

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**FREE CONFERENCE COMMITTEE ON HOUSE BILL 537**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on April 6, 1995, at  
8:00 a.m.

**ROLL CALL**

**Members Present:**

Sen. John R. Hertel (R)  
Sen. William S. Crismore (R)  
Sen. Dorothy Eck (D)  
Rep. Royal C. Johnson (R)  
Rep. Bob Keenan (R)  
Rep. Don Larson (D)

**Members Excused:** N/A

**Members Absent:** N/A

**Staff Present:** Bart Campbell, Legislative Council  
Lynette Lavin, Committee Secretary

**Statement by Sponsor:** **REP. DON LARSON, HD 58, Seeley Lake,** sponsored **HB 537**, the "stacking bill", which prevented, in the future, the stacking of liquor licenses for the purpose of acquiring additional gaming machines. The intent of that basic bill was never in question. **REP. LARSON** said it was unanimously passed by the House and carried substantially out of the Senate.

**REP. LARSON** stated the controversy was the grandfathering of the existing stacked machines. There were some choices that could be made. The committee could accept the bill as it left the House, accept the bill as it left the Senate committee, accept the bill as it left the Senate floor, or it could be left as it was. The bone of contention in the House was a five or a ten year grandfather clause for those businesses that had made capital outlays and stacked. They had stacked legally under the terms of the 1991 law, but they had bent the rules; however, investments were made. Those individuals who worked on the bill, from the industry and the legislators, agreed to a ten year stacking exclusion. That was amended out in the House and reamended in the Senate committee. He related there were two individuals from Missoula and Butte, who had a special circumstance, where they had made capital outlays and stacked before 1991 and were given an exclusion in the Senate.

**REP. LARSON** recommended the bill should remain as it left the Senate floor. There could be damage done to the bill on the Senate floor if there were changes. He declared **Mark Staples**, of the Montana Tavern Association, with the permission of the committee, had a definite perspective to comment on **HB 537**.

**Background Information:** **Mark Staples**, gave a historical perspective of the bill. Last June it became clear, statewide, problems were arising on the phenomenon of stacking. It wasn't unanimous; however, the overwhelming majority of the Montana Tavern Association thought there was a real problem. Those individuals who had acted legally and made significant investments, did not think there was a problem. **Mr. Staples** thought there was a question of legislative intent, not actually individuals "bending the rules". He stated they arrived at an agreement of this being a self-policing measure.

**Mr. Staples** reported the Montana Tavern Association brought this bill up and the Gaming Industry signed off on the bill with certain understandings. Originally it was thought this kind of legislation was unnecessary, but after a majority vote of the Association, it was thought to be necessary. Some people then wanted perpetual grandfathering. When the Senate Business and Industry Committee originally met, there were votes for a 25 year clause. When the ten year grandfather was settled between the industry it was with the agreement of those with investments that would be jeopardized that they would not hire their own lobbying force to oppose the ten year clause. He said they did not and that was one of the reasons the bill had gotten as far as it did.

**Mr. Staples** declared if the bill went back to the Senate with the five years there were many people who would oppose it (that didn't originally oppose it because of the ten year grandfather) and this bill could be lost. He thought, without this bill, there would be no limitation. It would be perpetuity; there would be 300 stacks by the time the legislature met again, and it would be too late. The 1991 legislation step didn't pass to limit it to two places. It was originally opposed because in 1991 they already had a five year grandfather and this gave them five years more. They would take the five years of the new grandfather for a total of ten. They then would just redesign their places and take the five years remaining of the ten year grandfather for a total of 15 years. That seemed unfair. They since had a legal opinion that if those people were given five years more, at the end of the five years, they had to get rid of one of those licenses. They would only get a total of ten years like everyone else and **Mr. Staples** said that was "fairness".

**Mr. Staples** related what happened on the floor of the House was real confusion. It was unclear whether **REP. LARSON** was going to move to accept the Senate amendments or reject the Senate amendments. Some people thought **REP. LARSON** was going to move to reject the Senate amendments and thus were poised to oppose **REP. LARSON's** motion. When **REP. LARSON** made the motion to accept the

Senate amendments, there was a general confusion. He said if this bill was taken back to the House as it came out of the Senate, it would pass the House.

**Discussion:** REP. ROYAL JOHNSON referred to the original bill and substantiated by the fact sheet of the Montana Tavern Association and distributed by REP. LARSON to everyone in the House. The five or ten years was the point of contention. A great number of amendments that went on in the Senate probably didn't need to be added. Take the bill back to before it went to the Senate, the second section in the original bill codified the bill. Should the old stackers be grandfathered in the new clusters, the old stackers (three of them) had already been given five years in which to add more machines on their premises than anyone else in the state. Those stackers didn't need to build separate premises, so they didn't need the same construction costs to recoup. During the five years they have had, their extra licenses had grown in value and they had more than enough time to recoup the costs of putting in the extra machines.

REP. JOHNSON contended in addition to the advantage of the grandfather being offered the new clusters must then, simply, separate their premises which would not be an oppressive undertaking for either of the two establishments still at the original stacking configuration. Both already had several special rooms in which the enterprises could be placed. They would then have the same ten years as the other several dozen clusters would to recoup those investments and then divest of their practice entirely. He thought if the committee related that particular paragraph to what was currently being talked about here, five years vs. the ten years, there wasn't anybody who was going to make an investment that they didn't think they couldn't amortize over a period of time. Those people had the opportunity to put twenty more machines in place. REP. JOHNSON said if the average on those machines, in the state, was \$30,000 and multiplied out, one could amortize a pretty fair size wall with that kind of money.

REP. JOHNSON declared there was no reason to extend it beyond that time. Every time the legislature did one of those situations, talked about a different sort of grandfathering condition, talked about changing it to take care of a couple of people, or a few people and so forth. If this bill failed because five years was not enough time, then it hadn't properly been worked out. The legislature could look at it again in two years and those people who were here could look at it again in two years and check if that was the correct situation. He had a serious problem when "negotiations" within the industry were talked about. The industry had a tremendous vested interest in this legislation and the thing the committee was here for was to protect the vested interest of the public, not the industry.

REP. JOHNSON thought this bill should be taken back to the original intent. It was originally presented by the tavern

owners to stop stacking of alcoholic beverages for the purposes of skirting the twenty game machine per location limit. That was exactly what this committee should do. He said these people should not be encouraged to build new premises or anything else.

**SEN. DOROTHY ECK** asked **REP. JOHNSON** if he was talking about the introduced bill, or were there amendments made in the House. He stated there were amendments made in the House that took it from ten years to five years.

**REP. LARSON** mentioned the controversy over the two special exceptions that had come up and he examined their special circumstances. The Butte situation (Mr. Wheeler was sitting here in this room) was a special circumstance in that the building would be physically impossible to separate so he faced a special circumstance. It created enough attention in Butte Silver Bow community that the entire Butte local government interests came up to testify in favor of the bill. It was the only 24 hour establishment in Butte's downtown area that serviced the military people. He said it was a fairly valuable anchor business in the downtown area and they were very concerned that they could lose that business.

**REP. JOHNSON** stated currently the stacking situation was tied up in the courts. There hadn't been any stacking since. The Revenue Department had taken the position that to move liquor licenses back and forth and to put another liquor license on top of four other liquor licenses was not in the public interest. They had handled the situation. Stacking may start again and they may lose that case; however, that wasn't the case right now. The Revenue Department had stopped the stacking by virtue of not transferring the licenses. **REP. JOHNSON** remarked people could only stack if they had the licenses.

**SEN. WILLIAM CRISMORE** asked **Mr. Staples** earlier about that situation and wanted him to explain the court case to this committee. **Mr. Staples** stated he was the lawyer carrying those cases both through administrative procedures and through the Department of Revenue and now had to go to district court in Billings on those two (and perhaps three) cases. Case by case by case, etc., was a tough way to do that. The reason they brought about the legislation was to not have to protest every license. The Revenue Department was only stopping those licenses which were protested. To fight the protest, he had to go through administrative procedure, hearings, protests, appeals; he had written 600 pages worth of briefs just on two and he still had to go to district court. That was a stop gap, but certainly not a satisfactory one in lieu of a bill. Nobody was going to build new premises if the bill passed. The building stopped.

**Mr. Staples** reported he put the fact sheet out when he thought the 1991 stackers were seeking fifteen years. He didn't realize that they were only seeking five. That was before they had the legal opinion which said they couldn't put up the wall. He

didn't think they were denied out of the bill, they could even be included in the ten year grandfather.

