public Service Commission, stated SB 132 is the result of an agreement between the PSC and the legislative auditors office concerning the proper implementation of the provisions of the existing sections of MCA 69-3-108. Mr. Jacobson said if enacted, SB 132 will clarify the PSC has the authority to establish units and standards for public utility products and services by administrative order and the resulting tariffs by administrative rule. Mr. Jacobson added the interest of SB 132 is to maintain the established authority of the PSC. According to Mr. Jacobson, the PSC has historically implemented MCA 69-3-108 by order and tariff. He stated this method of implementation is a practical necessity given the different operating conditions and characteristics of the regulated public utilities. Mr. Jacobson concluded the PSC had reviewed and agreed upon the amendments which will be offered.

John Alke, an Attorney who appeared on behalf of the Montana-Dakota Utilities Company joined in support of SB 132. Mr. Alke supplied proposed amendments to SB 132 (Exhibit #1). Mr. Alke would like for SB 132 to read "standards" instead of "tariff provisions" or "rules". He stated this amendment would allow standards to be established by rule or tariff in accordance with the Montana Administrative Procedures Act. Mr. Alke added the PSC had asked for three changes to the amendments: they requested the word "ordered" to be added where Mr. Alke inserted "Administrative rule or tariff provision"; they requested the same amendment in the body of the bill; and they requested "the standards, units, measurements, examinations" where Mr. Alke had "the standards and fees."

Dan Walker, representing U.S. West, stated his support of SB 132 as amended.

Gene Phillips, representing Pacific Power and Light, stated his support of SB 132 as amended.

Ken Williams, representing Montana Power Company, stated the Company's support of SB 132 as amended.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Christiaens asked Mr. Alke why the Montana-Dakota company had the ability to bill by thermal content versus the volume content used by Montana Power. Mr. Alke answered Montana Power is operated solely as a distribution system and distribution systems did not engage in thermal billing when they were first started up. The distribution systems had no need to install devices to measure heat content. The Montana-Dakota system is at the "pipeline level" and every company at that level uses the therm basis for billing to comply with federal regulation.

Senator Christiaens asked Ken Williams if MPC planned to switch to the thermal billing system. Mr. Williams responded he did not know, but would find out and get back to Senator Christiaens.

Senator Klampe asked John Alke to define "tariff provision." Mr. Alke answered a "tariff" is the document which results from the rate making procedures. A "tariff" can say what the rates will be, what the unit will be, the conditions of service, the government of line extension policies, and many other details.

Senator Lynch asked Mr. Williams which billing system was the cheapest for the consumer. Mr. Williams answered both systems serve the consumer perfectly.

Closing by Sponsor:

Senator Stang closed stating the proposed amendments will take care of any problems in SB 132.

Announcement:

Chair Lynch announced Executive Action would be taken on SB 111 at the end of today's Committee meeting.

Bart Campbell, Legislative Council, provided copies of a draft of the amendments to SB 111. Mr. Campbell stated a section of the law regulates any person or persons who operate motels, hotels, etc. and requires them to have a license from the Department of Health. He stated the Department of Health regulation exempts the owners from the real estate license requirement. Mr. Campbell suggested adding a section which would say "Title 37, Chapter 51 would not apply to any person operating a Hotel/Motel, Rooming House, Boarding House, Retirement Home or Tourist Home as defined in MCA 50-51-102." He said by adding this section, it would exempt those people from the requirement of a property managers license. Mr. Campbell then went over the amendments previously agreed upon by the Committee (Exhibit #2).

Opening Statement by Sponsor:

Senator Jergeson, Senate District 8, stated last session a Microbusiness Development Act (MDA) was passed. The MDA takes coal tax money and offers it as a loan to Microbusiness Development Corporations and different programs to provide capital for new, small businesses. He said a lot of jobs have been created through the appropriation of the funds. He said upon the establishment of the MDA, an advisory committee was also established which contained four non-voting legislators. Senator Jergeson state changes needed to be made to the MDA to implement the program more effectively. He said SB 161 would revise the MDA to this end.

Senator Jergeson stated SB 161 changes the section in the title which says "removing community support certification criteria" to more accurately reflect the contents of SB 161. He stated the change would not remove the criteria, but would establish the criteria which are necessary for the development of a statewide program.

The first change recommended to the Committee would be to establish that interest rates on the loans made through the MDA may not be less than 3% per year.

