

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on February 16, 1993, at
10:00 a.m.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: SB 51, SB 337
Executive Action: None.

HEARING ON SB 51

Opening Statement by Sponsor:

Senator Don Bianchi, Senate District 39, provided the Committee with amendments to SB 51 and stated it was a rewrite of the originally introduced bill (Exhibit #1). He stated SB 51 would provide for a temporary gaming license to people who had temporary liquor licenses. He stated the temporary gaming licenses were necessary for the industry to keep the revenues from machines coming in. He stated since there were temporary

liquor licenses available, there should also be temporary or supplemental gambling licenses until the review process was finished. He stated the supplemental gambling licenses should be made available to businesses who are applying for permanent licenses. He stated SB 51 stated there will be a \$25 fee for a temporary license and the owner of the license could continue to operate the machines until the permanent license is sent, or the Board finds you unsuitable for a license through the investigation process. He stated in the event a person is found to be not suitable, the Board may revoke the temporary license. He stated SB 51 is good for the businesses and good for Montana because it would keep the machines open and allow for income flow.

Proponents' Testimony:

Representative Jerry Driscoll, House District 92, stated he was a Secretary/Treasurer and Building Manager of the Union Hall Club Bar. He stated there is a need for the temporary licenses and gave an instance where he had to switch locations of the business and had to go through the licensing procedures all over again through the Gaming Division (GD). He stated he worked with the GD for eight weeks before he had to come to Helena and work with the Division in person before he received approval on the license.

Representative Don Larson, House District 65, stated he had run into a situation where he had leased out his business and had to sell his gaming and liquor licenses. He stated he had his business back in three months because of poor management. Mr. Larson stated he came to Helena to buy his licenses back and it took the GD three months to return his license. He stated the Revenue Division had his liquor license back to him in a matter of weeks. He stated the GD asked him to shut his business down, and he had to go through the investigatory process again even though he had owned the business for 13 years prior to the sale of his license. He stated the Justice Department shut down his business on the busiest weekend of the year because he didn't have his gaming license. He stated temporary authority could have eliminated the problems.

Representative Bob Pavlovich, House District 70, stated he was a former tavern owner. He stated his partner was buying him out and he wanted only his partners name on the license, so they approached the GD to take his name off of the license. He stated it took 30 days to get his name off of the license, and the GD wanted to run a complete investigation on his partner. He stated his partner had already been investigated and they had been in the business 12 years. He stated the shut down of machines during this period caused losses to the city and state in tax revenue.

Ernie Greszczetski, tavern owner, stated he decided to change his business from a partnership to a corporation and he had to go through the whole investigative procedure again. He stated during the investigation he had to shut his machines down. He stated he would not have lost valuable profits had he been able to attain a temporary license.

Larry Akey, Montana Coin Machine Operators Association (MCMOA) stated the Association supported SB 51. He stated MCMOA owns 65% of the machines in the state. He gave 12 examples of problems with license transfers, all of which were small town bars which needed the revenue from the machines. He stated the loss of revenues were substantial to all of the businesses, and it added up to an income loss to the state and the counties. He stated he would either like a provision for a temporary license or for the process to be sped up in the GD.

Jim Grubbs, Casino Operator, stated he was in the midst of the same types of problems as previously stated and felt the issuance of temporary licenses would rectify a lot of problems.

Mark Staples, Montana Tavern Association, stated SB 51 was not a new proposal and there had been temporary authority for the first 18 months of legal gaming. He stated the temporary licensing worked fine for those 18 months and all problems had been addressed. He stated the MTA had asked the Division if they had any intention to revoke the temporary authority which they were issuing in the beginning. Mr. Staples stated the Division said they would not revoke the temporary authority and they did. He stated the MTA talked to the GD and would be willing to provide for revocation authority on temporary licenses. He stated SB 51 was ready to go, but the GD wanted minimal investigation authority. He stated the MTA gave them 30 days investigation authority on temporary licenses. He stated the GD stated the Administrator was not comfortable with SB 51 and wanted more time to approach the problems. He stated the MTA then changed the language from "shall" to "may" which would give the GD rule making authority on the temporary license issue. He stated the MTA drafted language which would give the GD rule making authority (Exhibit #2). He stated the GD wouldn't cooperate, so they had to come before the Legislature.

Dennis Casey, Executive Director, Gaming Industry Associates (GIA) stated he supported SB 51.

Kent Frampton stated there was a real problem in the GD with proficiency and stated a temporary license would allow for the people in the Gaming Industry. He stated he supported SB 51.