**Motion:** REP. ROYAL JOHNSON MOVED HB 537 BE TAKEN BACK TO THE ORIGINAL FORM AS IT LEFT THE HOUSE.

**Discussion:** REP. LARSON stated when they brought the bill to the Senate Business and Industry Committee they made the recommendation that it was fair to grandfather back to the ten years. The subsequent amendment on the Senate floor was to further grandfather the two additions. He would resist that. He thought the \$30,000 per machine was not a good number, because that was the amount of money that actually went through the machine. The net on the machine was considerably lower. REP. LARSON's machines averaged \$6,000 per year on nine machines. Amortizing a building over five years was a substantial hardship. He was fearful that a tremendous amount of opposition would be generated against the bill if the committee reverted to a five year grandfather. He was confident there would be almost unanimous support from the industry if the ten year clause was retained. He said this was a policy decision for the committee.

REP. JOHNSON declared he would take the other side of that particular argument. It wasn't a matter if they had to amortize off this, or amortize off that; those people didn't want to do that. They didn't have to make an application for another license. He thought the legislature should not make it any more convenient or better for this industry than any other industry in the State of Montana. He thought they should be fair about it, but this industry should not be in the growth mode that it currently was in as it was not a fair situation.

REP. JOHNSON stated as far as the two grandfathered situations; he did visit with Mr. Wheeler about his building and that would be paid off by his situation. He had the advantage for the five years, as was printed out in the Tavern Owner's Association memo, that he had just read to the committee. He had that advantage for the last five years. He wasn't sure that was a fair comparison. REP. JOHNSON told the committee when the pamphlet was written, that was the bill, not the bill the committee was looking at today, which included the amendments.

REP. BOB KEENAN asked REP. JOHNSON if he would risk losing the whole bill on the Senate or House floor, as it was his concern that HB 537 would be lost. REP. JOHNSON declared that was the risk whenever a bill was put out. He thought there were really good bills that would have affected this industry and the affect of those bills was they were both dead. He didn't think that was too bad a situation as everybody lost a bill once in a while. He thought since this was a Free Conference Committee, there were a couple amendments he would like to add. He would like to enable people to have a franchise without being in the gambling business to serve food, wine and beer. Many opponents claimed that would destroy the industry, which REP. JOHNSON said had nothing to do

with that. His contention that this piece of legislation when originally proposed was to give those people some sort of break because of the desire to stop stacking. **REP. JOHNSON** said it was not in the best interest of the public to stack one liquor license on top of the other.

**REP. KEENAN** stated when the word "franchise" was used, was this in reference to a liquor license. **REP. JOHNSON** stated "yes".

**SEN. ECK** reported she would agree with **REP. JOHNSON**. She thought for too long the industry had asked for protection from themselves; there was no other industry that was protected like the tavern owners, which now had the gambling interests as well. She has four or five businesses in Bozeman that were after her all the time, because they could not survive as restaurants without a liquor license and yet the tavern owners and the gambling interests took strong stances against that. She thought the committee would not lose the bill, but if so, the Department of Revenue would maintain their present stance.

**SEN. CRISMORE** remarked he was concerned about losing **HB 537** and in his area of Libby, there would be many ramifications. One group had moved in that dominated the industry and he didn't want to lose the bill.

**REP. LARSON** said there was one other point he had neglected to mention. In the Business and Industry Committee meeting, several housekeeping amendments were added. By accepting **REP. JOHNSON's** motion, he stripped those very necessary and valuable clean up amendments. There was a commonality of interests and language clarified and some language with regards to financial interests in the businesses that had to be clarified. **REP. LARSON** said that language would go with the amendment if **REP. JOHNSON's** motion was passed.

**REP. JOHNSON** conveyed if there was actually clean up language that did not change the intent of the bill, he had no problem at all of changing his motion to include clean up language. If there were changes in the bill, he would not change his motion.

**Bart Campbell, Legislative Council**, questioned the clarification of the amendment and asked **REP. JOHNSON** to correct him if that wasn't what he had intended; Section 2 which was added on the floor would come back out, the date would go back to January 1st instead of February 1st, the ten year would go back to five year, and retain 1, 4, 5, 6, 7, because they were clean up language. **REP. JOHNSON** answered **Mr. Campbell** that all was correct.

