

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on March 26, 1993, at
9:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chair (R)
Rep. Sonny Hanson, Vice Chair (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. Cocchiarella

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 314
Executive Action: SB 314

HEARING ON SB 314

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, Senate District 18, Great Falls, said SB
314 is an act treating each series, portfolio, or other

subdivision of an investment company or similar issuer as a separate issuer of securities, and requiring each subdivision to pay a portfolio registration fee. He said this bill will be a revenue producer for the state with an increase of \$44,500 for FY 1994, and \$56,268 increase in special revenue in 1995. There are currently 525 investment companies registered in Montana, with approximately 2,000 individual portfolios. He said this probably raises some red flags for additional FTE, but they will be paid for by the fees from the portfolios.

Proponents' Testimony:

Mark O'Keefe, State Auditor, Commissioner of Insurance and Securities for the state of Montana, said SB 314 is before the committee today to close some loopholes that exist in Montana's Securities Law. He said this is a loophole that 41 other states have already closed. The National Association of Security Commissioners, and the SEC has asked that all states close these loophole so there will be consistency across the country in securities regulation. The language being adopted is consistent with the language of the laws already in place in the other 41 states, and will streamline Montana for regulation of securities, register securities and to protect the consumers in Montana. He said under current law, a security issuer must file a master fund and pay the fees set in statute. If that same issuer wants to file additional sub-funds or portfolios, no additional documentation is required other than the list of the name of the sub-fund. He said at this point, consumers are calling his office to inform them that a certain investment company is in Montana offering securities that pay 6000% in dividends a year, and wondered if they are registered. He said if the investment company was smart they would register a master fund with his office for \$200, listing the company as a sub-fund, and only then would he be able to let these people know if the company was legitimate. In the meantime, the company has been closed down and **Mr. O'Keefe's** office is in the process of trying to procure the money back for those who were defrauded by the sub-fund. He said Montana needs the review of these funds, because the number one investment/security fraud is to our senior citizens. The senior citizens often do not have the capability to look at complicated securities to see if they are receiving a good deal. **Mr. O'Keefe** said this bill will generate enough fee revenue to pay for the cost of the enforcement and is not opposed by the industry. He said without SB 314, the Securities Department has 23 open investigations, and 5 criminal cases have been filed in district court. In FY 1993, the Securities Department has recovered over \$500 million for Montana investors and has collected more than \$64,000 in fines for the general fund revenue. He said this bill earmarks the fee revenue to pay for the cost of enforcement. The industries nationwide have decided in order to protect themselves they will pay the fee so the regulators can catch the bad guys. This bill has been earmarked so the Securities Department will be able to put back \$100,000 into the general fund. The budget reflected what was needed to

actually have each of these securities reviewed when they come in, and the increase at the office. He used conservative numbers for the staff that will be needed for the department, and for predicting what the revenue will be. **Mr. O'Keefe** said **Dave Hunter, deputy auditor, and deputy commissioner of securities, and Melissa Broch, legal counsel for the State Auditor's office,** are here to answer any questions. He hoped the committee would give SB 314 a do pass so they can tighten up protection for both the honest people in the industry and the consumers at the same time.

Ed Caplis, Montana Senior Citizens Association, said the association is in support of SB 314. Unfortunately, over 50% of all victims of fraud are senior citizens. These citizens are on a fixed income and misinformed. By registering each subdivision, proper disclosure will be required.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

REP. BRANDEWIE asked **Mark O'Keefe** about the \$100,000 that he spoke of that would be returned to the general fund, and asked where it was in the bill? He said item 5 of the fiscal note states that the ending balance will remain in the account and will not be transferred to the general fund. **Mr. O'Keefe** asked if **Dave Hunter** could reply. **Mr. Hunter** said the bill does not specifically state that, but it is the practice of the budget office and the Appropriations Committee to look at state special revenue accounts as they prepare the budget, and capture those funds at the end of the biennium. **Mr. O'Keefe** interjected stating the assumption is if there is additional money in the account, then there isn't any need for their office to have it, and it is placed into the general fund.