Opponents' Testimony:

Janet Jessup, Administrator, Gaming Control Division, stated she appreciated the dialogue between the Division and the industry

and asked that it continue. She stated the GD had tried to incorporate SB 51 into the regulatory enforcement responsibilities and they had reached the conclusion it couldn't be done. Ms. Jessup stated the GD is still evolving and needed time to work. She stated the GD revoked the provisional licensing ability after the Legislative Auditor had pointed out that the law did not allow for provisional licenses by statute. She stated the GD is starting to fall into a more routine pattern of licensing. She stated the GD is issuing "amended licenses" in cases of death or when a sale falls through, and these "amended licenses" allow for the business to continue operating until a permanent license is given. She stated the average time for a license to be authorized went from 85 days to 77 days. She stated the GD tries to work with applicants in the application process and they have very few rejections. She stated the issuance of temporary licenses would add another step to the process and would cause further delay in the permanent licensing process. Ms. Jessup stated the GD would be forced into rule making and that would not be the best way to handle the problem. She stated there would be no discrimination available on applicant for provisional licenses. She stated no other state gives temporary authority, and she felt the way to deal with the problems at hand would be to improve the forms, work on inter-agency agreements between the Department of Revenue and the GD, and keep the applicant informed on the status of their applications. Ms. Jessup stated the GD is working on changes and asked the Committee to give her the time to implement those changes.

Gloria Hermanson, Don't Gamble With the Future, stated SB 51 not allow appropriate time for an investigation and the agency to access all the information available in order to form an appropriate decision on the applicants. She stated expedience in transfer and obtaining a license should be done through agency procedures and not by statute.

Questions From Committee Members and Responses:

Senator Christiaens asked Ms. Jessup about the lack of timeliness in acquiring criminal information. He stated the GD has access to the NCIN (National Crime Information Network), and wondered why the information wasn't instantaneously acquired. She stated the NCIN only supplied basic information and outlines, and sometimes the GD had to check further into it. Senator Christiaens asked Ms. Jessup what they could find in the "hard copy" that they couldn't acquire through the NCIN. She stated they could check into mitigating circumstances, dates, and other pertinent information. Senator Christiaens asked Ms. Jessup if the family transfers could possibly be included in the "amended license" process. She stated they should be done through the amended process, but there are "new people" which they need to investigate. Senator Christiaens asked Ms. Jessup if the clients are informed of the "amended license" availability. Ms. Jessup

stated she believed if the information comes to the GD correctly, the clients are informed.

Senator Gage asked Ms. Jessup if the Legislative Auditor had told her she "could not" issue temporary permits. Ms. Jessup stated the Legislative Auditor had told the GD they could not issue the temporary licenses. Senator Gage stated it seemed the GD was moving away from the concept of "innocent until proven guilty". Ms. Jessup stated the GD tried to treat all people equally, and they try to work with the applicant. Senator Gage asked Ms. Jessup how many applications are denied. She stated very few are denied and she would get the information to him.

Closing by Sponsor:

Senator Bianchi stated the people applying for applications are not all criminals, but are made out to be through the investigative process. He stated the GD has the "police mentality" because they act as though everyone who is applying for an application is trying to break the law. He stated SB 51 would allow the businesspeople to operate their businesses on a temporary basis until the end of the investigation. He stated SB 51 would allow for 30 days to issue a temporary license and the license would expire at the end of 60 days. He stated the Liquor Control Division is issuing temporary licenses in 30 days and the GD should be able to operate under the same provisions.

HEARING ON 337

Opening Statement by Sponsor:

Senator Harp, Senate District 4, stated SB 337 clarifies the duties of the Department of Commerce (DOC) and ties current law into local jurisdictions.

Proponents' Testimony:

Rich Koppel, Agency Council, Building Codes Bureau, DOC, stated SB 337 is a "housekeeping" bill and supplied the Committee with a copy of the proposed changes and what they meant (Exhibit #3).

Bill Egan, Montana State Conference of Electrical Workers, stated he supported SB 337. He offered a request for an amendment on page 2, line 8, to change "licensure" to "permitting".

Bruce Suenram, Chief, Fire Prevention and Investigation Bureau, Department of Justice, offered the Committee an amendment on SB 337 (Exhibit #4) and stated he supported SB 337.

Michael Mizenko, State Association of Plumbers and Pipefitters, asked the Committee give a Do Pass recommendation to SB 337.

John Alke, Montana/Dakota Utilities Company, provided the Committee with a proposed amendment (Exhibit #5).

Gene Phillips, Pacific Power and Light, stated he endorsed SB 337.

Mike Dussat, Montana Power Company stated he supported SB 337.

Nancy Griffin, Building Association, stated she supported SB 337.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers, provided written testimony to the Committee opposing SB 337 (Exhibit #6).

Questions From Committee Members and Responses:

Referring to page 2, section 3, Senator Lynch asked Mr. Koppel if the Department currently had the authority to determine the proper use of a building. Mr. Koppel stated the department has the authority and just wanted clarification on the point. Senator Lynch asked about the definition of a "mobile home". Mr. Koppel stated a mobile home is a home which has been manufactured to federal standards and is not factory built or modular housing. Senator Lynch asked Mr. Koppel what would happen if he decided to convert his HUD home into a business. Mr. Koppel stated it is not proper to convert HUD mobile homes to commercial use. Senator Lynch asked Mr. Koppel who makes HUD homes. Mr. Koppel stated a manufacturer makes homes to HUD standards.