The second change is on page 6, the local match for the MDA is currently at a 3-to-1 rate. SB 161 would change the match to a 6-to-1 ratio. This ratio would give the people asking for the loans a chance to self-finance the loans.

The third and final change would be to section 9. He stated SB 161 would make it possible for a legislative auditor to do a full-scale evaluation of the MDA.

Proponents' Testimony:

Sandra Oitzinger, President Montana Womens Capital Fund stated her support of SB 161.

Kate Cholena, Montana Womens Lobby, stated the Lobby's support of SB 161

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Rea asked Senator Jergeson to clarify who establishes the base of the interest rate charged and the current interest rate is on the loans. Senator Jergeson redirected the question to Lynn Robson, Loan Officer, Department of Commerce, MDA, who answered the current rate is 4%. There is a range of a 3% spread

which the businesses may charge. Senator Rea asked how the interest rate is determined. Ms. Robson answered the rates are calculated by surveying 9 banks across the state every quarter, taking an average of the interest rates and attaching a 3% spread.

Senator Christiaens asked if SB 161 would help the areas which do not already have a Microdevelopment Organization. Ms. Robson answered SB 161 would make it easier for an area to make use of the MDA because of the grants and lower collateral matches. Ms. Robson also stated the MDA committee would request a time period change for requests. Senator Christiaens asked if cash matches would allow a broader threshold for communities to meet the match requirements. Ms. Robson answered there was a change in language from "match" to "collateral".

Senator Klampe asked Ms. Robson how the 6 to 1 ratio was calculated. Ms. Robson answered the default rate in the MDA fund is less than 3%. She stated when looking at programs 4 years and older, the default rate is less than 2%. This evidence is used to calculate the ratio at 15%.

Senator Bruski-Maus asked why no money was available in Eastern Montana. Ms. Robson answered the reason was that proposals to get people to put the collateral together were not coming together. Ms. Robson added some proposals were being drafted and looked as potentially successful.

Senator Harding asked how many loans were given and in what communities. Ms. Robson answered 7 out of 12 regions are certified to receive loans. She stated the 5 which were funded and certified as of October 1 were Kalispell, Missoula, Bozeman, Havre, Billings and Lewiston. She stated 16 loans had been made after July 1, 1992 and \$154,748 had been loaned. She said the average loan had been \$9,672 and 30.5 jobs had been created with a cost per job of \$5,074.

Senator Lynch asked what kind of loans had been given in the Butte-Anaconda area. Ms. Robson replied the area had just been certified.

Senator Christiaens asked Ms. Robson about local agreements between tribes and counties where there is both local jurisdiction and tribal jurisdiction. Ms. Robson answered some legal issues needed to be worked out through the local HRDC and the tribe.

Senator Rea asked Ms. Robson what was going to happen to the \$3,250,000 the MDA could loan if it were not loaned by July. Ms. Robson answered the funds would revert to the Board of Investments and go back into the coal tax trust fund.

Senator Mesaros asked what types of businesses used the loans.

Ms. Robson answered the businesses were generally service oriented and with a few manufacturing businesses also applying.

Closing by Sponsor:

Senator Jergeson closed asking for a Do Pass consideration on SB 161. He added he would like the title to read, "further define statewide loan funds," instead of "removing community support certification criteria".

EXECUTIVE ACTION ON SB 161

Motion/Vote:

Senator Rea moved SB 161 BE AMENDED as stated in the closing by the sponsor. MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SB 161 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY with Senator Gage abstaining because he was absent during the vote.

EXECUTIVE ACTION ON SB 111

Discussion:

Senator Lynch wondered if the exemptions regarding relatives could be shortened. Mr. VanHorssen answered the language is from the Internal Revenue Code and should not be shortened because it acts as a reference for individuals who want to know if they would be in violation of SB 111.

Senator Lynch asked Bart Campbell if SB 111 would state a person who purports themselves to be a property manager must be licensed as such; and a person who is under one owner only, runs a motel or collects rents does not have to have a professional property managers license. Greg VanHorssen answered SB 111 applies to anyone in the business of renting, leasing, subleasing or other transfer of property interest. Mr. VanHorsen stated his reading of SB 111 as amended would include under the licensing requirement anyone who runs a motel, or hotel with more than four units. Mr. Campbell added that Mr. VanHorssen was not aware of the amendment which had been added earlier in Committee.