REP. LARSON asked **Melissa Broch** to explain to the committee what a sub-fund is, how they register now, and how this bill proposes for them to register? **Ms. Broch** said the master fund has been similar to the sub-fund. When master funds are registered they in turn offer sub-funds or portfolios that are drastically different from the master funds. There was a change in the securities industry, so when a master fund is registered, the office can review it. The investment company may sell a portfolio, but with this bill, they will now have to give the name of the sub-fund to the state auditor's office. The purpose of the bill is to allow the state auditor's office to review all the portfolios from the master funds and make the decisions from there. She said the difference between a master fund and sub-

fund is; a master fund is equivalent to an investment company that consists of two or more separate portfolios. Each portfolio is, in effect, a fund issuing shares which represent interests in the portfolio. Each portfolio has its own investment objectives and policies.

REP. LARSON wanted to know how many companies operate in Montana that have master funds, and how many sub-funds do each of these companies have? **Ms. Broch** said it varies from 2 to 3 or could be up to 40. **REP. LARSON** asked if her office will be able to go through and review each one of the portfolios when they come in? **Ms. Broch** said that is their plan. She said it will require an additional two FTEs to be generated by the additional filing.

REP. SIMON asked **Mark O'Keefe** if it should be specifically stated in the bill that the money generated from the securities be used only for that purpose? He said it looks like the money could be used for other regulatory purposes in the state auditor's office. **Mr. O'Keefe** said he doesn't see it that way. He said a lot of the language used in the bill is at the direction of the legislative auditors. The fees and fines have been changed this session so they could use the same language. **Dave Hunter** replied the intent was to use the standard earmarking language from the statute. **Mr. Hunter** said if the bill passes in both houses, they would have to take the fiscal note to a pre-conference committee on HB 2, and have them add the expenditure authority in the securities program so it will be specifically noted of where it is to be spent. **Mr. O'Keefe** informed **REP. SIMON** if he wanted to change the language he did not have a problem with it.

REP. ELLIS asked what happens to a company that doesn't pass the review? **Melissa Broch** said Montana is a merit review state, as opposed to a disclosure state. This means that Montana has the ability to review an offering of a portfolio on its merits rather than just the disclosure that is made for the consumer. The primary factor the office looks at is the return to the issuer on the offering. If it is determined the issuer was not merited, they would issue an order of denial of registration. **REP. ELLIS** asked why the companies couldn't set their own criteria and police themselves instead of at the expense of state government? **Ms. Broch** said it probably wouldn't work as a permanent enforcement, and it wouldn't apply to every criteria. **REP. ELLIS** asked if these companies have to meet certain criteria? **Ms. Broch** said one of the primary tools they use to review issues is guidelines that have been developed by the North American Securities Administrators Association which is an association of state regulators, and the Canadian provinces, to develop guidelines through committees which are objective, and not subjective.

Closing by Sponsor:

SEN. CHRISTIAENS closed stating the need is there with the five criminal prosecutions already this year; \$500,000 recovered to

consumers in Montana; and \$64,000 in fines. He said it would be a major savings for the state to put this into law. The two FTE will be able to review a minimum of two portfolios per day, with the assumption that there will be 600 securities filed and reviewed. The companies that come into the state and say they can pay 6000% in dividends will be caught before they can take advantage of the consumers in Montana.

EXECUTIVE ACTION ON SB 314

Motion: REP. BACHINI MOVED SB 314 BE CONCURRED IN.

Discussion: REP. BRANDEWIE said he doesn't have any problem in concurring with the bill, but the assumption on the fiscal note does not state where the \$100,000 will come from to be given to the general fund.

CHAIRMAN BENEDICT said he had some language that might help the concerns of REP. BRANDEWIE and REP. SIMON. On page 1, line 24, after "regulatory powers and duties" strike the period and replace with a comma and add "in relation to portfolio registration, and that any excess fees be returned to the general fund". SEE EXHIBIT 1

Motion/Vote: REP. BACHINI moved to adopt the amendment. REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. BACHINI MOVED SB 314 BE CONCURRED IN AS AMENDED.