**SEN. JOHN HERTEL** explained he did know what work went into this during the Business and Industry Committee meeting. He did know a lot of negotiations went forth with it. It was held for about two weeks before Executive Action was taken allowing the different groups to work together for negotiations between the interested parties. He thought the amendments that were put on

it after the committee were something necessary. He thought he knew what the feeling would be on the Senate floor and if this was put back into the original form, as it came out of the House, there was not a good chance for passage on the Senate floor. He maintained it was a necessary bill and as **SEN. CRISMORE** stated, there were areas in the state that definitely had a problem with the stacking situation and something must be done now. **SEN. HERTEL** related he would like the amendments the Senate added to be included in **HB 537**.

**Vote:** **SEN. JOHNSON's** motion that **HB 537, AS IT CAME FROM THE HOUSE WITH THE EXCEPTIONS OF 1,4,5,6,7,8, FAILED 4-2** on roll call vote (#1).

**Motion:** **REP. LARSON MOVED TO ACCEPT HB 537, AS IT LEFT THE SENATE AND ARRIVED AT THE HOUSE.**

**Discussion:** **REP. LARSON** stated this was a fair bill to business. He didn't think they were trying to make suggestions or inclusions for business. They were granted those liquor licenses by the Department of Revenue. They were granted the gambling licenses by the Department of Justice. Subsequent to those grants, those two agencies had changed their way of doing business and had started to resist the issuance of those licenses. Those people that did stack, did so legally. He said the question was the fair disposition of their assets.

**REP. JOHNSON** declared it was fair to let all those people who currently had licenses, but it was unfair to stop that now? That was not a fairness issue in his mind. If those people were entitled to that, then why weren't the other people. Why would the Revenue Department stop doing what they were doing. That was where it became unfair. He stated the industries put enough pressure on them to get those licenses through and right now the Revenue Department was standing back.

**REP. LARSON** related there were 1,600 licensees in the State of Montana. There were probably 40 or 50 that were stacked. Their interest in **HB 537** was to stop that practice. Stacking was just beginning relative to the overall size of the industry. He referred to **REP. JOHNSON's** beer and wine license bill and those were monied interests. **REP. LARSON** said if the stacking practice was stopped now, grandfather the few, the other licenses would be freed for the rest of the bona fide restaurants without gaming.

**Substitute/Motion:** **SEN. DOROTHY ECK MOVED A SUBSTITUTE MOTION TO AMEND INTO HB 537 AS IT CAME FROM THE SENATE, HB 495.**

**Discussion:** **SEN. ECK** stated **HB 495**, sponsored by **REP. JOHNSON**, allowed a special class of beer and wine licenses to those restaurants which had no gambling licenses.

**Mr. Campbell** stated there may be a problem incorporating the two bills.

**REP. JOHNSON** said since this was a Free Conference Committee the title could be changed, which would happen if the two amendments were taken out.

**REP. JOHNSON** stated he thought this was a good idea. The industry that proposed the bill said they didn't have any problem with the people who fought the bill the most, including **REP. LARSON**. He stated those licenses for people would cost about \$500 and they had them where they wanted and they specifically prohibited gambling on their premises. Those licenses specifically prohibited separate places for people to drink. **REP. JOHNSON** said it was an opportunity for restaurants to have a beer and wine license, so customers who wanted a drink with their dinner could, in fact, have a drink with their dinner.

**SEN. CRISMORE** asked **REP. JOHNSON** what had happened to his bill, **HB 495**, had it been killed in the House or where. **REP. JOHNSON** said it never got out of committee. **SEN. CRISMORE** said that might jeopardize getting **HB 537** passed. **REP. JOHNSON** stated it didn't have anything to do with this bill, except to ride along with it. It did not allow any part of gambling. He said it specifically prohibited gambling in lots of places in the bill.

**SEN. ECK** stated really what they had in Montana only affected the major cities, where there was growth and a demand for good restaurants. Most places outside the city limits, even outside the city limits of Gallatin, liquor licenses were available for small amounts. In the cities, one might have to pay over \$100,000 for a beer and wine license. **SEN. ECK** explained this meant it was no longer economically feasible for a new restaurant to come in and try to serve a dinner crowd that wanted wine or beer with their dinner.

**SEN. HERTEL** questioned **REP. JOHNSON** on the correlation of the two bills together, mixing oranges and apples? He thought there were two separate issues being bunched up into one. **REP. JOHNSON** explained there were a lot of similarities in those bills. Licenses were issued by the Department of Revenue and those licenses would be issued in exactly the same way. It allowed those people to issue licenses for this particular activity, didn't have anything to do with stopping, or starting, or increasing, or decreasing stacking, but it did state stacking had to do with licenses. The reason those people could not continue stacking was because the Revenue Department would not give them a license. This particular bill allowed the Revenue Department to give licenses to a restaurant and serve beer and wine, and didn't take anything away from the beer and wine operators. The correlation was there would be another type of license. This was just like they did for gambling establishments that had liquor and wine. **REP. LARSON's** bill made the point that if the stacking situation goes in, that ought to free up other licenses. **REP. JOHNSON** expressed it still was one of those types of situations where people were just trying to make a living in the food business and had this as an accessory.

**SEN. ECK** stated what they did when they allowed beer and wine licenses was to also allow gambling. That was the action that increased the value of those licenses. Before that, beer and wine licenses were relatively easy to come by and relatively inexpensive. Then people came in and argued the point that their value would be reduced and would undermine the money they had borrowed for their beer and wine licenses on that establishment. They had significantly increased the value of those licenses. She said to look at the restaurants that had no gambling, but had beer and wine licenses; their's were almost all licenses that were purchased before gambling went into effect and they paid only a modest amount for those licenses.

**REP. LARSON** spoke against the substitute motion because that would kill **HB 537**. He said the stacking bill would go down in flames. He stated those people who wanted to serve beer or wine with their food could purchase a license. His point being licenses were available. This bill, if passed, would free up other beer and wine licenses and that was a separate issue from this bill which was intended to stop stacking. He strongly urged the committee to resist the substitute motion.

**REP. JOHNSON** stated this bill would not go down on the floor as long as the committee members supported the bill.

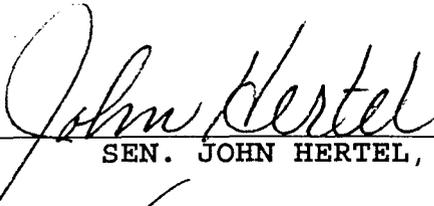
**REP. LARSON** stated the argument that killed **REP. JOHNSON's** bill in the Business Committee was 300 new casinos would be created in Montana, because people with existing beer/wine licenses could sell those licenses, they would be grandfathered, and with a gambling option.

**Vote:** The substitute motion to amend **HB 537 INTO HB 495 FAILED 4-2** on roll call vote (#2).

**Vote:** The motion by **REP. LARSON TO RETAIN HB 537 AS IT LEFT THE SENATE CARRIED 4-2** on roll call vote (#3).

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 8:55 a.m.

  
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SEN. JOHN HERTEL, Chairman

  
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LYNETTE LAVIN, Secretary

JH/11





# MONTANA STATE SENATE

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April 5, 1995

The Honorable John Mercer  
Speaker of the House of Representatives  
State Capitol  
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate, on April 5, 1995 by motion, acceded to the request of the House of Representatives and the President was authorized to appoint a Free Conference Committee to meet with a like committee of the House of Representatives to confer on Senate Amendments to House Bill No. 537.

The President appointed the following members:

Senator John Hertel, Chairman  
Senator Bill Crismore  
Senator Dorothy Eck

Respectfully,

A handwritten signature in cursive script that reads "Rosana Skelton".

ROSANA SKELTON  
Secretary of the Senate



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

April 4, 1995

The Honorable Bob Brown  
President of the Senate  
State Capitol  
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that the House, on April 4, 1995, failed to concur with the Senate amendments to House Bill 537, "PREVENT STACKING OF PREMISES WITH COMMON INTERESTS AND VIDEO GAMING MACHINES", and by motion, the Speaker was authorized to appoint a Free Conference Committee.

The Speaker appointed the following members:

Representative Royal Johnson, Chairman  
Representative Bob Keenan  
Representative Don Larson

The House requests that the Senate appoint a like committee to confer on House Bill 537.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn Miller".

MARILYN MILLER  
Chief Clerk

hfcc



# FREE CONFERENCE COMMITTEE

on House Bill 537  
Report No. 1, April 6, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 537** and considered:

1. Senate Committee on Business and Industry to the third reading copy, dated March 9, 1995; and
2. Senate Committee of the Whole Amendments to the third reading copy, dated March 20, 1995.

We recommend that the amendments for the Standing Committee and the amendments for the Committee of the Whole be adopted.

And this FREE Conference Committee report be adopted.

For the House:

R. Johnson

Chair

Keenan

  
Larson

For the Senate:

Hertel

Chair

Crismore

  
  
Eck

ADOPT

REJECT