Referring to page 8, section i, Senator Gage asked Mr. Koppel about the exemption and if the state would have authority over buildings which fall under the Federal Health and Safety Act. Mr. Koppel stated the intent was to encompass residential buildings and other structures. Referring to page 12, line 13, Senator Gage asked about the Department's discretion to issue a certificate of occupancy. Mr. Koppel stated whichever agency has building code enforcement jurisdiction has to issue the certificate of occupancy.

Referring to Section 9, and subsection 5, page 10, Senator Gage asked Mr. Koppel how the two sections would tie together. Mr. Koppel stated the language on page 10 was to allow the Department to do things by "geographic area". Senator Gage asked if the exceptions were in opposition to reasonably uniform standards. Mr. Koppel stated they would not be.

Referring to line 12, page 21, Senator Gage asked Mr. Koppel why the language was different. Mr. Koppel stated the the provisions of the Administrative Procedure Act, Title 2, Chapter 4 pertain to this the area referred to.

Referring to Section 32, and the provision regarding fines and imprisonment, Senator Gage asked how this section would apply to the double permit fee. Mr. Koppel stated there was the civil aspect which allows the Department to charge a double fee. He stated the other aspect would be criminal, and the fines and imprisonment would address the criminal sanctions.

Senator Gage asked Mr. Koppel about the state's exemption from inspections on reservations and why there was nothing in SB 337 addressing these issues. Mr. Koppel stated the reason the material was not in SB 337 was because it was a jurisdictional question which is determined by the Supreme Court.

Referring to lines 17-20, Senator Klampe asked Mr. Koppel about the certificate of occupancy and if the Department was giving itself immunity. Mr. Koppel stated the reason for the section was the Department does not give certificates of occupancy, and each project is inspected by one of three inspectors. He stated by the time the inspectors catch each of the projects, a lot of them has been completed or are already half-way done. He stated the inspectors are not allowed to look behind the walls and they can't be sure every aspect of the building codes have been complied with. He stated if the Department was to issue a certificate of occupancy, and the building burned because of faulty wiring, they would be sued because the state had "approved" the building. Mr. Koppel stated the Department was willing to be responsible for what they can control under reasonable limitations.

Senator Klampe asked Mr. Koppel why they don't issue certificates of occupancy. Mr. Koppel stated SB 337 would allow them to issue the certificates. Mr. Klampe then asked Mr. Koppel if they wanted to issue the certificates without liability because of limitations in the inspections. Mr. Koppel stated the Department would not be provided immunity, but the evidence would be needed.

Senator Rea asked Mr. Koppel about the HUD built homes and if they would not be able to be used for anything besides residential use. Mr. Koppel stated that was true only if it was a HUD built home and not a factory built or a modular.

Senator Lynch asked Mr. Koppel for clarification on the HUD homes and factory built homes. Mr. Koppel stated the definitions are in the statutes. Senator Lynch asked if there were factory built homes which were the same as a HUD built home. Mr. Koppel answered "no."

Closing by Sponsor:

Senator Harp closed on SB 337.

EXECUTIVE ACTION ON SB 331

The Committee was supplied with amendments by Senators Toews, Christiaens, and Lynch (Exhibits #7-#9).

Motion:

Senator Christiaens moved SB 331 BE AMENDED (Exhibit #7).

Discussion:

Senator Christiaens explained his amendment (Exhibit #7). He stated the important issues were competition, access and choice, and his amendments would allow for all of those.

Senator Gage asked if nobody bids, would it preclude the insurance companies from negotiating with anyone. Senator Lynch stated the amendment stated "be awarded on the basis of competitive bids or negotiations", so there didn't have to be bids.

Senator Gage asked if the insurance company is going to have to negotiate with all the providers to make sure none of them are interested in bidding. Senator Christiaens stated the intent of the amendment was to allow for the providers interested to enter into an insurance agreement sent to them by the insurance company.

Senator Klampe said the word "or" solves the question raised by Senator Gage.

Senator Gage asked how the insurance company was to inform the people they were open to negotiations. He proposed the insurance companies be allowed to send out requests for proposals and if no body responds, the insurance company would be free to negotiate with whomever they wanted to.

Senator Gage asked if the amendments would affect a health care provider asking to enter into negotiations after the negotiations were closed. Senator Lynch stated the willing provider would be able to do just that, and it would be good for the consumer.

Senator Gage stated allowing for the willing provider to come in when they want to negates the PPO because there would be no guarantee for the "channeling" of the insured to the provider. Senator Lynch stated it doesn't seem to be happening that way currently.

Senator Klampe stated he would like to amend the amendment. He stated he would like a clause stating the insurance companies

should send out notification of requests for proposals. Senator Christiaens stated he had no objection to the amendment. Senator Gage stated he didn't feel the amendment solved the problems.

Senator Toews stated the amendment deals with the bidding process and the willing provider issue is a separate issue.

Senator Lynch stated without the amendment, the PPO has to be available to a willing provider. He stated the PPO is reached through negotiations by an insurer and a provider, and nobody else is allowed the opportunity to bid. He stated the amendment would allow for everyone in the area to bid and negotiate and then form a PPO.

Senator Gage stated there was a problem with the issue of nobody submitting a competitive bid, but one hospital was interested in negotiating and nobody else was. He stated there may be a problem with negotiations starting with one of the providers and another provider decides they want to negotiate also. Senator Lynch stated that was fine because it would benefit the consumer.


Senator Klampe stated he had a proposed amendment from BCBS.

Senator Lynch stated the amendments should come through the Legislative Council and everyone should have the opportunity to view the amendments.


Senator Christiaens stated the Committee could address the issue in the next meeting.

ADJOURNMENT

Adjournment: 11:55 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 2/16/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Kuehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

1 SENATE BILL NO. 51

2 INTRODUCED BY BIANCHI

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROVIDING THAT
5 AN APPLICANT FOR A GAMBLING OPERATOR'S LICENSE MAY BE GRANTED
6 A PROVISIONAL LICENSE WITHIN 5 DAYS OF APPLICATION TEMPORARY
7 OPERATING AUTHORITY, PENDING THAT AGENCY'S DECISION ON HIS
8 APPLICATION FOR A PERMANENT LICENSE; PROVIDING FOR A
9 "COMPLETENESS" REVIEW; AMENDING SECTIONS 23-5-112 AND 23-5-
10 177, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 ~~NEW SECTION. Section 1. Provisional operator's license.~~

13 ~~An applicant for an operator's license must be issued a~~
14 ~~provisional operator's license within 5 working days from the~~
15 ~~date on which the department receives the application. The~~
16 ~~holder of a provisional license has the same rights and duties~~
17 ~~under this chapter as the holder of an operator's license.~~
18 ~~The provisional license is valid until the operator's license~~
19 ~~is granted or denied. Issuance of a provisional license~~
20 ~~creates no presumption or evidence that the applicant is~~
21 ~~qualified for an operator's license. The fee for a~~
22 ~~provisional license is \$25, which the department shall retain~~
23 ~~for purposes of processing the license.~~

24 ~~NEW SECTION. Section 2. Codification instruction.~~

25 ~~{Section 1} is intended to be codified as an integral part of~~
26 ~~Title 23, chapter 5, part 1, and the provisions of Title 23,~~

chapter 5, apply to [section 1].

Section 1. "Purpose. The legislature finds that it is in the public interest to facilitate the orderly and timely transfer of ownership interests in a licensed gambling establishment to a new qualified owner. Unwarranted cessation of business in such establishments pending the granting of a permanent license to a new owner may unnecessarily result in the layoff of current employees and the loss of gambling tax revenues to local governmental entities."

Section 2. Section 23-5-112, MCA, is amended to read as follows:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) - (33) [unchanged].

(34) "Temporary operating authority" means the discretionary authority or permission to operate a gambling establishment which may be granted, denied or revoked by the department to an applicant for licensing who has submitted a complete application for a gambling operator's license. This discretionary authority or permission may not be construed to be a license, entitled to due process or contested case provisions under the Montana Administrative Procedure Act.

~~(34)~~ (35) [unchanged]."

NEW SECTION. Section 3. Temporary Operating Authority. (1) The department [of justice] may, in its

1 discretion, issue an applicant for a gaming operator's license
2 temporary gaming authority for a period not to exceed ^{Sixty}~~ninety~~
3 (60) days if:

4 (a) the applicant has submitted a complete gambling
5 operator's license application as is required by the
6 department;

7 (b) the applicant has received from the department of
8 revenue temporary operating authority for his alcoholic
9 beverage establishment pending it's review and decision on
10 granting him the authority to transfer ownership of the
11 alcoholic beverage license;

12 (c) the application, accompanying personal histories, and
13 initial department investigations do not reveal any
14 convictions or outstanding charges for felonies or crimes
15 involving theft or false swearing;

16 (2) The department may revoke or withdraw temporary
17 gaming authority to any applicant without notice if during its
18 investigation of the applicant it finds that the applicant
19 lied or omitted information from his application for a gaming
20 license or that any grounds exist for ultimate denial of the
21 operator's license.

22 (3) The temporary gaming authority contemplated by this
23 section may not be construed to be a license under the
24 provisions of the Montana Administrative Procedure Act, nor
25 may the applicant request a contested case hearing on a
26 decision by the department to deny or revoke such authority.

1 (4) The department's decision to grant, deny or revoke
2 temporary gaming authority is not required to be preceded by
3 prior notice or a hearing since the applicant for a gaming
4 operator's license is entitled to a hearing on the
5 department's final decision to grant, deny or revoke his
6 application for a gaming operator's license.

7 (5) After 60 days the temporary authority shall
8 automatically expire. However, if the department has still not
9 approved or denied the application, the department may extend
10 temporary authority for 30 days at a time until such ultimate
11 denial or grant is rendered.

12 NEW SECTION. Section 4. Section 23-5-177 is amended
13 to read:

14 "23-5-177. Operator of gambling establishment --
15 license -- fee. [Subsections 1 and 2 unchanged.]

16 (3) The department shall review the application form and
17 other information for completeness and shall notify the
18 applicant in writing within ten working days of any
19 deficiencies in the application. An application is deemed
20 complete unless an applicant is notified of deficiencies
21 pursuant to this subsection."

22 [Renumber subsections 3 through 7 and correct internal
23 references.]

24 NEW SECTION. Section 4 5. Effective date. [This act]
25 is effective on passage and approval.

26 -End-

1 Section 3. Section 23-5-118, MCA, is amended as
2 follows:

3 "23-5-118. Transfer of ownership interest. (1) A
4 licensed operator shall notify the department in writing
5 before transferring any ownership interest in his premises.

6 (2) The department may adopt rules providing for the
7 granting, denial or revocation of temporary operating
8 authority to qualified license applicants. These rules may
9 include, but are not limited to, rules prescribing application
10 forms and procedures as well as establishing reasonable fees
11 that are necessary to reimburse the department for costs
12 associated with processing requests for temporary operating
13 authority."

14 NEW SECTION. Section 3 4. Effective date. [This act]
15 is effective on passage and approval.

16 -End-
17
18

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/16/93

BILL NO. SB.51

EXPLANATION OF LEGISLATIVE CHANGES
SENATE BILL NO. 337

TITLE 50, CHAPTER 60
BUILDING CONSTRUCTION STANDARDS

SECTION 1.

50-60-101(2) - Municipalities or counties may be certified as local code enforcement jurisdictions. This clarifies that the definition of building regulations includes those adopted by a county.

50-60-101(3) - Clarifies that the definition of construction includes all activities included within the present definition of building regulations (50-60-101(2)).

50-60-101(8) and (9) - Clarifies that the definition includes a county local code enforcement jurisdiction as well as a municipality.

50-60-101(11)(a) - Clarifies that a municipal jurisdictional area can be extended at the written request of a municipality with Department approval.

50-60-101(12) - Adds a definition for the term non-commercial which will be used in determining certain exceptions to the State Building Code.

50-60-101(17) - Adds a definition for the term transient guest which will be used in determining certain exceptions to the State Building Code.

SECTION 2.

50-60-102(1)(a)(i) - Requires that a residential building or a private garage or storage structure be non-commercial and located on non-commercial property to be excepted.

50-60-102(1)(a)(ii) - Clarifies that the mine or building must be subject to inspection under the federal mine safety and health act to be excepted.

50-60-102(1)(b) - Provides that the exceptions to the state building code in this section do not apply to plumbing, electrical and elevators. Those sections have separate provisions pertaining to exceptions. Also provides that buildings used as motels, dude ranches, etc., are not excepted.

50-60-102(2) - Adds language which provides authorization for a county or municipality which is not a certified local code enforcement jurisdiction to request that the Department enforce the

state building code to those buildings otherwise excepted. The Department's approval would be required prior to implementation and would be subject to legislative approval for additional staff, etc.

50-60-102(3) - The Department would have authority to require documentation and proof that an action is not subject to the state building code. This would provide the Department with a means for documenting a proposed use so that a determination can be made prior to completion of a structure.

50-60-102(4) - This would clarify the Department's authority to require state building code compliance when a change of use occurs which would be of a nature that requires state building code compliance. This provision would also clarify a local enforcement jurisdiction's authority in a change of use situation.

SECTION 3.

50-60-103(7) - This would clarify the Department's authority to determine the proper use of a building and structure in relationship to the type and method of construction. Example: mobile home constructed under HUD provisions being converted to other uses which should be prohibited for other than residential use for life safety reasons.

50-60-103(8) - This would provide authority for the Department to enact rules as a part of the state building code regarding the location and placement of foundations for manufactured housing including HUD "mobile homes". This would provide for the safe placement of these structures when it is intended to place these on foundations.

SECTION 5.

50-60-107 - This change would provide a practical basis upon which the state can utilize a certificate of occupancy as a means of obtaining building code compliance prior to occupancy of a building or structure. At present, a certificate of occupancy is not utilized by the Department due to the large area which each state building inspector must cover. It is not possible for an inspector to see all work prior to portions being covered by a wall, etc., and the Department does not want to certify the building for occupancy when it could later be used as evidence of wrongdoing against the Department or a local certified jurisdictional area. A certificate of occupancy would also be an incentive for persons to complete code corrections, before occupancy, without interference with an ongoing business after occupancy has occurred. At present the Department must obtain code compliance after persons have occupied a building or structure and this necessarily can cause interference with an ongoing business.

SECTION 6.

50-60-108 - This change will clarify the Department's authority to determine who is entitled to obtain a building permit. This change confirms the Department's practice of issuing permits to those authorized by law to perform the work covered by the permit.

SECTION 7.

50-60-109(1) - This change provides that a certified county enforcement official, as well as a state or municipal official, may issue an order which may be enforced through injunctive relief. Additionally, a recent Montana Supreme Court Case not involving the Department pronounced the necessity to establish the likelihood of irreparable injury prior to the entitlement to injunctive relief pending the final determination in a cause. In a typical case where a preliminary injunction might be sought, the person constructing the building or structure has failed to submit an application and any plans as required by the state building code. Usually, a state building inspector has discovered ongoing construction and does not have sufficient information to satisfy the requirement of proving that there is a likelihood of irreparable injury. If the person continues building it is possible that the structure could be completed before any court decision and thereupon the structure may be required to be dismantled or substantially altered. This change would provide a mechanism whereby all sides would benefit.