Discussion: REP. ELLIS said it is obvious this bill is going to pass, but he was not going to vote for it. It is creating more government, not less. He said the parent companies should be held responsible for policing their own actions. Once a sub-fund is found that doesn't meet the criteria, the parent company would obviously know about it and then recover the funds without having to go to court, or take action against the parent company so they could no longer work in the state.

REP. LARSON said the auditor's office has been before the committee several times in an attempt to protect the consumers, and felt this is in the best interest of Montana citizens.

REP. SONNY HANSON said he supports the bill and disagrees with REP. ELLIS. He knew of a large corporation that came into Montana, and decided Montana wasn't big enough to do business in, and left the person in Montana with a \$30,000 debt. He felt the bill should be passed to protect these kinds of people before they get started.

REP. MILLS said in listening to the testimony and the criteria that has been sent from Canada to Mexico, they should have judgement criteria for a basis in writing an RFP. He is not in support of the bill.

Motion/Vote: REP. DAILY called the question. Voice vote was taken. Motion carried 13 - 4 with REPS. WAGNER, ELLIS, MILLS AND BARNETT voting no.

Vote: SB 314 BE CONCURRED IN AS AMENDED. Motion carried 13 - 4.

EXECUTIVE ACTION ON SB 337

Motion: REP. PAVLOVICH MOVED TO RECONSIDER ACTION ON SB 337 AND TAKE FROM THE TABLE.

Discussion: REP. PAVLOVICH said this is the building codes bill from Mr. Kopel who has also submitted some amendments to help take it off the table.

REP. SONNY HANSON said he has received some amendments, and the petroleum industry has an additional 13 amendments. He said it should probably stay where it is, because it is too late in the process to make those kinds of changes. He stated his opposition to the bill.

REP. BACHINI said they have operated this way for the last two years, they can continue to operate for another two years and bring it back next session if they need to.

Motion/Vote: The question was called to bring SB 337 off the table. Voice vote was taken. Motion failed 5 - 13 with REPS. PAVLOVICH, STELLA JEAN HANSEN, TUSS, DAILY, AND DOWELL voting yes.

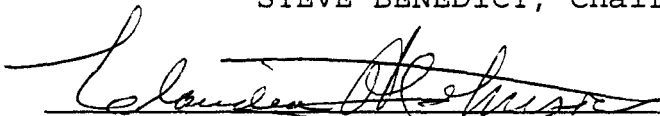
Vote: SB 337 FAILED TO TAKE OFF THE TABLE. Motion failed 5 - 13.

ADJOURNMENT

Adjournment: 10:00 A.M.



STEVE BENEDICT, Chair



CLAUDIA JOHNSON, Secretary

SB/cj

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

ROLL CALL

DATE 3-26-93


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	✓		

HOUSE STANDING COMMITTEE REPORT

March 26, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 314 (third reading copy - blue) be concurred in as amended .

Signed: 
Steve Benedict, Chair

And, that such amendments read:

Carried by: Rep. Hibbard

1. Page 1, line 24.

Following: "duties"

Insert: " in relation to portfolio registration. Any excess fees must be deposited in the general fund"

-END-

Committee Vote:
Yes 13, No 4.

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EXHIBIT 1
DATE 3-26-93
SB 314

Amendments to Senate Bill No. 314
Third Reading Copy

For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 26, 1993

1. Page 1, line 24.

Following: "duties"

Insert: " in relation to portfolio registration. Any excess fees
must be deposited in the general fund"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Economic COMMITTEE BILL NO. *SB 314*
DATE *March 26, 1993* SPONSOR(S) *C. Christensen*

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Edmund Caplip</i>	<i>MA SENIOR CITIZENS ASSN</i>	<input checked="" type="checkbox"/>	
<i>David Hopton</i>	<i>State Auditor</i>	<input checked="" type="checkbox"/>	
<i>Mark O'Keefe</i>	<i>State Auditor</i>	<input checked="" type="checkbox"/>	
<i>LARRY AXEL</i>	<i>MIT ASSOC OF LIFE UNDERWRITERS</i>	<input checked="" type="checkbox"/>	
<i>Melissa Broch</i>	<i>St Aud</i>	<input checked="" type="checkbox"/>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.