Mr. VanHorsen asked Mr. Campbell if the amendment he was referring to was to title 37 chapter 51. Mr. Campbell answered yes and it removed the people Mr. VanHorssen had specified.

Mr. Lynch asked what effect SB 111 would have on current law.

Mr. Campbell answered SB 111, if passed, will cover current law.

Senator Christiaens asked if a person who collects rents and takes deposits for a realty firm would be required to list and sell property and work under a real estate broker. Mr. VanHorsen answered that he was not prepared to address the question. Mr. Campbell added the passage of SB 111 would allow such a person to become a licensed property manager without having to become a realtor.

Senator Klampe asked if SB 111 needed to be amended to require realtors pass the property management test. Senator Lynch agreed with Senator Klampe.

Senator Rea asked if section 1 addressed the bankers and the assignment of repossessed property. Mr. Campbell answered the bank would operate as a trustee and anyone who is assigned the property would be considered an employee and covered under the amendments.

Senator Gage referred to the language in part 3 and asked if his 8 year old granddaughter could manage property under the new amendments. Mr. Campbell answered that was correct. Mr. VanHorsen added the liability would still be with the owner or licensee.

Motion/Vote:

Senator Bruski-Maus moved SB 111 BE AMENDED. MOTION CARRIED UNANIMOUSLY.

Discussion:

Senator Klampe asked the opinion of the Committee if the motion he wanted to make should be:

The people who are already realtors and property managers might be grandfathered in to SB 111.

The people who are already realtors and property managers should be required to take the property managers test.

Senator Lynch stated he felt that "what is good for the goose is good for the gander" and the realtors should be made to take the test.

Senator Gage added he agreed with Senator Lynch.

Senator Toews stated he had a problem with requiring the real estate brokers to take the test. He said real estate brokers are trained to do exactly what property managers do and all the information for managers is in the brokers test.

Senator Lynch referred to a real estate broker to whom he had talked who did not want to be a property manager and did not have the knowledge. He added if a real estate broker wanted to be a manager and they already had the knowledge, then they should be able to pass the test easily and would not argue about taking it.

Senator Klampe read a quote from someone on the Real Estate Board:

"Special training required for property managers you don't get as a realtor...Absolutely anyone new coming into the property management business should be trained."

Senator Klampe stated he felt this person was agreeing with what Senator Lynch had said earlier. He said realtors do not necessarily know how to do property management.

Bart Campbell asked Senator Klampe about his proposed amendments and stated there were two ways to amend SB 111. The first option was to strike the whole thing. The second option was to say, "a licensed real estate broker under the supervision of one may not act as a property manager without meeting the qualifications required of a property manager". Senator Klampe stated he thought it would be simpler to strike lines 17 through 22.

Mr. Campbell stated he felt the rewording of the section was a better idea and more concise. Senator Klampe agreed and asked the amendment be drafted.

Motion/Vote:

Senator Klampe moved SB 111 BE AMENDED. MOTION CARRIED 12 to 1 with Senator Toews voting NO.

Discussion:

Senator Christiaens asked the Committee to include in SB 111 a section regarding public administrators of property and the handling of an estate until the estate is settled. Mr. Campbell answered the amendment which states, "incidental to their duties" would cover the above situation.

Motion/Vote:

Senator Klampe moved SB 111 DO PASS AS AMENDED. MOTION CARRIED 11 to 2 with Senator Wilson and Senator Toews voting NO.

Motion/Vote:


Senator Harding moved SB 132 BE AMENDED. MOTION CARRIED UNANIMOUSLY. Exhibits attached (Exhibit #1).

Motion/Vote:


Senator Harding moved SB 132 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY with Senator Gage abstaining because he was absent for the testimony.

ADJOURNMENT

Adjournment: 11:15 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE Jan 22 1993

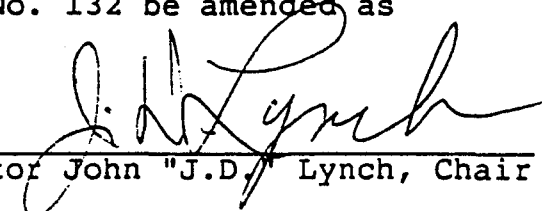
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		<i>exc</i>
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy			✓
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 132 (first reading copy -- white), respectfully report that Senate Bill No. 132 be amended as follows and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 7.

Following: "BY"

Strike: "RULE, ORDER, OR A COMBINATION OF BOTH"

Insert: "ADMINISTRATIVE RULE OR ORDERED TARIFF PROVISION"

2. Page 1, lines 21 through 22.

Following: "~~prescribe~~" on line 21

Strike: "adopt"

Insert: "establish"

Following: "regulations"

Strike: "rules or issues orders"

Insert: "standards"

3. Page 3, lines 3 through 10.

Following: "(6)"

Strike: strike lines 3 through 10 in their entirety

Insert: "The standards and fees established by the commission pursuant to this section must be established through administrative rules or ordered tariff provisions, in accordance with the Montana Administrative Procedure Act."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 23, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 111 (first reading copy -- white), respectfully report that Senate Bill No. 111 be amended as follows and as so amended do pass.

Signed: 

Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.

Following: "PENALTIES;"

Insert: "CREATING EXEMPTIONS FROM REAL ESTATE AND PROPERTY
MANAGEMENT LICENSING;"

2. Page 4, line 14.

Following: "the"

Insert: "business of"

3. Page 5, lines 17 through 19.

Following: "a" on line 17

Strike: "dependent"

Insert: "relative"

Following: "estate"

Strike: the remainder of line 17 through "act];" on line 19

Insert: ", defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner;
or

(ix) the spouse of the property owner;"

4. Page 6, line 11.

Following: "duties;"

Strike: "or"

5. Page 6, line 16.

Following: "States"

Strike: "."

Insert: "; (h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed; or

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties."

6. Page 6, line 19.

Following: "may"

Insert: "not"

7. Page 6, line 20.

Following: "meeting"

Strike: "any"

Insert: "the"

Following: "qualifications"

Insert: "to be a property manager"

-END-

AMENDMENTS TO SB 132

1. Page 1, In 7
Following: "services by"
Strike: "RULE, ORDER, OR A COMBINATION OF BOTH"
Insert: "ADMINISTRATIVE RULE OR TARIFF PROVISION"

2. Page 1, In 21
Following: "prescribe"
Strike: "adopt"
Insert: "establish"

3. Page 1, In 21
Following: "regulations"
Strike: "rules or issue orders"
Insert: "standards"

4. Page 3, In 3-10
Strike: In their entirety.
Insert: "The standards and fees established by the commission pursuant to this section shall be established through administrative rules or tariff provisions, in accordance with the Montana Administrative Procedures Act."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE Jan 22, 1993

BILL NO. SB 132

1. Page 4, line 14
Following: "the"
Insert: "business of"
2. Page 5, line 17
Following: "a"
Strike: "dependent"
Insert: "relative"
3. Page 5, line 17 through 19
Following: "real estate"
Strike: ", as defined in 26 U.S.C. 152, on [the effective date of this act;]"
Insert: "defined as follows:
 (i) a son or daughter of property owner or a descendant of either,
 (ii) a stepson or stepdaughter of the property owner,
 (iii) a brother, sister, stepbrother, or stepsister of the property owner
 (iv) the father or mother of the property owner, or an ancestor of either,
 (v) a stepfather or stepmother of the proper owner,
 (vi) a son or daughter of a brother or sister of the property owner,
 (vii) a brother or sister of the father or mother of the property owner,
 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner, or
 (ix) the spouse of the property owner."
4. Page 6
Following: line 16
Insert: "(h) a person who receives his or her compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue is deposited or from which revenue is disbursed.
 (i) a person employed by the owner of the real estate if that person's property management duties are incidental to his other employment related duties."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. _____

DATE 1/22/93

BILL NO. SB 111

DATE Jan. 22, 1993

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 132, SB 161

Name	Representing	Bill No.	Check One	
			Support	Oppose
Nick V. Cloc	Mont. Rural Water Systems	SB 132		✓
Gene Phillips	P.P. & L	SB 132	Amend	
Martin Jacobson	PSC	SB 132	✓	
Jennifer Massman		SB 161	X	
Lynn Robson	DOC	SB 161	✓	
Kate Cholera	MT Women's Lib	SB 161	✓	
Dan Walker	U S WEST	SB 132	X	
Sandra Ditzinger	MT Women's Capital Fund	SB 161	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY