

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 10, 1993,
at 8:00 A.M

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: REP. ELLIS AND REP. MILLS

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 383, HB 387, HB 390 AND HB 441
Executive Action: HB 383, HB 390 AND HB 441

HEARING ON HB 387

Opening Statement by Sponsor:

REP. BILL ENDY, House District 74, Whitehall, said HB 387 is an
act providing that a real estate broker must be involved in the
auction of property.

Proponents' Testimony:

Tom Hopgood, representing Montana Association of Realtors, said the association is comprised of over 2,500 licensees as brokers and salespersons of real property and another 2,500 licensees that are not members of the association but are licensed to conduct real estate sales in the state. He said a home is probably the most important investment that a person will ever make. A real property transaction is the most complicated act most people will ever be involved in. He said HB 387 will require an auctioneer to have a realtor license when selling real property. An auctioneer brings buyers and sellers together for the transaction of real estate. He said the National Association of Realtors has passed a resolution to require auctioneers who auction real property to be licensed under real estate license laws or perform real estate auction sales in conjunction with a real estate licensee. He said the auctions are becoming a marketing tool in the real estate industry and are growing due to the large turnover of real property that may not be sold under other situations for long periods of time. A survey done in the second half of 1992 showed that a large percentage of auctions were in RFDC. He said public auctions are essentially negotiated sales with a time deadline. Auctioneer's fees usually range from 4 to 10 percent of the selling price plus marketing costs. He said there are 34 states which require an auctioneer to be licensed as real estate salespersons or brokers, and nine states require a separate auction license. He said this is a consumer protection bill and urged the committee to give HB 387 favorable consideration.

Lloyd Norman Mandeville, Montana Association of Realtors, and an auctioneer, Bozeman, distributed written testimony and information on the method of auction sales. EXHIBITS 1 AND 2

Steve Mandeville, Legislative Chairman for the Montana Association Realtors, distributed a survey on the summary of auctioneer licensing and state auctioneer license laws. He said Montana does not have any regulation for auctioneers. He stated his support for HB 387. EXHIBITS 3 AND 4

Opponents' Testimony:

REP. GARY MASON, House District 63, Corvallis, said as an auctioneer he does title searches and deals with real estate. He informed the committee that he has asked Paul Verdon to draft some amendments to grandfather in the auctioneers that have been working for the last five years.

Margee Mason, Mason Marketing Services, said she opposes HB 387. It discriminates against the rights of individuals to chose which way they want to sell their property. The auction way of selling is not the same as a real estate agent, the bid goes to the highest bidder with no long term contract.

Davar Gardner, Gardner Auction Services, Kalispell, said he concurs with the previous testimony. He said the national association and the Certified Auctioneers Institute offer many courses for selling real estate at auctions, and are accepted by most boards of realty throughout the country.

Tex Pate, Montana Auctioneer Association, said HB 387 should be changed to a Real Estate Brokers Income Protection Act of 1993. He urged the committee not to pass HB 387.

Glen Levandoski, Auctioneer, Blue Mountain Auction, distributed written testimony opposing HB 387. EXHIBIT 17

Questions From Committee Members and Responses:

REP. DAILY asked Tom Hopgood if an auctioneer is licensed as a real estate broker and sells a \$100,000 farm and receives \$6000 as a commission to the broker, how much of a percentage would be charged on top of that for the fee. Mr. Hopgood said the anti-trust law prohibits real estate salespeople and brokers from setting a fixed fee. He said an auction situation would be different and suggested that something could be worked out between the auctioneer and the owner.

Closing by Sponsor:

REP. ENDY closed.

HEARING ON HB 390

Opening Statement by Sponsor:

REP. JOE QUILICI, House District 71, Butte, said HB 390 is an integrated least-cost resource planning map. He said HB 390 is one of the most important energy bills to come before a committee in the last couple of sessions. The bill has been worked on for the last several years by the environmental groups, utilities, Department of Natural Resource and Conservation (DNRC), Public Service Commission (PSC), and public input. HB 390 is unique to Montana because it is being looked at by the federal government, Congress, and other states for this method of energy. He said HB 390 has three major purposes: 1) to clarify the PSC authority to require that electric and natural gas utilities file a financial report with the commissioner to clarify the utilities and recover their cost if they invest in energy efficiency or make other investments consistent with the plans that go before the PSC and the DNRC. They are to use the coordinated planning requirements of the PSC with those required under the Major Facility Siting Act to eliminate duplication and provide continuity in the process. REP. QUILICI distributed amendments. EXHIBIT 6

Proponents' Testimony:

Gerald Mueller, Regulation & Integrated Least-Cost Resource Planning & Acquisition Working Group, said he is the spokesperson for the Working Group that developed this proposed legislation. He distributed a list of the organizations and participants involved in the compromise of HB 390. He said the integrated least-cost plan differs from traditional utility planning in three important ways: 1) it ensures that utilities seek out the least costly means of meeting the electricity demands from all resource alternatives, i.e., power plants, conservation, utility-owned resources and the competitive market place; 2) it specifically takes into account the factors not addressed in past utility plans and will incorporate social and environmental costs and benefits not born directly by the utilities, but in comparison of resources and not by including these costs directly in utility rates. It takes into consideration the uncertainty of projecting future electricity demands and the availability and costs of future resources. Least-cost planning will allow utilities to identify and manage the risks that arise from this uncertainty; and 3) it will involve all environmental groups, utility customers, and regulators in utility planning before the resource acquisition decisions are made. He emphasized that the involvement does not transfer resource decisions from utility management to either the state or the public. It does provide utilities with information about the interest and concerns of the regulators and potential interveners in regulatory processes at an early stage so if the utilities choose to, they can incorporate this information to avoid potential conflict in the regulatory form. **EXHIBIT 7**

Ken Toole, consultant working with the Montana Environmental Information Center (MEIC), presented written testimony in support for HB 390. **EXHIBIT 8**

John Alke, Helena Attorney representing the Montana-Dakota Utilities, said the utilities support HB 390 and the amendments. He distributed a document on the proposed adoption of rules on least-cost planning and the reply by Montana-Dakota Utilities Co. **EXHIBIT 9**

Bob Anderson, Public Service Commission (PSC), said the PSC supports HB 390. He said HB 390 is about the risk of future litigation. He presented written testimony. **EXHIBIT 10**

Mark Simonich, Director of the Department of Natural Resources and Conservation (DNRC), said he is appearing before the committee on behalf of Governor Racicot to indicate the administration's support of HB 390 and the amendments. He said they also support the way the PSC has defined the roll for utilities in Montana. The process of HB 390 provides for meaningful public dialogue on the energy choices that utilities will confront before they actually make the investments. It will be cost-effective and will delete the time-consuming regulatory

legal battles that have plagued Montana for many years. He said one of the most important things this bill will do is require that the DNRC and the PSC work together in meeting the emissions instead of working as separate entities. **EXHIBIT 5**

Frank Buckley, Montana Consumers Council Office, said they support the bill and feel it is in the best interest of the rate payers.

Jack Haffey, Vice President of Montana Power Company, said they support HB 390 in its entirety. He said they were involved in part of the process that resulted in this bill. He urged the committee's support in the passage of HB 390.

Gene Phillips, representing Pacific Power and Light, Kalispell, said this is what a least-cost program looks like in a seven-state system. He said they worked on section 6, and submitted application on the use of the utilities.

Tom Schneider, former chairman of the PSC and representing the Northern Plains Resource Council, said they strongly support the bill as drafted and amended by REP. QUILICI. **EXHIBIT 11**

Jay Downen, Executive Vice President of the Montana Electric Cooperatives Association, said the association represents the 26 electric co-ops that serve Montana. He complimented REP. QUILICI for bringing together this coalition of an two year effort. He said they are already under the least-cost plan, and urged the committee to pass HB 390.

Allen Davis, DNRC, said this bill also shortens the Siting Act process by two years. He urged the committee's support for HB 390.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SONNY HANSON asked John Alke if HB 390 will give authority to the PSC to develop energy-related building codes for the state of Montana? Mr. Alke said he wasn't there, but it is his observation that under the existing law the PSC has the power to implement building codes. Mr. Alke said he has received information from Chairman Anderson of the PSC, and believes that the PSC is a creature of limited statutory powers. The PSC does not in Mr. Alke's opinion have the power to define its own regulatory course?. He said there is nothing in this bill to authorize the PSC to trample over the jurisdiction of the Department of Commerce and impose on their building codes. REP. HANSON asked Mr. Alke what he meant when he said this bill was not limited to production only, what other meaning is there if it is not consumption? Mr. Alke said the existing statutory law

defines eligible conservation investments. He said there is a 100 percent limit called "avoided cost". The avoided cost to a utility versus conservation, are the production cost that utilities avoid by not having to produce the unit of energy that is conserved by the conservation management. He said once they go beyond the actual production cost, i.e., environmental externalities, social cost, and the negative and positive by definition of externalities is a cost which is not imbedded in the cost of production.

Closing by Sponsor:

REP. QUILICI said it has been over 10 years since Montana has used the Major Facility Siting Act. He said it hasn't been too many years ago when there was over 2000 mgw of surface power in the Pacific Northwest, and it is now drastically lower. He said HB 390 addresses the problems that need to be taken care of. There needs to be many entities involved in energy resources.

REP. QUILICI informed the committee that DNRC would be available to answer any questions regarding the amendments.

HEARING ON HB 441

Opening Statement by Sponsor:

REP. WILLIAM REHBEIN, House District 21, Lambert, said HB 441 is at the request of the Board of Water Well Contractors, Department of Natural Resources and Conservation (DNRC). He said it will streamline the departments way of handling problem water well contractors. HB 441 will allow more efficiency in the way the board and the water well contractors handle their differences.

Proponents' Testimony:

Fred Robinson, Legal Counsel, DNRC, said it is in his capacity as counsel for the Board of Water Well Contractors and not as a part of DNRC that he is before the committee. The board asked for HB 441 because they have had to spend an inordinate share of their resources for disciplining a few problem licensees. The proposed process is designed to strengthen the board's ability to react appropriately and timely to public complaints about problem licensees by emphasizing settlements without discipline and repealing requirements for trial-type hearings. He said the bill is sensitive to the due process rights of the licensees. Mr. Robinson distributed written testimony. EXHIBIT 12

Wes Lindsay, Chairman of the Water Well Licensing Board, said there are five members on the board. Two of the members are water well drillers, and the rest are state employees. He said the members support HB 441. It is long overdue and will cut down on the lengthy court cases and cost.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LARSON asked Wes Lindsay to identify some of the problems the board has to deal with? Mr. Lindsay said at this time there is an individual who defies everything the board asks him to do. He thinks he knows more than the board and does not live up to the standards of the board. He said the board has been trying to get this person out of business for the last two-years.

Closing by Sponsor:

REP. REHBEIN said if HB 441 is passed, it will save the board time in the process and give them the authority to deal with the problems without going to trial. He urged the committee for a do pass recommendation for HB 441.

HEARING ON HB 383

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, House District 49, Bigfork, said HB 383 is at the request of the Department of Commerce. It calls for the continuing education of the Board of Realty Regulations to receive a license to sell real estate.