50-60-109(2) - This change would provide that the code enforcement jurisdiction may require that code deficiencies be corrected and permit fees paid through the same court proceeding wherein an injunction is sought.

50-60-109(3) - This change would allow the code enforcement jurisdiction to seek correction of a code violation or reimbursement for expenses incurred to correct same, directly from the person who caused the violation. At present, the Department is required to bring action against the person building or using the structure, even if that person did not create the violation. An example is a recent case involving a water well contractor who illegally installed more than nine electrical pumps, with substantial code violations. Because of existing law, the Department was required to demand correction from the innocent property owners who were misled by the violator. This change would also provide that the code enforcement jurisdiction may recover reasonable attorney's fees and costs against the person who created or caused a violation, or is using a building in violation of a building code or any lawful order of a building official. This would be an incentive for individuals to resolve existing

violations without requiring the code enforcement jurisdiction to utilize the court process.

50-60-109(5) - This provision would provide express authority to the State or local enforcement jurisdiction to request that a power supplier disconnect power to a building or structure owned or used in violation of the building code, or a lawful order of the code enforcement authority. It would only apply when and for such period of time deemed necessary to protect the occupant or users or general public from eminent danger to health or safety. A recent Montana Supreme Court Case established that a state employee may be personally liable under a federal claim for performing an act which is not authorized by law. This change would allow the code enforcement jurisdiction and employee to protect persons without concern of personal liability.

50-60-109(6) - This section would provide for a four year statute of limitations for any action authorized to be brought by a code enforcement jurisdiction pursuant to Title 50, Chapter 60. This change would allow the Department to file a lis pendens, which is a legal notice that the property involved in the legal action is affected by the outcome of the action. The Department has been involved in several recent cases whereby the owner transferred or attempted to transfer the property to a person who did not know about the action. Under existing law the Department does not have the legal authority to file this notice which would protect innocent individuals who are taking property that is subject to a building code dispute.

50-60-109(7) - This section would clarify that the action authorized applies to the entire chapter rather than parts 1 through 4.

SECTION 8.

50-60-110(1), (2), (3) and (4) - This section and other sections which follow in subsequent parts provide uniform punishments for violation of a building code or lawful order of a building official. Maximum punishment is a fine of not more than \$500 and/or imprisonment in a county jail for not more than three months. Under Montana criminal law, without this punishment range, punishment could be by an unlimited fine and/or imprisonment in a county jail for an unlimited period or imprisonment for one year in a state institution. The punishment set by this section is reasonable and any violation is a continuing violation tolling the statute of limitations. The amendment also provides that the county attorney shall, upon request of the appropriate building code enforcement authority, prosecute any violations. This section also provides that prosecution for a misdemeanor shall not bar enforcement by a civil injunction proceeding, or any other remedy provided by law.

SECTION 9.

50-60-201(4) - This section is amended so that it does not require future amendment to continually conform with federal law regarding buildings constructed with public funds. The standards contained in the current law were revised and are being utilized to comply with federal law.

SECTION 10.

50-60-202 - The language stricken from this section has been misconstrued. It was intended to require the State Fire Prevention and Investigation Bureau of the Department of Justice to review any building plans and regulations within their jurisdiction for conformity with the state building code adopted by the Building Codes Bureau. The existing language has been misinterpreted by many who erroneously believed that the Department of Justice was to review all building plans and regulations for conformity with fire prevention and investigation rules. The existing language is not necessary as the state building code would apply to the plans and regulations contemplated by the language to be stricken and the Building Codes Bureau reviews these projects for building code compliance.

SECTION 11.

50-60-203(5) - This section will clarify the Department's authority to adopt the dangerous building code and provide for enforcement as authorized in 50-60-109. This language will also allow the Department to obtain relief against an owner of property whether he resides in Montana or elsewhere.

SECTION 12.

50-60-205 - This section clarifies current law and authorizes the process of allowing local code enforcement jurisdictions to select those codes which it chooses to enforce, with the remaining codes which were not adopted enforced by the Building Codes Bureau.

SECTION 13.

50-60-206(1) and (2) - Public hearing language is removed as unnecessary because this is required under the Montana Administrative Procedure Act. The other amended language clarifies the requirements and circumstances under which a petition for a variance from a state building code provision or review of denial of a permit are allowed. The amended language also provides that the procedure utilized shall be that under the Montana Administrative Procedure Act. This section also clarifies that the

Building Codes Bureau, if it has jurisdiction, may review any ruling, direction, determination or order of any state agency or local government affecting or relating to construction of any building which is pursuant to the state building code. Jurisdiction is determined in Section 12.

50-60-206(3) - This section provides that the Department may waive minor building code violations which do not constitute an eminent threat to the safety, health or welfare of any person or property.

SECTION 14.

This new section provides express authority for the Department to determine whether permits may be issued to the owner of the building or structure where the work is to be performed or to a person or entity authorized by law to perform the work covered by the permit.

SECTION 15.

50-60-301 - This section provides the powers and duties of municipalities and counties who choose to adopt codes included in the state building code and become certified as local code enforcement jurisdictions. The section also clarifies and expressly states that local code enforcement jurisdictions may enter, inspect and examine buildings or premises necessary for enforcement of the county or municipal building code.

SECTION 16.

50-60-302 - Clarifying that a county or municipality must not only file a code adopted and plan for enforcement with the Department, but the code and plans must be certified by the Department. Subsection (2) is not changed and reflects the certification process which was intended.

SECTION 17.

50-60-303 - Reiterates requirements that a certified municipality or county establish an appeal procedure by ordinance which is acceptable to the Department.

SECTIONS 18 & 19.

50-60-402, 403 and 404 - Amendments to clarify that Parts 1 through 7 of Title 50, Chapter 60 apply to factory-built buildings and recreational vehicles and that a county may be a certified code

enforcement jurisdiction for these structures as well as a municipality.

SECTION 20.

This new section clarifies that the Department may enter, inspect and examine buildings and premises for the purposes of verifying that persons performing work are properly licensed under Title 37, Chapter 69 (plumbing license).

SECTION 21.

This new section provides that certified local jurisdictional enforcement areas have a duty to ensure that persons applying for a plumbing permit and/or performing plumbing work are either properly licensed or the work is exempt from the license requirement.

SECTION 22.

50-60-503 - This amendment would change the exception to the plumbing permit and inspection requirement pertaining to farms and ranches. A farm or ranch would continue to be excepted and not require a permit or inspection if a plumbing installation is on a farm or ranch, provided the installation is used in conjunction with an agricultural or livestock raising operation and is not connected to either a public water supply or sewage disposal system. Additionally, an installation used in conjunction with a hotel, motel, guest ranch, etc., would not be excepted from the plumbing permit and inspection requirements.

SECTION 24.

50-60-507 - The amendment for this section clarifies that it is unlawful for any person to engage in work involving plumbing or drainage systems, or parts thereof, without first obtaining a permit regardless of the business or trade of that person.

SECTIONS 27 & 28.

50-60-509 - Clarifies that this section refers to a state permit. Local code enforcement jurisdictions provide by local law for the issuance of permits. See Section 14 which would allow the Department to determine whether permits may be issued to the owner of the building or structure where the work is to be performed or to a person or entity authorized by law to perform the work covered by the permit.

SECTION 29.

50-60-510 - This amendment provides a language change with no change in substance except for renumbering certain sections referred to in this section. Applies solely to state permits.

SECTION 30.

50-60-511 - This section would provide that the Department be given not less than 48 hours before work is to be inspected rather than the current 24 hour requirement. Manpower limitations require this change.

SECTION 32.

50-60-515 - This section is amended to make it unlawful to connect or disconnect plumbing in violation of the law regardless of whether the connection or disconnection is from a public water or sewer system or an individual system. The punishment section is also changed to be identical to the other punishment sections. This change does not change the existing permit requirement under 50-60-507.

SECTION 33.

This new section provides that certified local jurisdictional enforcement areas are to ensure that persons applying for permits and/or performing work are properly licensed or exempt from the electrical license requirement. The substance of this section is similar to Section 21 relative to plumbing work.

SECTION 34.

This new section would provide an exemption from the permit requirement for minor procedures as determined by rule by the Department. In order to qualify as a minor procedure or installation the performance of same must not have a significant potential for creating a condition hazardous to the public health, welfare or safety. Many individuals are currently violating existing law by failing to obtain permits for minor procedures or installations. This language would authorize the Department to exempt certain procedures or installations and enforce the permit and inspection provision to other work.

SECTION 35.

50-60-602(5) - Clarifies the law to provide that a state permit is not required where the work will be covered by a local code enforcement jurisdiction.

SECTION 37.

This new section provides a means for verification that persons performing work are properly licensed under the electrical licensing law. Similar language is provided in Section 20 pertaining to plumbing licensure.

SECTION 38.

50-60-604 - Amends language to reflect that an electrical permit is utilized in lieu of an inspection tag.

SECTION 39.

50-60-605 - Amends language to reflect that an electrical permit is utilized in lieu of an inspection tag. Subsection (2) provides the Department or local enforcement jurisdiction with the authority to order a power supplier to disconnect power where it has been determined that an electrical code violation exists or where a required electrical permit has not been obtained. Similar to 50-60-109(5), but because an electrical installation is involved, allows an order rather than a request to disconnect power.

SECTION 40.

50-60-607 - Amends language to reflect the usage of an electrical permit rather than an inspection tag. Also adds identical language which was utilized in earlier sections for punishment in the event of a violation.

SECTION 41.

50-60-701 - Clarifies that the fees charged shall provide for both inspections and the cost of administering this part. Subsection (4) is added to preclude a municipality or county from adopting the state building code provisions regulating elevators and escalators. This is not a change from existing law.