Proponents' Testimony:

Marsha Allen, Member of the Board of Realty Regulation, addressed the bill section by section in her written testimony. She spoke of the funds that are earmarked for the educational program. She said the current balance in the account is in excess of \$280,000 and the statutory balance of the account is set at \$100,000. The board offers outreach programs, newsletters, and will create an education council that would allow the board to use the expertise of educators and licensees across the state. The council will answer to the board and be limited in its decision-making authority. She said there are 30 states who employ a full-time education director to assist in implementing education programs, and 22 states have some form of an education council. The states are recognizing the benefit of developing an educational strategy and following through with a comprehensive, managed plan. She emphasized that HB 383 is requesting authority only to spend revenues currently collected. There will be no increase in cost to the licensees of Montana. If the fund doesn't allow the statutory to balance, fees will be collected from the participants of educational programs to revive the account balance. EXHIBIT 13

Greg Van Horssen, Income Property Managers Association (IPMA), and the Montana Landlords Association (MLA), said he is a no-

ponent of HB 383. He said it is imperative for him to address the committee of some concerns the associations have with regard to the proposed legislation compared to current legislation. He said the associations do support the education process to increase the standards in the real estate industry. He directed the committee's attention to SB 111, sponsored by SEN. HARP. He said SB 111 will create a new category of licensee to be administered by the Board of Realty Regulation, and the category will be called "Property Manager". He said a property manager is different than a real estate broker because they deal exclusively with rental of residential property. SB 111 will provide that the Board of Realty Regulation issue the property manager's license, renew that license and revoke, suspend or deny that license. He directed the committee's attention back to section 1 of HB 383, which states the need for a property manager's license to be recognized because of the different responsibilities between real estate brokers and people involved primarily in the rental business. He feels that SB 111 will become law, and the reason he is before the committee. He said a property manager should be included under HB 383 as a member of the education council which is listed on page 3, lines 7 - 10. The council is made up of two real estate educators, two real estate licensees, one member of the board, and the executive secretary of the board. He said if SB 111 does become law, he asked that the committee take some steps to allow for the inclusion of a property manager on the education council.

Tom Charlton, mobile home owner, Missoula, said he concurs with Mr. Van Horssen's comments to include a property manager on the education council.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LARSON asked REP. BRANDEWIE if he would have any problem with Mr. Van Horssen's suggestion to include a property manager on the education council? REP. BRANDEWIE said he and the board do not have a problem with it.

REP. STELLA JEAN HANSEN asked Marsha Allen to explain more about the fee? Ms. Allen said there is a one-time fee of \$35 which goes into the state fund recovery account.

REP. STELLA JEAN HANSEN asked Grace Burger, Executive Secretary for the Board of Realty Regulation, Department of Commerce, to explain how the fund accumulated to \$280,000? Ms. Burger said in 1985 the Legislature created the Rural State Recovery Fund which took the place of bond requirements. The fund's main purpose is to provide for damage suits, and for acts preformed by the licensee that they performed and were negligent in their actions. This fund is limited to \$25,000 per claim. The account has been

accumulating since 1985 from the assessed one-time fee of \$35, which comes from each first time new license for a salesperson or a broker who fills out an original application.

REP. LARSON asked Marsha Allen how many licensed salespeople and brokers are there to create \$280,000? Ms. Allen said there are approximately 5,000 members that have paid the \$35 one-time fee.

REP. DAILY asked Grace Burger how many times this fund has been used? Ms. Burger said there have been four different claims paid out from the fund. The largest claim was around \$34,000.

Closing by Sponsor:

REP. BRANDEWIE clarified the information that had been received on property managers. He said in order to become a property manager, a person must become a real estate broker, and to become a real estate broker, a person has to become licensed as a real estate salesperson, work two years under a broker/owner, have listed a certain amount of property, experience in the sales of certain property, acquire more education, take the brokers test, and become licensed as a broker.

EXECUTIVE ACTION ON HB 387

Motion: REP. DAILY MOVED HB 387 BE TABLED.

Discussion: None

Motion/Vote: The question was called. Voice vote was taken. Motion carried unanimously.

Vote: HB 387 BE TABLED. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 441

Motion: REP. BRANDEWIE MOVED HB 441 DO PASS.

Discussion: None

Motion/Vote: The question was called. Voice vote was taken. Motion carried unanimously.

Vote: HB 441 DO PASS. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 383

Motion: REP. PAVLOVICH MOVED HB 383 DO PASS.

Discussion: REP. LARSON moved to adopt REP. LARSON'S conceptual amendment on page 3, subsection 5. EXHIBIT 21

REP. LARSON spoke to his amendment. He wanted to include a property manager on the education council, but felt the bill should be held back to see if SB 111 is passed out of the Senate. CHAIRMAN BENEDICT informed him that SB 111 would not be heard until after transmittal.

REP. BRANDEWIE said Paul Verdon, Legislative Council would be able to place a coordinating clause on this bill to go with SB 111. REP. BRANDEWIE said the clause would make another position on the board to include a property manager, and increase the board from six members to seven members.

REP. LARSON called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. BRANDEWIE MOVED HB 383 DO PASS AS AMENDED. The question was called. Voice vote was taken. Motion carried unanimously.

Vote: HB 383 DO PASS AS AMENDED. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 390

Motion: REP. STELLA JEAN HANSEN MOVED HB 390 DO PASS.

Discussion: REP. STELLA JEAN HANSEN moved to adopt an amendment. EXHIBIT 6

REP. DAILY said these amendments have been agreed to by all parties. REP. SONNY HANSON called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. BACHINI MOVED HB 390 DO PASS AS AMENDED. REP. SIMON called the question. Voice vote was taken. Motion carried unanimously.

Vote: HB 390 DO PASS AS AMEND. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 240

Motion: REP. DAILY MOVED HB 240 BE TABLED.

Discussion: None

Motion/Vote: The question was called. Voice vote was taken. Motion carried 17 - 1 with REP. KNOX voting no.

Vote: HB 240 BE TABLED. Motion carried 17 - 1.

EXECUTIVE ACTION ON HB 155

Motion: REP. PAVLOVICH MOVED HB 155 DO PASS.

Discussion: REP. PAVLOVICH discussed the reasons why the denturists want to create their own board and take care of their own fees. He said the denturists have had nothing but problems with the Board of Dentistry.

REP. LARSON spoke against the bill. He said there are only 13 denturists in the state, and said they are unrealistic in the cost of having their own board.

REP. WAGNER said there was a Board of Denturity and the denturists were unable to meet the criteria of 30 denturists to have a board, and were placed under the Board of Dentistry.

REP. STELLA JEAN HANSEN said if the denturists are not allowed to have their own board so they can set their own criteria for licensing, they will not be able to draw any denturists into the state so they can have their own board.

Motion/Vote: REP. DAILY MADE A SUBSTITUTE MOTION THAT HB 155 BE TABLED. Voice vote was taken. Motion carried 14 to 4 with REPS. HERON, DOWELL, STELLA JEAN HANSEN, AND PAVLOVICH voting no.

Vote: HB 155 BE TABLED. Motion carried 14 - 4.

EXECUTIVE ACTION ON HB 216

Motion: REP. BARNETT MOVED TO RECONSIDER ACTION ON HB 216 AND TAKE FROM THE TABLE.

Discussion: REP. BARNETT said HB 216 removed the sunset off the marketing and unfair practice law which was passed two years ago.

Roll call vote was taken. Motion carried 10 - 8. EXHIBIT 14

Motion: REP. PAVLOVICH MOVED HB 216 DO PASS.

Discussion: REP. PAVLOVICH asked REP. SONNY HANSON if this bill is passed, can the county attorney still force the gas station owners to raise the price of gas like they did with the existing law? REP. SONNY HANSON said the county attorney demanded that they raise the gas price based on the existing law. If HB 216 is passed, the existing law becomes permanent. The retailer will have to keep the gas price up to maintain the 1 percent and 6 percent levels of profit for them. REP. PAVLOVICH asked if the

bill is passed, would it make him a richer man per se if he were a gas station owner? REP. SONNY HANSON said he thought it would make him richer. REP. BARNETT informed REP. PAVLOVICH that REP. SONNY HANSON'S comment was an assumption because he said "thought", and he did not have any facts to prove it. REP. SONNY HANSON said he based his comments on information from Charles Brooks, who represents a retail agency, who said the agency was against this bill two years ago, but this year they are a no-ponent, because the retail people that are involved in the market did not want to appear against the bill, because they are making more money.

REP. BRANDEWIE said there was conflict with this bill when it was before the committee. In the hearing there was a 2.8 cents per gallon difference between Cheyenne, Wyoming and Livingston, Montana. He said no one could explain why there was a price difference between the oil refinery in Wyoming and the refinery in Billings. He said HB 216 will not work in the big towns of Montana, but it would probably help the small business man in rural Montana.

REP. WAGNER said his people back home, the small station owners, like this bill the way it is because it protects them. But what is the long term affect on the consumer? Will this keep the gas price up and make the consumer suffer, and if the price comes down is there anything to protect the consumer in this state if that happens? CHAIRMAN BENEDICT answered stating this bill has been on the books for two years and it will sunset at this time. He said prior to 1991, a company called Kenneally, owner of the Town Pumps in Montana, relishes HB 216 because it gives them a guaranteed profit.

REP. DAILY called the question. Roll call vote was taken. Motion failed 8 - 10. EXHIBIT 15

Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT HB 216 BE TABLED. Roll call vote was taken. Motion carried 10 - 8. EXHIBIT 16

Vote: HB 216 BE TABLED. Motion carried 10 - 8.

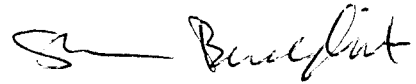
HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 10, 1993

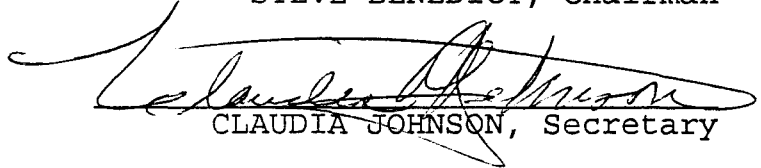
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ADJOURNMENT

Adjournment: 11:00 A.M.



STEVE BENEDICT, Chairman



CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE

2-10-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS			✓
REP. DICK KNOX	✓		..
REP. NORM MILLS			✓
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993

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HOUSE STANDING COMMITTEE REPORT

February 10, 1993

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Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 383 (first reading copy -- white) do pass as amended .

Signed: Steve Benedict
Steve Benedict, Chair

And, that such amendments read:

1. Page 3, line 1.

Strike: "six"

Insert: "seven"

2. Page 3, line 9.

Following: line 8

Insert: "(c) one member must be a property manager licensed as provided in [Senate Bill No. 111];"

Renumber: subsequent subsections

3. Page 7, line 15.

Following: line 14

Insert: "NEW SECTION. Section 5. Coordination instruction. If Senate Bill No. 111, including provisions creating a property manager's license, is not passed and approved, then the code commissioner is instructed to revise [this act] to change the number of members of the real estate education council provided for in 37-51-204(5) to six and to strike the property manager from the membership of the real estate education council."

-END-

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

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Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 390 (first reading copy -- white) do pass as amended .

Signed: _____
Steve Benedict, Chair

And, that such amendments read:

1. Title, line 11.
Following: line 10
Insert: "69-3-701,"

2. Page 2, lines 2 and 3.
Following: "." on line 2
Strike: the remainder of lines 2 and 3
Insert: "However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions."

3. Page 2, line 25.
Following: line 24
Insert: "actually"
Strike: "by"
Strike: "to"
Insert: "for the convenience of"

4. Page 3, line 6.
Following: "commission's"
Strike: "other"
Insert: "existing statutory"

5. Page 4, line 1.
Insert: "(6) 'Portfolio development costs' means the costs of preparing a resource in a portfolio for prompt and timely acquisition of the resource."
Renumber: subsequent subsection

6. Page 6, line 17.

Insert: "Section 7. Section 69-3-701, MCA, is amended to read:

"69-3-701. Definitions. As used in this part, the following definitions apply:

~~(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.--~~

~~(2) (1)~~ "Commission" means the Montana public service commission created in 2-15-2602.

~~(3) (2)~~ "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

~~(4) "Residential building" means a building used for residential occupancy that:--~~

~~(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and--~~

~~(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units."~~

Renumber: subsequent sections

7. Page 6, line 20.

Strike: ":",

3. Page 6, line 21 through page 7, line 3.

Strike: "(1)"

Following: "[section 6]"

Strike: the remainder of line 21 through "costs" on page 7, line

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 441 (first reading copy -- white) do pass .

Signed: _____
Steve Benedict, Chair

EXHIBIT 1
DATE 2-10-93
HB 387

My name is Lloyd Norman Mandeville.

I reside at 1001 Woodland Drive in Bozeman, Montana

I am here representing the Montana Association of Realtors

I am a licensed real estate broker with 15 1/2 years experience in the field of real estate sales, including 8 years as broker/owner of Mandeville real estate in Bozeman.

I am also an auctioneer with nearly 25 years experience in conducting auctions.

Since becoming a licensed real estate salesperson, I have had many opportunities to participate in and conduct real estate auctions. During that time there have been dramatic changes in the way that we have approached and conducted a real estate auction, while our method of conducting personal property auctions have changed very little. The world of real estate has precipitated those changes to our methods.

One of the high points of my auction career was when the Montana Auctioneers association invited me to be one of the featured speakers at our state auctioneers convention last year. The topic was "Auctioning Real Estate In Today's Changing Marketplace". The gist of the talk had to do with how ~~dangerous~~ ^{perilous} it is to both auctioneers and consumers to auction real estate without the help of a real estate professional.

*Today, we have a different real estate property business than
as we did when we started. Meanwhile
Auctioning R E has changed a lot over the
last 10 years.*

When we first started auctioning real estate, we would meet with the seller for two to three hours gathering information about the property and viewing it, then go home and print up a one page sale bill about the property, advertise in the community in which we were conducting the auction, and show up the day of the sale. Today, after meeting with the seller we spend up to the next three weeks gathering information. This includes such things as having the seller complete detailed disclosures about the property, checking the records at the city and county offices, meeting with the title company, obtaining plats and maps, ordering inspections and tests, verifying loan information, and gathering other pertinent facts about the property such as environmental information. Then we start putting this information together into a package for the buyers as back-up information to the sale bill.

I have brought for your reference a package which contains three things: a checklist which I now use when preparing for an auction to help insure that I don't miss anything; a sale bill and the twelve pages of back-up information from an auction which we conducted in 1991; and a letter from the Vice President of the First Trust Company of Montana. This letter was included because in the second paragraph he stated, "Their knowledge and expertise in auctioning AND in real estate transactions made this a successful sale for us".

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Today selling real estate has become very complicated. To help protect the public, the real estate salesperson in Montana has to obtain 60 hours of education in the field of real estate followed by constant continuing education. In addition, to insure protection to the public, our actions are strictly monitored by the board of Realty Regulation. In addition, many Montana real estate licensees, in an effort to further protect the public and enhance our professional image, have banded together under one umbrella known as the Montana Association of Realtors and, in so doing, have agreed to abide by the 23 articles in the Code of Ethics. Since it's inception in 1913, the Code of Ethics has been revised only 18 times in it's 80 year history. Consistent with our rapidly changing real estate market, six of those 18 changes have occurred in the last 7 years.

As a contrast, today to sell real estate by auction, all I have to do is post a \$5,000.00 property bond and I can call myself an auctioneer. I do not have to have any education, do not have to take a test, and do not have to work under a supervising broker until I have some grasp of what I am doing.

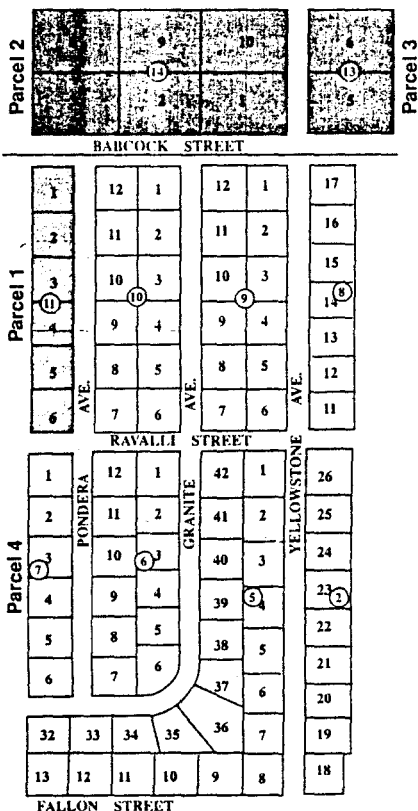
A real estate auction requires the expertise of the auctioneer to control the crowd and create the excitement of the auction which drives prices up. But it also

insure that all information is gathered and properly presented, both before and during the auction. For the protection of the public, it is essential that auctioneers not be allowed to sell real estate by auction without the expertise of the real estate professional.

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REAL ESTATE AUCTION

THURSDAY, JULY 25, 1991
CITY HALL – 411 East Main – 2:00 P.M.
Tax Deed Sale by the City of Bozeman
Lots in Valley Unit Subdivision
 6 R-3 Lots to be offered individually
 8 R-3 Lots (previously TH) to be offered in 2 parcels
 51 R-4 Lots to be offered in 1 parcel



TO BE OFFERED IN 4 PARCELS AS FOLLOWS:

Parcel 1: Zoned R-3

Consists of Lots 1-6 in Block 11. These lots are to be offered individually subject to the following minimum bid.

Minimum Bid	SID Bal	Min Bid	Lot Size
Each Lot	Each Lot	Each Lot	Sq. Ft.
\$9,836.00	\$5,914.00	\$15,750.00	16,249

Parcels 2 and 3: Zoned R-3 (formerly zoned TH)

Consists of 8 lots ranging in size from 43,582 sq. ft. to 44,998 sq. ft. The 6 Lots in Block 14 described as Lots 1-3 and Lots 8-10 will be offered as 1 unit. (Parcel 2)

	Minimum Bid	SID Balance	Total
Total Package	\$22,245.00	\$97,755.00	\$120,000.00
Average per Lot	\$ 3,707.50	\$16,292.50	\$ 20,000.00

The 2 lots in Block 13 described as Lots 5 and 6 will be offered as 1 unit. (Parcel 3)

	Minimum Bid	SID Balance	Total
Total Package	\$11,456.00	\$29,744.00	\$41,200.00
Average per Lot	\$ 5,728.00	\$14,872.00	\$20,600.00

Parcels 1, 2, and 3 are zoned R-3 which is a Residential Medium Density District. The R-3 district allows up to a four family dwelling unit per lot, or townhouse clusters not to exceed five units or 120 feet in length.

Parcel 4: Zoned R-4

Consists of 51 lots to be offered as one package. The lots range in size from 13,799 sq. ft. to 25,965 sq. ft. They are described as:

Block 2, Lots 18-26
 Block 5, Lots 1-13 and Lots 32-42
 Block 6, Lots 1-12
 Block 7, Lots 1-6

	Minimum Bid	SID Balance	Total
Total Package	\$167,026.00	\$289,424.00	\$456,450.00
Average per Lot	\$ 3,275.02	\$ 5,674.98	\$ 8,950.00

These lots are zoned R-4 which is a Residential High Density District. Uses permitted in the R-4 district are the uses permitted in the R-3 district, plus multiple family and townhouse structures exceeding four units per structure as principle uses. Additional conditional uses permitted in the R-4 district are offices, medical offices, clinics and centers.

Taxes and SID's will be paid current to date of sale.
 There will be no delinquent taxes or SID's on the lots purchased.

FINANCING TERMS R-3:

50% of the purchase price will be required at the time of sale. The City will finance the remaining 50% over two years at 8% interest with semi-annual payments.

FINANCING TERMS R-4:

40% of the purchase price will be required at the time of sale. The City will finance the remaining 60% over five years at 8% interest with semi-annual payments.

Statements on the date of sale shall take precedence.

TITLE INSURANCE furnished to buyer by the City of Bozeman. Title conveyed by Quit Claim Deed. The herein described property will be offered for sale at public auction, sold in the manner of the highest bid subject to the printed minimum bids. Properties will be sold "as is, where is" without representation or warranty either expressed or implied.

All information is from sources deemed reliable and is believed to be correct. However, seller and agent accept no responsibility for the accuracy thereof and all interested parties are urged to independently satisfy themselves in all matters regarding these properties. Please seek professional advice if you believe it to be advisable or necessary.

FOR COMPLETE INFORMATION CONTACT:



411 E. MAIN ST.
 Bozeman, Montana
 (406) 586-3321



1121 Mandeville Lane
 Bozeman, MT 59715
 (406) 587-7 832



420 West Mendenhall
 Bozeman, Montana 59715
 (406) 587-9566

First
 Class

EXHIBIT 2
 2-10-93
 HB 287

EXHIBIT 2
DATE 2-10-93
HB 387

WELCOME TO THE AUCTION OF
4 PARCELS IN VALLEY UNIT SUBDIVISION

WE AT MANDEVILLE AUCTION SERVICE AND MANDEVILLE REAL ESTATE
ARE PLEASED TO BE OFFERING THE LOTS FOR THE CITY OF BOZEMAN

BIDDERS PACKETS

If you are considering bidding on a lot it is important
that you register to bid and pick up a bidders packet.
Bidders packets will be given to those who register to bid.

Included in the bidders packet is an explanation of the
terms of the auction & the auction procedure; the November
1991 and May 1992 SID payment amounts on all parcels; the
1990 tax amounts from which the taxes will be prorated,
pages from the most current city zoning code explaining R-3
and R-4 zoning, an "Acknowledgment of Bid" which you will
be required to sign upon being declared the successful
bidder, a sample agreement for sale and a promissory note
which you will be required to sign if you are asking the
city to carry part of the purchase price, a sample copy of
the "Indenture" which conveys title to the purchaser, and a
letter from Montana Power regarding gas and electric.

Not included in the bidders packet but available from one
of the members of the auction team is an SID payment
schedule on each lot for the scheduled life of the SID
balance, a standard Montana Trust Indenture which you will
also be required to sign if you ask the city to finance
part of the purchase price, a title report on each lot or
parcel, maps from the city of Bozeman showing the existence
of sewer and water to each of the parcels, and a map from
the Montana Power Company showing the existence of utility
hookups to two of the parcels.

MINIMUM BID:

The City has established minimum amounts for each lot or
parcel. The bidding will be started no lower than the
minimum amounts as shown on the sale bill. In addition to
the price bid the purchaser will assume the SID'S.

Procedure: When a lot is declared sold, the successful
bidder will sign an "Acknowledgment of Bid" before being
escorted to the closing table. There the purchaser will
deposit with the closing agent an amount equal to at least
50% of the amount bid if buying an R-3 lot or parcel, or at
least 40% if purchasing the R-4 parcel. The successful
bidder will have the option of paying the balance in full
at this time, or by signing a note and accompanying
documents, the city will finance the balance as stated in
the sale bill. The first semi-annual payment will be due in

January 1992.

For Example: If the successful bid on a single R-3 lot in Block 11 is \$10,000 and the successful bidder wanted the City to finance, the successful bidder will pay a minimum of \$5,000 down at the conclusion of the bidding and sign a note and accompanying documents for the balance. The note would be paid in four equal payments every 6 months in the amount of \$1397.45 (an average of \$729.58 per month). This schedule would result in a total interest cost of \$509.80 over the two years, assuming all payments were paid exactly on the date due.

In addition the purchaser will be required to assume or pay off the remaining SID balance for each lot. The SID'S are set up on semi-annual payments due November and May of each year. The first two semi-annual SID payments for each lot are shown in the bidders packets. Full payoff schedules are available from any of our auction personnel. The November 1991 SID payment will be prorated from July 1, 1991 to July 25, 1991 with the purchasers being credited at closing for those 25 days of SID payment. The purchaser will then be responsible for paying the full semi-annual payment due in November, 1991.

If you have any questions concerning the minimum bid or SID'S, please talk to one of our Auction Staff to be sure you fully understand it before you bid.

RELEASES ON R-4 LOTS

The City would be willing to release any number of R-4 lots from its Trust Indenture upon the owner bringing the interest accruing on the debt for that lot current and the payment of two times the unpaid balance of principal remaining on the lot or lots requested to be released.

By the way of example, on July 25, 1991, the City financed \$83,513.00 of the purchase price. Every semi-annual payment would first be applied to interest and the balance to principal. If you desire to release a lot during the summer of 1992, you would make a payment that would bring the interest on the debt on that lot current and you would pay \$2,718.00 principal for the released lot. This amount is two times the proportionate share of the 1992 outstanding principal balance remaining after the last semi-annual payment (based on the original amortization schedule).

Any pre-payment resulting from releasing lots, would be applied to your obligation which would reduce proportionately, the principal balance of the remaining lots. However, any pre-payment would not excuse the next semi-annual payment due and the full amount described in

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the Promissory Note.

UTILITIES

According to the utility companies, all utilities are available in Block 13 and 14 (the 8 R-3 lots being offered in 2 parcels). Telephone and Cable TV are available in Block 11, and no utilities are in to the 51 R-4 lots. Montana Power has stated that gas and electricity would be brought into the lots at no cost to the owner or developer. The only charge would be the hook-up charge. See letter from Montana Power (included in the packet).

TERMS AND CONDITIONS OF THE SALE:

1. All Delinquent taxes will be brought current at closing.
2. All Delinquent SID'S are waived at closing.
3. Purchaser will accept and be responsible for paying SID'S & Taxes from the date of the sale forward. The prorated balance of the 1991 taxes and SID's will be credited to the purchaser at closing.
4. The City of Bozeman will furnish Title Insurance in the amount of the purchase price (title reports are available from the Auction Personnel.
5. Title will convey by Quit Claim Deed.
6. The deed will be held by the title company until the check has cleared and then be recorded for you.
7. The property will be offered & sold "AS IS WHERE IS" and it is the responsibility of the purchaser to inspect the property before he or she bids.
8. There is no warranty either expressed or implied.
9. Upon being declared the successful bidder, the successful bidder must deposit a minimum of 50% of the amount bid if purchasing an R-3 lot or parcel, or 40% if purchasing the R-4 parcel, and sign all closing documents.
10. The balance of the bid price will be amortized as stated in the Sale Bill at 8% APR and paid to the City of Bozeman in semi-annual payments.
11. In addition to the Bid Price, the Purchaser must assume the remaining SID balance.
12. All parties wanting to bid on any lot must first register and obtain a bidder number and receive a bidders packet.
13. It is the responsibility of each bidder to understand the terms and conditions of this auction before bidding. When the Auctioneer says "Sold" if you are the successful bidder, you own the property and are responsible for paying for the same.
14. We recommend that Buyers verify the location lot liprior to build! representation or warranties as to the location of the

lot lines of the properties.

15. We recommend that the purchasers verify the availability of utilities. The information presented regarding the existence or availability of utilities is from representations made to the agent by the utility companies. Agent and seller do not guarantee the accuracy of this information.
16. The Purchaser and seller are to split the closing fee. The Purchaser is to pay all recording fees.
17. Purchaser to deposit all necessary funds with the closing agent immediately upon being declared the successful bidder. If the purchaser is not prepared to close, the sale may be declared void at the option of the seller, and the property be re-offered.
18. The title will be vested only in the name(s) of the party(ies) who are available to sign at the Auction unless other arrangements have been made (eg. Power of Attorney).
19. There are no water rights.
20. As this is a subdivision within the boundaries of Bozeman, the existence of mineral rights have not been researched and are unknown.

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VALLEY UNIT AUCTION #6
 TAXES AND SID PAYMENT SCHEDULE

LOT	BLOCK	TAXES	PRINCIPAL & INTEREST		STREET MAINTENANCE		TREE MAINTENANCE		LIGHTING DISTRICT	
			SID PAYMENT 11/30/91	SCHEDULE 05/31/92	11/90	05/92	11/90	05/92	11/91	05/92
1	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
2	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
3	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
4	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
5	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
6	11	\$ 311.66	\$ 554.47	\$ 541.54	\$ 16.02	\$ 16.01	\$ 1.88	\$ 1.87	NONE	
PARCEL 2										
1-3	14		\$ 9,165.88	\$ 8,951.98	\$ 96.12	\$ 96.06	\$11.28	\$11.22		
8-10		\$ 4,249.94							\$924.94	
									(AFFECTS LOTS 8-10)	
PARCEL 3							\$ 3.76	\$ 3.74		
5 & 6	13	\$ 1,426.02	\$ 2,788.92	\$ 2,723.84	\$ 32.04	\$ 32.02			NONE	
PARCEL 4										
ALL 51	2,5 6,7	\$15,108.46	\$27,136.16	\$26,503.06	\$817.02	\$816.51	\$95.88	\$95.37	NONE	

CITY OF BOZEMAN AUCTION
BID ACKNOWLEDGEMENT FORM

Lot _____

Block _____

Subdivision _____

Purchase Price \$ _____

Purchaser asking Seller to finance 1/2 of the purchase price?

Yes _____

No _____

Information to appear on closing documents (please print):

(Name) _____ SSN: _____

(Name) _____ SSN: _____

(Address) _____

(City/Zip) _____

I/we understand that the SID's are not included in the bid price and that in addition to the bid price, I/we do hereby agree to assume the principal balance remaining on the SID's. I/we further acknowledge that I/we have read and understand the terms and conditions of the sale and that I/we am/are purchasing the above described lot under those terms and conditions.

Signature Date

Signature Date

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2-10-93
HB 387

AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS AGREEMENT made and entered into this 28th day of June, 1989, between the CITY OF BOZEMAN, a municipal corporation of the State of Montana, hereinafter referred to as "City", and _____ of _____, Montana, hereinafter referred to as "Purchaser".

RECITALS

1. Pursuant to Section 15-17-317, MCA (1987), City received an Assignment Certificate of Duplicate Certificate of Tax Sale transferring the rights of Gallatin County for the payment of delinquent taxes (excluding special improvement district assessments) and costs; and

2. Pursuant to Section 7-8-2301, MCA (1987), City having conducted an auction sale of land and the Purchaser having purchased the real property at the public auction on _____, 19____.

IN CONSIDERATION OF the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Purchase Price. The purchase price for Lot _____ of Block _____, in Valley Unit Subdivision, Phase I, is the sum of \$ _____, computed and payable as follows:

(a) \$ _____ as a payment which is paid upon execution of this Agreement, the receipt of which is hereby acknowledged;

(b) The balance of the principal, if any, in the amount of \$ _____ shall be evidenced by a promissory note requiring payment of _____ equal semi-annual installments of principal and

interest with the unpaid principal accruing interest at the rate of eight percent (8%) per annum. Interest shall be computed from _____ and the entire unpaid balance of principal and accrued interest shall be due and payable on _____, 19____.

2. Quitclaim Deed. City shall execute and deposit with Security Title Company of Gallatin County for recording, as closing agent, a quitclaim deed to the land above described. Upon execution of this Agreement and closing of this transaction, including execution by Purchaser of all appropriate documents, closing agent, herein designated Security Title Company of Gallatin County, may record the quitclaim deed and the Montana trust indenture which constitutes evidence of a first secured lien on the real property for the full repayment of the promissory note.

3. Disclaimer of Warranties. The City and its agents have not made and do not make any representation as to the physical condition, layout, rents, incomes, expenses, operation or suitability of the property for the purpose for which the Purchaser is purchasing the property or any other matter or thing affecting or relating to the property or to this contract. City makes no warranty, express or implied, as to the condition of the premises and sells the same "as is" in its present condition without any warranty of any kind. Purchaser expressly acknowledges City's refusal to make these representations or warranties, and Purchaser has carefully inspected the property and knows the conditions thereof. The Purchaser further understands and agrees that City is not making any warranties as to

merchantability of title. The Purchaser is acquiring whatever interest the City has in the property.

4. Prepayment Provision. In the event the City has financed a portion of the purchase price, the entire unpaid balance of principal, together with accrued interest, under this contract may be prepaid or paid in advance any time.

5. Possession. City shall deliver possession of the property to Purchaser on the date this transaction closes. Purchaser assumes all risk of loss occurring to the premises thereafter.

6. Payment of Taxes and Assessments. Purchaser shall pay all subsequent taxes and assessments levied and due and payable against the property. The purchase price includes all of the county taxes up to and including _____, 19____. The Purchaser shall pay all subsequent taxes and assessments whether levied by the state, county, municipality, or any other taxing entity. The payment of taxes and assessments subsequently levied against this property shall be made timely and shall not be allowed to become delinquent. Specifically, Purchaser agrees to pay the balance of all remaining special improvement district assessments which have been levied against the property.

7. Default. Time is of the essence of this Agreement. If the City has financed a portion of the purchase price and if the Purchaser fails to pay the promissory note and the promissory note or Montana trust indenture becomes in default, the parties shall have those rights and responsibilities described in the Montana trust

indenture, the promissory note and the Small Tract Financing Act of the State of Montana.

8. Attorney Fees. If any action is brought to enforce this contract or any provision thereof, to rescind the same, or to collect damages for an alleged breach hereof, the prevailing party whether plaintiff or defendant, shall be entitled to reimbursement of all fees and costs incurred in said action, including reasonable attorney fees.

9. Cost of Closing. Each party shall bear the costs of closing set out on the settlement statement executed herewith.

10. Binding Effect. The parties hereto agree that all of the covenants and agreements contained herein shall extend to and be obligatory upon the heirs, personal representatives, successors or assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have subscribed their names the year and date hereinabove written.

CITY OF BOZEMAN, a Municipal Corporation

BY: James E. Wysocki, City Manager

Purchaser

EXHIBIT 2
DATE 2-10-93
WB 387

PROMISSORY NOTE

\$ _____ BOZEMAN, MONTANA

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of the City of Bozeman, a Montana Municipal Corporation, negotiable and payable to payee at 411 East Main Street, Bozeman, Montana, the full sum of _____ DOLLARS (\$ _____), together with interest from date at the rate of eight percent (8%) per annum on unpaid balances of principal, payable as follows: _____ DOLLARS (\$ _____) per payment, payable on the _____ day of _____, 19____, and on the _____ day of _____, 19____ and on the _____ day of both _____ and _____ through _____, 19____, when the entire balance of principal and interest will be due and payable if not due earlier. The makers of this Note shall have the right to pay, in addition to any installment, any additional sums or to pay the entire balance remaining due at any time. Interest shall first be computed and deducted and the balance credited upon the principal.

Should default be made in the payment of any installment under this Note, and if the default is not made good within five (5) days, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default, it is agreed that the holder of this Note may recover such necessary expenses as may be incurred in collection, including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof, severally waive presentment for payment, demand and notice of dishonor, and non-payment of this Note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof, with respect to payment or other provisions of this Note, and to the release of any security, or any part thereof, with or without substitution.

This Note is secured by a Montana Trust Indenture, of even date, herewith, upon real estate situated in the County of Gallatin, State of Montana.

INDENTURE

THIS INDENTURE made between the CITY OF BOZEMAN, a municipal corporation, 411 East Main Street, Bozeman, Montana, the party of the first part, and _____, of _____, party of the second part.

WITNESSETH:

WHEREAS, there was assessed for the year 19____ and subsequent years in the name of Valley Unit Corporation that certain tract of land hereinafter described for payment of special improvement district no. 621 through 625 assessments which have not been paid and constitute a lien on the hereinafter described real property in the total amount of \$_____, including interest thereon; and

WHEREAS, the City of Bozeman acquired on _____ an assignment certificate of tax sale assigning the interest of Gallatin County, Montana, in the hereinafter described real property resulting from a tax sale on the _____ day of _____, 19____, for the tax year _____ held by Gallatin County; and

WHEREAS, the City having paid delinquent taxes and costs amounting to \$_____ to the Gallatin County Treasurer,

NOW, THEREFORE, the City of Bozeman, in consideration of the sum of \$_____, does hereby convey, transfer and quitclaim unto _____ of _____, all of its right, title and interest to the following described real property and the aforementioned certificate of tax sale number _____, all of which is situated in Gallatin County, State of Montana, to-wit:

Lot _____ in Block _____ of Valley Unit Subdivision, Phase I, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

EXCEPTING THEREFROM expressly and subject to (1) any and all water rights; (2) any and all mineral and royalty interests; (3) any and all special improvement district assessments which are due and payable on _____, and subsequent years; (4) any and all real estate property taxes and assessments due and payable _____, and subsequent years; and (5) any and all easements, rights-of-way, utility lines, and other liens and encumbrances which are of record in the Clerk and Recorder's Office of Gallatin County, Montana.

DATED this _____ day of _____.

CITY OF BOZEMAN, a Municipal Corporation

By: _____
James E. Wysocki, City Manager

ATTEST:

Robin L. Sullivan
Clerk of City Commission

Purchaser

EXHIBIT 2
DATE 2-10-93
HB 387

55 FEB 1993



P.O. BOX 490, BOZEMAN, MONTANA 59715

MONTANA POWER COMPANY

ANN M. GIBSON
MANAGER

July 19, 1991

Mandeville Realty
420 West Mendenhall
Bozeman, Montana
59715

Dear Lloyd,

As per our conversation on 7/19/91, there will not be a charge to bring the electric and gas distribution lines through the development. However, there will be a charge for secondary electric to be brought onto the individual lots at a cost per lot.

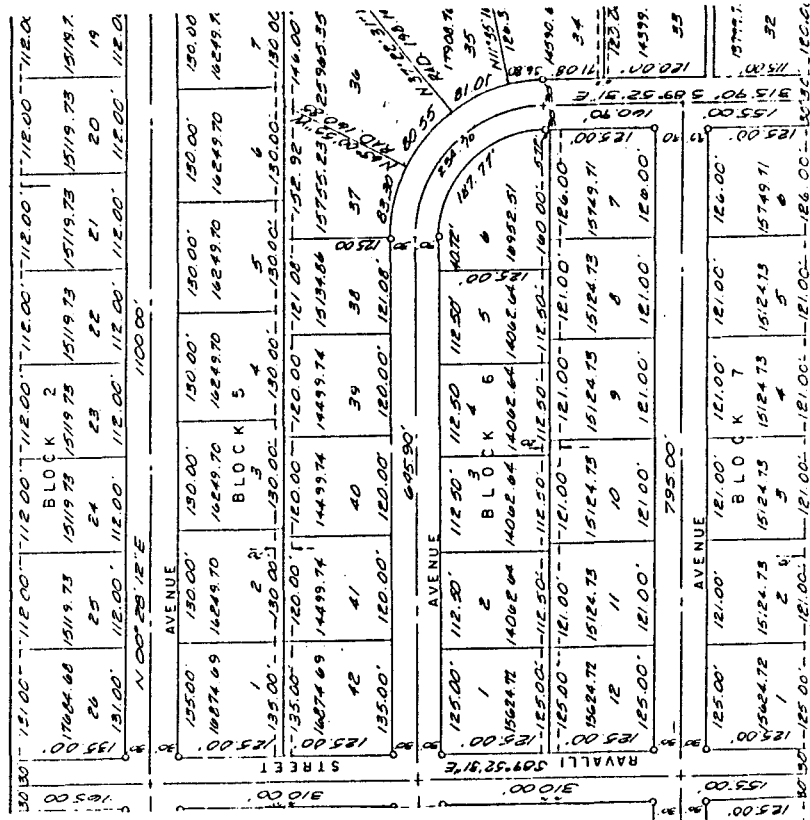
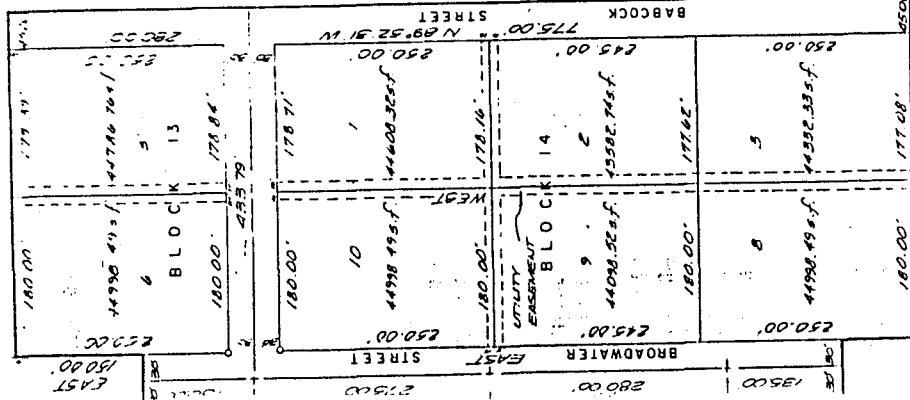
If you have any further questions, please notify me.

Sincerely,

Cyndi S. Alverson
Cyndi S. Alverson
Energy Services

CSA/jc

C: Mike Reichman





First Trust Montana

First Trust Company of Montana
First Bank Building
P.O. Box 730
Bozeman, Montana 59715
(406) 587-5451

Offices: Bozeman
Great Falls
Helena
Missoula

EXHIBIT 2
DATE 2-10-93
HB 387

April 27, 1989

To Whom It May Concern:

Our firm has employed Mandeville Auction Service and Mandeville Real Estate several times to liquidate personal and real estate property for us.

One of the last projects was a 102 unit motel in Williston, North Dakota. They did an excellent job of marketing, selling, and closing the sale. Their knowledge and expertise in auctioning and in real estate transactions made this a successful sale for us.

I would highly recommend Mandeville Auction Service and Mandeville Real Estate for any of your real estate or auction liquidation needs.

Very truly yours,

FIRST TRUST BOZEMAN

Charles A. Wendtland
Vice President

CAW/mdh

EXHIBIT 3
DATE 2-10-93
HB 387

STATE SUMMARY OF AUCTIONEER LICENSING

No. states reporting	44	
No. requiring a RE License to Auction		34
No. requiring a RE Broker for paperwork		<u>2</u>
Subtotal - RE License required at RE Auction		36
No. with Auctioneer Licensing Law but not requiring RE License w/RE Auction		<u>7</u>
Subtotal Licensing Required		43
This leaves one in 44 without any Licensing of Auctioneers		
Montana		<u>1</u>
Total in survey (balances)		<u>44</u>

Steve

SUMMARY OF STATE AUCTIONEER LICENSE LAWS

EXHIBIT 7

DATE 2-10-93

HB 387

Prepared by the State & Municipal Legislation Division

August 31, 1992

STATE	GOVERNMENT AGENCY	REAL ESTATE LICENSE	SEPARATE AUCTIONEER LICENSE	RECIPROCITY
ALABAMA	Alabama State Board of Auctioneers 109 Downtown Plaza Cullman, AL 35055 (205) 739-0548	YES	YES	CA, FL, GA, IN, KY, LA, NC, OH, PA, SC, TN, TX, WV
ALASKA	Real Estate Commission P.O. Box D Juneau, AK 99811 (907) 465-2542	YES	NO	N/A
ARIZONA	Arizona Dept. of Revenue 1600 W. Monroe Phoenix, AZ 85007 (602) 542-2076 ext 50	YES	NO	N/A
ARKANSAS	Arkansas Auctioneers Licensing Bd 221 W. Second, Suite 228 Little Rock, AR 72201 (501) 375-3858	YES	YES	FL, GA, IN, KY, LA, TN, TX
CALIFORNIA	California Auctioneer Commission 2231 J Street, Suite 101 Sacramento, CA 95816 (916) 324-5894	NO	YES	GA, IN, KY, LA, NC, OH, SC, TN, TX, VA, WV
COLORADO	Colorado Real Estate Commission 1776 Logan Street Denver, CO 80203 (303) 894-2166	YES	NO	N/A
CONNECTICUT	Dept. of Consumer Protection 165 Capitol Ave., Room G8 Hartford, CT 06106 (203) 566-5130	YES	NO	N/A

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STATE	GOVERNMENT AGENCY	REAL ESTATE LICENSE	SEPARATE AUCTIONEER LICENSE	RECIPROcity
MICHIGAN	Dept. of Commerce Bureau of Occup. & Prof. Reg. P.O. Box 30018 Lansing, MI 48909 (517) 373-0490	YES	NO	N/A
MINNESOTA	County Auditors	YES	YES	Determined on case-by-case basis
MISSISSIPPI	Secretary of State P.O. Box 136 Jackson, MS 39205 (601) 359-1604	YES	YES (for livestock only)	N/A
MISSOURI	Executive Office P.O. Box 720 Jefferson City, MO 65102	NO	YES	N/A
MONTANA	Dept. of Commerce 1424 Ninth Ave Helena, MT 59620-0401 (406) 444-3923	NO	NO (no statewide license, cities & towns may license)	Residency requirements by Montana are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for citizens of Montana.
NEBRASKA	Nebraska Real Estate Commission P.O. Box 94667 Lincoln, NE 68509 (402) 471-2004	YES	NO	AR, CO, CT, IL, IN, IA, KS, MI, MN, MO, NY, ND, OK, SD, WY
NEVADA	Real Estate Division 1665 Hot Springs Road Las Vegas, NV 89710 (702) 687-4280	YES	NO	N/A
NEW HAMPSHIRE	New Hampshire Bd of Auctioneers Secretary of State Capitol Bldg, Room 204 Concord, NH 03301 (603) 271-3242	NO	YES	N/A
• NEW JERSEY	N/A	YES	NO	N/A

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2-10-93

STATE	GOVERNMENT AGENCY	REAL ESTATE LICENSE	SEPARATE AUCTIONEER LICENSE	RECIPROCITY
PENNSYLVANIA	State Board of Auctioneer Examiners P.O. Box 2649 Harrisburg, PA 17105-2649 (717) 783-3397	NO**	YES	AL, FL, IN, KY, NC, OH, RI, TN, VA, WV
RHODE ISLAND	Dept. of Business Regulation, Division of Licensing and Consumer Protection Auctioneer Licensing Section 233 Richmond St., Suite 230 Providence, RI 02903-4230 (401) 277-3857	YES	YES	FL, IN, LA, PA, SC, TN, TX, VA
SOUTH CAROLINA	South Carolina Auctioneers Commission 1200 Main St. #301 Columbia, SC 29201 (803) 734-1220	YES	YES	AL, CA, FL, GA, IN, KY, LA, NC, OH, RI, TN, TX, VA, WV
SOUTH DAKOTA	South Dakota Real Estate Commission P.O. Box 480 Pierre, SD 57501-0409 (605) 773-3600	YES	YES	IL, IA, KS, MN, NE, ND, OK, WY
TENNESSEE	Tennessee Auctioneer Commission 500 James Robertson Parkway Nashville, TN 37243-1152 (615) 741-3236	YES	YES	AL, AR, CA, FL, GA, IN, KY, LA, NC, OH, RI, SC, TX, VA, WV
TEXAS	Dept. of Licensing and Regulation P.O. Box 12157 Austin, TX 78711-3257 (512) 463-3173	YES	YES	AL, AR, CA, FL, GA, IN, KY, LA, NC, OH, RI, SC, TN, WV
UTAH	Department of Commerce Heber M. Wells Building 160 E. 300 South, P.O. Box 45802 Salt Lake City, UT 84145-0802 (801) 530-6955	YES	NO	N/A
• VERMONT	Office of the Secretary of State 109 State Street Montpelier, VT 05609-1106 (802) 828-2191	YES	YES	N/A

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2-10-93

This document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

MONTANA

Government agency: Department of Commerce
Rebecca R. Baumann, Business Licensing Specialist
1424 Ninth Avenue
Helena, MT 59620 (406) 444-3923

Auctioneer license? Towns and cities may tax, license and regulate auctioneers.

Must auctioneer hold a real estate license if his/her role is limited to calling bids at a real estate auction? No.

Must auctioneer hold a real estate license if he/she is handling all aspects of a real estate auction? No.

Reciprocity: The residency requirements are waived for the citizens of any state to the same extent that the home state of the applicant waives residency requirements for citizens of Montana.

Bonding requirements: Auctioneer, \$5,000, payable to the state with one or more sureties, and approved by the county clerk of the county in which the auctioneer resides. Nonresidents' bond said be filed with the county clerk in the Montana county in which he carries on his principal auction business.

NEBRASKA

Government agency? Nebraska Real Estate Commission
Les Tyrell, Director
P.O. 94667
Lincoln, NE 68509 (502) 471-2004

Auctioneer license? No.

Must an auctioneer hold a real estate license if his/her role is limited to calling bids at a real estate auction? Yes.

Must auctioneer hold a real estate license if he/she is handling all aspects of a real estate auction? Yes.

Reciprocity (Real Estate Commission): Arkansas, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, New York, North Dakota, Oklahoma, South Dakota and Wyoming.

NEVADA*

Government agency: Real Estate Division
R. Lynn Luman, Administrator
1665 Hot Springs Road
Las Vegas, NV 89710 (702) 687-4280

(continued)

EXHIBIT 4
DATE 2-10-93
14
7- HE 307

EXHIBIT 5
DATE 2-10-93
HB 390

HOUSE BILL 390
TESTIMONY

My name is Mark Simonich and I am the Director of the Department of Natural Resources and Conservation. I am appearing today on behalf of Governor Racicot to express the administration's support for House Bill 390 and the amendments offered by Representative Quilici.

The administration not only supports the concept of integrated resource planning, but also supports how the Public Service Commission has defined it for utilities in Montana. The process that is outlined in this bill provides an opportunity for a meaningful public dialogue on the energy choices that utilities will confront before they actually make significant investments. This should alleviate the costly and time consuming regulatory and legal battles that have been very contentious for many years in Montana.

Another important feature of this bill is that it causes the Department of Natural Resources and Conservation and the Public Service Commission to work together in meeting their respective missions as opposed to working as separate entities, each failing to recognize the other's interests. By having state agencies working together we will arrive at better and smarter solutions to the issues that agencies are required to address to fulfill their statutory obligations. Such cooperation and coordination also avoids duplication and reduces the cost of government in Montana.

This bill is a specific example of how working together can lead to smarter and sustainable solutions to energy issues facing this state. The major energy planning issues of the key energy players in this state are addressed in HB 390. As a result, HB 390 provides a productive solution for all Montanans to an issue that has plagued the state for nearly 20 years.

Amendments to House Bill No. 390
First Reading Copy

Requested by Rep. Quilici
For the Committee on Business and Economic Development

Prepared by Susan B. Fox
February 8, 1993

1. Title, line 11.
Following: line 10
Insert: "69-3-701,"

2. Page 2, lines 2 and 3.
Following: "." on line 2
Strike: the remainder of lines 2 and 3
Insert: "However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions."

3. Page 2, line 25.
Following: line 24
Insert: "actually"
Strike: "to"
Insert: "for the convenience of"

4. Page 3, line 6.
Following: "commission's"
Strike: "other"
Insert: "existing statutory"

5. Page 4, line 1.
Insert: "(6) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt and timely acquisition of the resource."
Renumber: subsequent subsection

6. Page 6, line 17.
Insert: "Section 7. Section 69-3-701, MCA, is amended to read:
"69-3-701. Definitions. As used in this part, the following definitions apply:

~~(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.~~

~~(2)~~ (1) "Commission" means the Montana public service commission created in 2-15-2602.

~~(3)~~ (2) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the

criteria of 69-3-702.

~~(4) "Residential building" means a building used for residential occupancy that:~~

~~(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and~~

~~(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units."~~

Renumber: subsequent sections

7. Page 6, line 20.

Strike: ":"

8. Page 6, line 21 through page 7, line 3.

Strike: "(1)"

Following: "[section 6]"

Strike: the remainder of line 21 through "costs" on page 7, line

3

REGULATION
AND
INTEGRATED LEAST COST RESOURCE PLANNING AND ACQUISITION
WORKING GROUP

EXHIBIT 7
DATE 2-10-93
HB 390

ORGANIZATION

PARTICIPANTS

Montana Power Company	Jack Haffey, Tom Worrington, & Dave Houser
Montana Dakota Utilities	C. Wayne Fox, Don Ball, & John Alke
Western Montana Generation & Transmission Co-op	Ron Wilkerson
Central Montana Electric Co-operative	Jim Eskeridge
Montana Environmental Information Center	Sam Toole
Northern Plains Resource Council	Tom Schneider
District XI Human Resource Council	Jim Morton & Thomas M. Power
Boulder Hydro	Lee Tavener
Montana Consumer Counsel	Robert Nelsen & Frank Buckley
Montana Department of Natural Resources & Conservation	Van Jamison, Alan Davis, Larry Nordel
Montana Consumer Counsel	Robert Nelsen & Frank Buckley
Montana Public Service Commission Staff	Dan Elliott & Robin McHugh
Northwest Power Planning Council	John Hines
Bonneville Power Administration	Gail Kuntz
Committee Facilitator	Gerald Mueller

EXHIBIT 8
DATE 2-10-93
HB 390

Testimony of MEIC
In Support of HB 390 and Amendments
Presented by Ken Toole

Mr. Chairman, members of the committee, thank you for the opportunity to submit written testimony. I apologize for being unable to appear in person. My name is Ken Toole and I am a consultant working with the Montana Environmental Information Center (MEIC) on energy issues. My testimony is offered on behalf of MEIC in support of HB 390 and in support of the amendments offered by Representative Quillici.

MEIC has been extensively involved in the long and contentious battles over energy development in Montana. We, like all of the other parties to these disputes, have come to the conclusion that working in a cooperative manner with utilities, regulatory agencies and other interest groups is far more productive than entering the adversarial process.

The bill and amendments before you represent over two years of collaborative work on energy planning issues with a wide variety of groups and individuals from differing perspectives. We believe that this bill will facilitate responsible energy planning in Montana. It will also assure better coordination of effort between various agencies in the planning process.

We believe that the bill and amendments will contribute to the efficient use of our natural resources, as well as assuring that the planning process weighs all of the potential risks of particular energy development projects. Of course a more deliberate planning effort on the part of utilities will reduce the potential for conflict once projects are chosen and a course of action has been chosen by developers.

We urge passage of HB 390 and the proposed amendments.

Thank you.

RECEIVED

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

JAN 27 1992
MONT. P. S. COMMISSION

* * * * *

IN THE MATTER of the Proposed)
Adoption of Rules On Integrated)
Least Cost Planning)
for Electric Utilities)

REPLY COMMENTS OF
MONTANA-DAKOTA UTILITIES CO.

COMES NOW, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., and submits the following reply comments.

INTRODUCTION

Both Montana-Dakota and Montana Power Company, in their earlier comments, have pointed out the need for enabling legislation to successfully implement least cost planning and resource acquisition in the State of Montana. Such legislation is necessary in three areas:

1. The Commission needs enabling legislation to implement least cost planning in Montana.
2. Statutory clarification is necessary to insure that prudent expenditures incurred for planning or implementation of a plan are recoverable in rates, even though the expenditures do not result in the actual acquisition of a resource.
3. Sections 69-3-701, *et seq.* of the Montana Code Annotated need to be amended.

The Montana legislature has already twice rejected legislation enabling the

Commission to implement least cost planning.¹ Consensus has been reached in two important areas on the issue of cost recovery.² Apparently, however, no consideration was given to the effect of § 69-3-701, MCA, prior to the Commission's rulemaking hearing. At that hearing, unsupported statements were made that the statutes did not limit the Commission's authority. The Commission will seriously jeopardize the future of least cost planning in Montana if it fails to address the need for changes to §§ 69-3-701, *et seq.*, MCA. The purpose of these reply comments is to focus the Commission's attention on the need for such changes.

SECTIONS 69-3-701, ET SEQ., MCA

MUST BE AMENDED

Part 7 of Chapter 3 of Title 69 was enacted into law by the 1983 Montana legislature. In doing so, the 1983 legislature made a clear choice. Two bills were introduced in the 1983 session, Senate Bill 456, and House Bill 765. It was Senate Bill 456 which was eventually enacted into law. The key provisions of the two bills were as follows:³

S.B. 456

1. Permissive utility investment in conservation;
2. Investment limited to measures costing no more than 50% of avoided cost.⁴

¹ House Bill 780, 1981 Montana Legislature; House Bill 868, 1985 Montana Legislature.

² Comments of Regulation and Integrated Least Cost Resource Planning and Acquisition Group, pp. 5-7.

³ SB 456, First Reading Copy, is attached as Exhibit A. HB 765, First Reading Copy, is attached as Exhibit B.

⁴ The 1987 amendments raised the ceiling to 100% of avoided costs, Chapter 304, 1987 Session Laws of Montana.

3. A 2% "equity kicker" for investments in conservation.

HB 765

1. Mandatory utility investment in conservation;
2. Investment criteria to be established by the Commission.

If the legislature had enacted HB 765 into law, the Commission would have been empowered to enact many of the rules it has proposed, such as the "115% of avoided cost" provision in Rule III(1)(h). Instead, the legislature rejected HB 765, and after substantial amendment, enacted SB 456 into law. (One of the amendments was a request by the Commission to limit recoverable conservation investments by utilities to investments in exiting residential structures.⁵)

It is specious to now suggest that § 69-3-701, *et seq.*, MCA, does not address, or was not intended to address, utility investments in conservation measures. Part 7, Chapter 3, of Title 69 is succinctly entitled:

Conservation Purchases or Investments by Utilities

Its provisions clearly and unambiguously set forth standards for recoverable utility investments in conservation.

CONCLUSION

The successful implementation of least cost planning and resource acquisition in Montana requires some statutory changes. No interest group suggested they would oppose the enactment of such changes. Given that lack of opposition, any resistance to making the

⁵ March 22, 1983 Minutes of the House Business and Industry Committee:

The next major amendment is to limit the whole bill to residential facilities, rather than to commercial and industrial and agricultural. This was at the suggestion of the PSC.

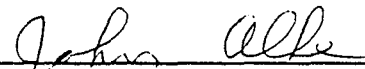
necessary changes is quixotic.

Respectfully submitted this 27th day of January, 1992.

MONTANA-DAKOTA UTILITIES CO.,
a Division of MDU Resources Group, Inc.

HUGHES, KELLNER, SULLIVAN & ALKE

By



John Alke
404 Fuller Avenue
P.O. Box 1166
Helena, MT 59624-1166

Doug Schulz
400 North Fourth Street
Bismarck, ND 58501

ATTORNEYS FOR MONTANA-DAKOTA
UTILITIES CO.

EXHIBIT 10
DATE 2-10-93
HB 390

PUBLIC SERVICE COMMISSION

1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6199
FAX #: (406) 444-7618



February 10, 1992

Testimony of Bob Anderson

Bob Anderson, Chairman
Bob Rowe, Vice Chairman
Dave Fisher
Nancy McCaffree
Danny Oberg

The PSC supports HB390, which clarifies the authority of the PSC to require energy utilities to prepare and submit integrated least cost plans.

HB390 is not about whether or not integrated least cost planning is a good idea. It's about the risk of future litigation.

Integrated least cost planning has been developed over a period of several years by state utility commissions and utilities all over the country. Its key concepts include:

- a level playing field for conservation and supply
- public involvement in utility planning
- consideration of the environment in resource selection
- risk management
- pricing for informed and efficient purchase decisions.

In December, 1992, the PSC adopted rules which require the utilities to submit integrated least cost plans, beginning with the Montana Power Company in March, 1993. These rules were the result of a collaborative process that began in 1988 and included three rounds of public hearings and much dialog among the interested and affected parties. The resulting rules are as well thought out as any in the country.

A sticking point in the dialog was whether or not the PSC has sufficient legal authority to require this planning. We firmly believe that we do under our general statutory powers. Some parties agree with us; others do not.

There are two ways to settle this disagreement. One is in court. After a rate case an unhappy party could challenge the PSC's authority to require integrated least cost plans.

The other way to settle this dispute is to clarify the PSC's authority in legislation. That's what HB390 would do. We believe it is in the public interest to settle this matter in the legislature rather than in the courts. That's why we support HB390.

Our fiscal note on the bill shows a \$50,000 per biennium cost for processing the plans. We will incur this cost whether or not the bill passes. Our budget subcommittee has approved a modification to our consulting budget for this expense.

Finally, we respect the process that produced this bill. It represents a way of settling differences in a constructive way instead of the polarized, contentious way of the past. This bill represents one of the positive legacies of the Colstrip era.

Northern Plains Resource Council

P. 1st

SUBJECT: House Bill 390

EXHIBIT 11

DATE 2-10-93

HB 390

Mr. Chairman & Members of the Committee:

I am Tom Schneider, a former Chairman of the Montana Public Service Commission and current President of Schneider Consulting Services, Inc.

I am appearing on behalf of the Northern Plains Resource Council to support HB 390 as amended today.

For the past four years I have represented the Northern Plains Resource Council as a member of two "collaborative processes" designed to assure the development and implementation of Integrated Least Cost Resource Planning and Acquisition by utilities in Montana:

- 1) Montana Power Company Advisory Committee on Conservation & LC
- 2) Statewide Working Group on Regulatory Barriers to IRP

The legacy of Colstrip 3 and 4 immortalized two decades of conflict and bloodletting associated with energy resource decisions in the early 1970's. That Colstrip energy saga was a primary impetus for both collaborative processes and for HB 390. Longtime antagonists joined in a consensus building process designed to assure that such impacts on our very social, economic, environmental, cultural & political fabric would not be repeated.

The goal was to develop the guidelines and framework for an integrated least cost resource planning and acquisition process for future resource decisions in Montana which balances:

- Consumer & investor interests
- encourages conservation / energy efficiency
- environmental impacts & externalities
- competitive market processes
- uncertainty & risk
- public participation, input & expertise
- enhance regulatory standards

HB 441

The Montana Board of Water Well Contractors presents this testimony in support of HB 441:

The Montana Board of Water Well Contractors was established to promote the orderly and sanitary development of groundwater resources. See Mont. Code Ann. § 37-43-101(1991). Towards that end, the Board, with the assistance of the regulated community, has implemented well construction and licensing standards that most water well professionals adhere to. The Board also hears complaints about problem wells, offers advice towards fixing problem wells, and in extreme cases disciplines licensees.

Water well professionals mostly agree and cooperate with the Board in fixing problem wells so that disciplinary action is rarely necessary. However, a small percentage of licensees refuse to comply with Board standards or cooperate with the Board in fixing problem wells. The Board has been forced to spend an inordinate share of its limited resources in disciplining these few problem licensees. Processing one of these extreme cases can cost hundreds of hours of work, thousands of dollars, and take years. HB 441 is proposed to avoid unnecessary delay and expense in the process by clarifying the Board's authority and function with respect to complaints, eliminating the superfluous and time-consuming trial-type hearing, and tailoring the grounds and modes for discipline to fit the needs and purposes of water well professionals, the public and the Board.

This Bill emphasizes the Board's role in settling public complaints and achieving legal compliance without costly disciplinary action. Although the Board has been able to accomplish this goal with cooperative licensees under existing statutes, uncooperative licensees have challenged the Board's authority to act in any way with respect to complaints other than as a disinterested tribunal. Uncooperative licensees argue that under Mont. Code Ann. § 37-43-311(1991) it is up to the public to prosecute complaints and the Board, as tribunal, should not assist them. When there is a complaint before the Board and the licensee takes this stance, the Board's efforts to help fix the problem well only serve to delay an already protracted process. This Bill would provide incentive for cooperation with the Board by recognizing the Board's pervasive role in resolving water well problems and clarifying that the Board may investigate, mediate and prosecute complaints.

The Bill would also streamline the disciplinary process by eliminating the trial-type hearing and associated time-consuming pre-hearing process. The new process would require the Board to have its supporting evidence together and presented to the licensee with the proposed order to initiate the disciplinary process. Licensees would have the opportunity for a hearing to cross-examine the Board's witnesses, challenge the evidence, present additional evidence and argue against the proposed order for whatever reason. The Board would not be required to present evidence at the hearing because all of its evidence would have

already been presented with the proposed order. The hearing, then, would be for the sole purpose of allowing the licensee, to show cause why the proposed discipline is unwarranted. From the Board's experience, this is the type of hearing most licensees expect and desire when they request a hearing.

This Bill would also remove confusion from the existing process by tailoring the grounds for discipline to fit the purposes and expertise of the Board of Water Well Contractors. Some of the existing statutory grounds for discipline are vague and inappropriate for consideration by a Board selected for its expertise in water well construction. See Mont. Code Ann. § 37-43-311(1991). For example, "gross negligence" is a standard for discipline under the current statute that more appropriately applies to matters of safety. Water well professional discipline should be more oriented towards obtaining compliance with Board rules and laws than with safety. "Incompetence" is a standard for discipline in the existing law that is vague. The proposed grounds for discipline are narrowly defined and tied directly to the licensees ability to comply with water well laws.

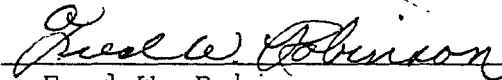
Finally, this Bill would authorize the Board to order the most sought after and viable of solutions for substandard wells. Current disciplinary process offers little help to the already injured public because the Board is without clear authority to order licensees to repair faulty wells. This Bill would clarify that the Board may order licensees to reconstruct or repair substandard wells.

HB 441 Bill was drafted to meet the needs of the Board of Water Well Contractors, the public and water well professionals alike. The Bill would allow the Board to more efficiently and appropriately deal with customer complaints and problem drillers and contractors. Efficiency and appropriateness would be achieved by clarifying the Board's authority to investigate and order faulty wells fixed, by removing the requirement for trial-type hearings, by authorizing agreed settlements short of formal disciplinary action, and by eliminating vague standards for discipline.

Submitted this 10th day of February, 1993

Board of Water Well Contractors

By:



Fred W. Robinson
legal counsel

EXHIBIT 13
DATE 2-10-93
HB 383

HOUSE BILL 383 HAS SEVERAL PARTS TO IT THAT MUST BE ADDRESSED ON THEIR OWN MERITS. SECTION ONE OF THE BILL ALLOWS THE BOARD TO PROVIDE QUALITY EDUCATION PROGRAMS TO CURRENT LICENSEES AND LICENSE APPLICANTS. IT ALLOWS FOR THE CONTINUED TRAINING OF STAFF INVESTIGATORS, LEGAL COUNSEL, ADMINISTRATORS AND BOARD MEMBERS. IT ALLOWS THE BOARD TO CONTINUE WITH THE PRINTING AND DISTRIBUTION OF THE NEWSLETTER ON A REGULAR BASIS. IT CREATES A COUNCIL OF EXPERTS TO WORK WITH THE BOARD TO ACCOMPLISH THE ABOVE MENTIONED GOALS.

THE ORIGINAL REAL ESTATE RECOVER ACCOUNT LEGISLATION DIRECTED THE BOARD TO ESTABLISH A RECOVERY FUND, ESTABLISHED A MINIMUM FUND BALANCE, AUTHORIZED THE ESTABLISHMENT AND COLLECTION OF FEES, AND PAY OUTSTANDING JUDGEMENTS THAT MEET THE LEGISLATIVELY ESTABLISHED REQUIREMENTS. THE LAW ALSO ALLOWS THE BOARD THE DISCRETION TO TRANSFER ANY EXCESS MONEY TO THE STATE SPECIAL REVENUE FUND FOR EDUCATIONAL PROGRAMS AND CONTINUING EDUCATION. SEVERAL YEARS AGO, THE BOARD ATTEMPTED TO SPEND SOME OF THAT EXCESS REVENUE, ONLY TO DISCOVER THAT APPROPRIATION DID NOT ACCOMPANY THE CASH.

THE BOARD IS ASKING FOR AUTHORIZATION TO SPEND FUNDS CURRENTLY COLLECTED AND DEPOSITED IN THE RECOVERY ACCOUNT FUND. EACH NEW LICENSEE PAYS \$35.00 EARMARKED FOR THIS FUND AND GETS NO EDUCATIONAL BENEFIT FROM THE PROGRAM. CURRENTLY THE BALANCE OF THAT ACCOUNT IS IN EXCESS OF \$280,000. THE STATUTORY BALANCE OF THIS ACCOUNT IS SET AT \$100,000.

THE BOARD HAS ATTEMPTED TO IMPLEMENT AN EDUCATION OUTREACH PROGRAM DESIGNED TO OFFER QUALITY, TIMELY EDUCATION TO THOSE IN AREAS WHERE EDUCATION IS NOT READILY AVAILABLE AND TO THE HALF OF

THE LICENSING BODY THAT DOES NOT HAVE EDUCATION PROGRAMS READILY AVAILABLE TO THEM AS AN ASSOCIATION MEMBER. UNDER THE CURRENT PROGRAM, THE BOARD IS MANDATED TO PRODUCE A LIMITED NUMBER OF OFFERINGS WITH A VENDOR WHO HAS THE RESOURCES TO ADMINISTER THE ENTIRE PROGRAM BECAUSE THE BOARD DOES NOT HAVE THE AUTHORITY TO COVER SUCH COSTS. CURRENTLY FEES ARE CHARGED TO COVER A PORTION OF THE COST OF THESE PROGRAMS. THAT MONEY IS COLLECTED AND SPENT BY THE VENDOR, WITH THE BOARD MAKING UP ANY ADDITIONAL COSTS. THIS PROGRAM HAS BEEN VERY WELL RECEIVED, BUT LIMITS THE BOARD TO COURSE CONTENT AND RESOURCES OF THE VENDOR.

THE NEWSLETTER IS A SOURCE OF INDUSTRY AND REGULATORY INFORMATION OFFERED TO ALL LICENSEES. IT IS DESIGNED TO INFORM LICENSEES OF NEW REGULATORY ISSUES THAT ARE IN EFFECT, ANSWERS GENERAL ADMINISTRATIVE QUESTIONS AND KEEPS THE LICENSEES INFORMED OF BOARD ACTIVITIES. BOARD MEMBERS AND STAFF ALIKE HAVE RECEIVED A NUMBER OF FAVORABLE COMMENTS ON THE FORMAT AND CONTENT OF THE NEWSLETTER.

THE CREATION OF AN EDUCATION COUNCIL WOULD ALLOW THE BOARD TO USE THE EXPERTISE OF EDUCATORS AND LICENSEES ACROSS THE STATE WHO ARE INTERESTED IN ASSISTING THE BOARD IN THE DEVELOPMENT OF QUALITY PRE-LICENSURE AND CONTINUING EDUCATION. THIS COUNCIL WOULD ANSWER TO THE BOARD AND BE LIMITED IN ITS DECISION MAKING AUTHORITY. THIS BILL DOES NOT MANDATE THE EXISTENCE OF A COUNCIL, BUT DOES PROVIDE A MECHANISM TO CREATE AND COMPENSATION SUCH A BODY. WISE SPENDING OF EDUCATION DOLLARS WILL GREATLY OUT-WEIGH THE COST OF AN EDUCATION COUNCIL. THE BOARD WOULD USE THE EXPERTISE OF LICENSEES AND EDUCATORS FROM ACROSS THE STATE TO IDENTIFY AND DEVELOP

EXHIBIT 13
DATE 2-10-93
X1 H3383

CURRICULUM TO ADDRESS CURRENT ISSUES. WITH ALL OF THE OTHER DUTIES PLACED ON THE BOARD, COURSE DEVELOPMENT DOES NOT GET THE ATTENTION IT DESERVES.

TODAY, 30 STATES EMPLOY A FULL TIME EDUCATION DIRECTOR TO ASSIST IN IMPLEMENTING THEIR EDUCATION PROGRAMS. 22 STATES HAVE SOME FORM OF AN EDUCATION COUNCIL. OF THOSE, 15 STATES HAVE BOTH A FULL TIME EDUCATION DIRECTOR AND AN EDUCATION COUNCIL, AND THOSE NUMBERS ARE RISING. STATES RECOGNIZE THE BENEFIT OF DEVELOPING AN EDUCATIONAL STRATEGY AND FOLLOWING THROUGH WITH A COMPREHENSIVE, MANAGED PLAN.

THE BILL WOULD ALLOW CONTINUING EDUCATION FUNDS TO TRAIN ITS STAFF OF INVESTIGATORS, LEGAL COUNSEL AND ADMINISTRATOR. IT WOULD PROVIDE FUNDS FOR BOARD MEMBERS TO ATTEND EDUCATIONAL PROGRAMS DESIGNED TO EDUCATE MEMBERS ON THE DUTIES AND RESPONSIBILITIES OF THAT POSITION. IT IS COUNTER PRODUCTIVE TO REQUIRE THE LICENSEE TO KEEP ABREAST OF NEW DEVELOPMENTS IN THE INDUSTRY AND ATTEMPT TO REGULATE THOSE LICENSEES WITHOUT THE KNOWLEDGE TO DO SO.

THE SECOND SECTION OF THIS BILL DOES SPECIFICALLY SPELL OUT LICENSE DENIAL CRITERIA. CURRENTLY THE BOARD CAN DENY A LICENSE FOR ACTIVITY THAT COULD RESULT IN LICENSE SUSPENSION OR REVOCATION. THIS SECTION WOULD PUT THE APPLICANT ON NOTICE THAT MAKING FRAUDULENT STATEMENTS OR DEMONSTRATING FIDUCIARY UNRESPONSIBILITY.

THE THIRD SECTION OF THIS BILL DOES ALLOW THE BOARD TO ACCEPT AND IMPOSE DISCIPLINARY SANCTIONS OTHER THAN LICENSE SUSPENSION OR REVOCATION AGAINST A LICENSEE AFTER AN ADMINISTRATIVE HEARING. THERE ARE OCCASIONS WHEN THE LICENSING LAW HAS BEEN VIOLATED, BUT THE VIOLATION DOES NOT WARRANT REVOCATION OR SUSPENSION. THIS

SECTION WOULD ALLOW THE BOARD TO PRONOUNCE OR STIPULATE TO LESSER DISCIPLINARY ACTION.

AGAIN, I WOULD LIKE TO REITERATE THAT THIS BILL IS REQUESTING AUTHORITY ONLY TO SPEND REVENUES CURRENTLY COLLECTED. THERE WILL BE NO INCREASE IN COST TO THE LICENSEES OF MONTANA. IF THE FUND DOES FALL TO THE STATUTORY BALANCE, FEES WILL BE COLLECTED FROM THE PARTICIPATES OF EDUCATIONS PROGRAMS TO REVIVE THE ACCOUNT BALANCE.

EXHIBIT 14
DATE 2-10-93
HB 216

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 2-10-93 BILL NO. HB 216 NUMBER

MOTION: Rep Barnett made motion to take from the table.

Motion Carried 10-8

NAME	AYE	NO
REP. ALVIN ELLIS		✓
REP. DICK KNOX	✓	
REP. NORM MILLS	✓	
REP. JOE BARNETT	✓	
REP. RAY BRANDEWIE	✓	
REP. JACK HERRON		✓
REP. TIM DOWELL	✓	
REP. CARLEY TUSS	✓	
REP. STELLA JEAN HANSEN	✓	
REP. BOB PAVLOVICH	✓	
REP. VICKI COCCHIARELLA	✓	
REP. FRITZ DAILY		✓
REP. BOB BACHINI		✓
REP. DON LARSON		✓
REP. BRUCE SIMON		✓
REP. DOUG WAGNER	✓	
REP. SONNY HANSON, VICE CHAIRMAN		✓
REP. STEVE BENEDICT, CHAIRMAN		✓
	10	8

EXHIBIT 15
DATE 2-10-93
HB 216

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 2-10-93 BILL NO. HB 216 NUMBER _____

MOTION: Rep Barnett Moved Do Pass.

Motion failed 8-10

NAME	AYE	NO
REP. ALVIN ELLIS		✓
REP. DICK KNOX	✓	
REP. NORM MILLS		✓
REP. JOE BARNETT	✓	
REP. RAY BRANDEWIE	✓	
REP. JACK HERRON	✓	✓
REP. TIM DOWELL	✓	
REP. CARLEY TUSS	✓	
REP. STELLA JEAN HANSEN	✓	
REP. BOB PAVLOVICH		✓
REP. VICKI COCCHIARELLA	✓	
REP. FRITZ DAILY		✓
REP. BOB BACHINI		✓
REP. DON LARSON	✓	
REP. BRUCE SIMON		✓
REP. DOUG WAGNER		✓
REP. SONNY HANSON, VICE CHAIRMAN		✓
REP. STEVE BENEDICT, CHAIRMAN		✓
	8	10

EXHIBIT 16
DATE 2-10-93
HB 216

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 2-10-93 BILL NO. HB 216 NUMBER _____

MOTION: Rep Beckini Moved to place
HB 216 on the table.

Motion Carried 10-8

NAME	AYE	NO
REP. ALVIN ELLIS	✓	
REP. DICK KNOX		✓
REP. NORM MILLS	✓	
REP. JOE BARNETT		✓
REP. RAY BRANDEWIE		✓
REP. JACK HERRON	✓	
REP. TIM DOWELL		✓
REP. CARLEY TUSS		✓
REP. STELLA JEAN HANSEN		✓
REP. BOB PAVLOVICH	✓	
REP. VICKI COCCHIARELLA		✓
REP. FRITZ DAILY	✓	
REP. BOB BACHINI	✓	
REP. DON LARSON		✓
REP. BRUCE SIMON	✓	
REP. DOUG WAGNER	✓	
REP. SONNY HANSON, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT, CHAIRMAN	✓	
	10	8

EXHIBIT 17

DATE 2-10-93

HB 387

BLUE MOUNTAIN AUCTION

GLEN LEVANDOSKE

BONDED

AUCTIONEER

INSURED

MEMBER: MONTANA & NATIONAL AUCTIONEERS ASSOCIATION

OFF. (406) 363-1533

RES. (406) 363-6531

708½ N. 1ST STREET, HAMILTON, MT 59840



To Whom It May Concern:

Blue Mountain Auction Service, Inc
is opposed of House Bill 387.

This should be the land holders right
to chose whether he wishes an auctioneer,
real estate person or himself to sell his
property.

Thank You

Glen Levandoske Pres.

Glen Levandoske, Pres.

Blue Mountain Auction Service, Inc.

Subscribed and sworn to before me this 16
day of Feb, 1992. Presiding in the State of
Montana. My commission Expires 4/93.

Glen Levandoske

EXHIBIT 18
DATE 2-10-93
HB 387

H.R. 387 IN OPPOSITION

THE FREEDOM TO CHOOSE HOW + WHAT METHOD TO USE IN DISPOSING OF ONE'S PROPERTY HAS ALWAYS BEEN LEFT TO THAT INDIVIDUAL. H.R. 387 DISCRIMINATES AGAINST THAT FREEDOM + ELIMINATES THAT RIGHT OF INDIVIDUAL CHOICE.

ALSO. THE AUCTION METHOD OF SELLING IS NOT THE SAME AS A "PRIVATE TREATY" TRANSACTION - SUCH AS IN A CONTRACT BETWEEN A REAL ESTATE SALESMAN - IE "BROKER".

AT AN AUCTION THE SALE GOES TO THE HIGHEST BIDDER. MANY TIMES BRINGING BETTER THAN THE "LIST" PRICE.

THE AUCTIONEER ACTS AS AN AGENT FOR THE SELLER. AND THE SELLER SHOULD BE ABLE TO CHOOSE, HOW, WHEN + BY WHAT METHOD HE SELLS, WITHOUT UNDO + UNWARRENTED RESTRICTION.

THE AUCTION METHOD OF MARKETING HAS WORKED FOR THOUSANDS OF YEARS. PLEASE LETS NOT MESS IT UP NOW

Thank you Margo SERVICES
Margo MARKETING WAY 59828
MASON AUCTION MT. 59828
1368 APRILLIS MT. 59828
1106-363-4230

In opposition of HB 387

I feel that is not in the best interest of the auctioneer business.

A auctioneer that is regarded enough to sell the life time holding of a individual is professional enough to sell any and all holdings of said individual.

I feel the people of real estate are trying to create a monopoly of all property sold.

The people of Montana have a hard enough time making a living without giving everybody a hand out for doing nothing.

Kevin Kill
P.O. Box 772
Hamilton, MT 59840
(406) 363-6350

EXHIBIT 20
DATE 2-10-93
HB 387

2-8-92

To Whom It May Concern:

Be it known that I am opposed
to HB 387.

Thank you

Bob Necker

P.O. Box 385

Corvallis, MT 59828

(406) 961-4629

BOB NECKER
Auctions
COMPLETE AUCTION SERVICE
Toy Collector • Farm & Steam Toys
Bus. (406) 363-5133
Res. (406) 961-4629
103 South Second Street • Hamilton, Montana 59840

EXHIBIT 21
DATE 2-10-93
HB 383

Amendments to House Bill No. 383
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 10, 1993

1. Page 3, line 1.

Strike: "six"

Insert: "seven"

2. Page 3, line 9.

Following: line 8

Insert: "(c) one member must be a property manager licensed as
provided in [Senate Bill No. 111];"

Renumber: subsequent subsections

3. Page 7, line 15.

Following: line 14

Insert: "NEW SECTION. Section 5. Coordination instruction. If
Senate Bill No. 111, including provisions creating a
property manager's license, is not passed and approved, then
the code commissioner is instructed to revise [this act] to
change the number of members of the real estate education
council provided for in 37-51-204(5) to six and to strike
the property manager from the membership of the real estate
education council."

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. A/B 441

DATE Feb. 10, 1993 SPONSOR(S) W. Lehlein

PLEASE PRINT PLEASE PRINT PLEASE PRINT

[illegible]

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. HB 387
DATE Feb. 10, 1993 SPONSOR(S) W. E. ndy
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MARGE MASON 1368 ^{CORVALLIS MT.} AUCTION WAY	MASON MARKETING SERVICES		X
DAVAR GARDNER ^{1896 Airport Rd} Kalispell	GARDNER Auction Service		X
Mont D. Manderville	Manderville Real Estate Manderville Auction Sales	X	
Steve Manderville	MT Assoc Realtors	X	
Pat Pate	MT Auctioneer Assoc.		X
Ray Mason			X
John Manderville		X	
Tom Hoggard	MT. Assoc. Realtors	✓	✗
Steve Berry	MT Auctioneer		X

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec COMMITTEE BILL NO 71B383
DATE Feb. 10, 1993 SPONSOR(S) R. Brandeure
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[illegible]

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. HB 390
DATE Feb. 10, 1993 SPONSOR(S) J. Quilici
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Anderson	PS	✓	
GENE PHILLIPS	PP&L	✓	
Frank Buckley	mcc	✓	
Jim Mockler	Mt. Coal Council		
Alan Davis	DNRC	✓	
MARK Simonich	DNRC & Governor	✓	
Tom Schneider	NPRC consultant	✓	
JAY DOWNEN	Montana Elec. Cooperatives	✓	
Gerald Mueller	Regulation & Integrated Least Cost Resource Planning	✓	
Jack Haffey	+ Acquisition Working Group Montana Power Company	✓	
Mary W. H. H. H.	M. P. C.	✓	

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