SECTION 42.

50-60-704 - Provides identical provisions for punishment and

enforcement as those set forth in earlier sections.

SECTION 43.

50-60-106 - This section is being repealed because the powers and duties of municipalities are combined with those of counties and rewritten in 50-60-301.

50-60-204 - This section is repealed because Title 2, Chapter 4, the Montana Administrative Procedure Act supersedes its provisions. The Administrative Procedure Act provides the procedural requirements for public hearings relative to the rulemaking process.

50-60-502 - Repealing this section will not cause a change in the Department's approach to enforcing the plumbing license law on behalf of the Board of Plumbers. Repeal will remove the perception that is proper to hire an unlicensed person to do work which the law requires be performed by a licensed individual.

50-60-514 - This section is repealed as it is unnecessary in view of the clarification that 50-60-109 is applicable.

50-60-606 - This section is repealed as an inspection tag process is not needed.

Amendments to Senate Bill 337
First Reading Copy

Prepared by Department of Justice

1. Page 3, line 3.

Following: "50-60-514,"

Strike: "AND"

Following: "50-60-606,"

Insert: "50-61-112, AND 50-61-113,"

2. Page 39, line 18.

Following: "50-60-514,"

Strike: "and"

Following: "50-60-606,"

Insert: "50-61-112, and 50-61-113,"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 2/16/93

BILL NO. 52 337

AMENDMENT TO SB 337

1. Page 14, line 6 through 15.
Strike: in their entirety

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 2/14/83

BILL NO. SB 337

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February 16, 1993

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Sen. J.D. Lynch, Chair
Senate Business and Industry Committee
Room 410, State Capitol
Helena, MT 59624

RE: SB 337

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's concern with certain provisions of SB 337, which generally revises Montana's building codes.

1. Section 5 regarding certificates of occupancy already gives state and local building departments sole discretion in issuing those certificates. Yet even if the agency is grossly negligent, arbitrary or capricious, even willfully reckless in exercising that discretion, the amendment prohibits a victim from using crucial evidence. MTLA believes that this provision of SB 337 removes important protections for Montana citizens and important incentives to fair, competent enforcement of building codes.

2. Section 7 regarding injunctions relieves state and local building departments from any burden of proving the likelihood of imminent or irreparable injury (page 13, lines 11-16). At the same time, Section 13 regarding variances allows the state department to waive minor violations that do not constitute an imminent threat to person or property. In combination, these sections of the bill seem to subject developers and contractors to the personal and widely varying preferences of agency officials who can with equal ease obtain injunctions or grant variances.

Thank you for considering these comments.

Respectfully,



Russell B. Hill, Executive Director

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 2/16/93

BILL NO. SB 337

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Senator Christiaens
For the Committee on Business and Industry

Prepared by Greg Petesch
February 16, 1993

1. Title, line 5.

Following: " ; "

Insert: "REQUIRING NEW OR RENEWAL AGREEMENTS TO BE AWARDED ON THE
BASIS OF BID OR NEGOTIATION;"

2. Page 3, line 5.

Following: line 4

Insert: "(2) An agreement entered or renewed after [the
effective date of this act] must be awarded on the basis of
competitive bids or negotiations open to all providers of
the service in the state."

Renumber: subsequent subsections

3. Page 5, line 5.

Strike: "2(3) "

Insert: "1(4) "

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 7

DATE 2/16/93

BILL NO. SB 331

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Senator Lynch
For the Committee on Business and Industry

Prepared by Greg Petesch
February 16, 1993

1. Page 5, line 5.
Strike: "2(3)"
Insert: "1(4)"

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 2/16/93
BILL NO. SB 331

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Senator Toews
For the Committee on Business and Industry

Prepared by Bart Campbell
February 16, 1993

1. Page 3, line 17.

Following: "agreement"

Insert: "and the provider agrees to charge 5% less for services
than are allowed under the agreement"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9

DATE 2/16/93

BILL NO. SB 331

DATE Feb. 15, 1993

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 337, SB 51

Name	Representing	Bill No.	Check One Support Oppose	
W James Kembel	Public Safety Div DOC	S337	✓	
James F. Brown	Bldg. Codes Bur., DOC	337	✓	
LARRY AKEY	COIN MACHINE OPERATORS	51	✓	
GENE PHILLIPS	P P & L	SB 337	X	
BRUCE SUBURMAN	Justice	SB 337	X	
RICHARD L KOPEL	Building Code Bur. DOC	337	X	
W.H. JELLISON	BLDG CODES BUREAU	337	✓	
Michael Triguero	State Asst Plumber & Pipefitter	337	✓	
Pat Dussan	Borries	337	✓	
Flora Hernandez	Real Estate of the Future	51		✓
Jim Smith	Press Republics	51	✓	
DEAN CASEY	GIA	51	✓	
Kent Fremington	GIA	51	✓	
MIXE CETRARI	VILLAGE INN PIZZERIA	51	✓	
Mike Pichette	Mt. Power	S337 amend		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY