

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 1, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

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

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

Committee Business Summary:

Hearing: SB 224, SB 170, HB 163
Executive Action: None

HEARING ON HB 163

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, Brockway, told the committee HB 163 was a housekeeping bill. Those were statutes under which contracts were let for janitorial services. The purpose was to make changes in the requirements for bid and contract performance security. It would make it easier for businesses to bid on contracts and hopefully instill some competition in the bidding process. HB 163 changed the amount of security required, gave more flexibility to the Department, and gave flexibility to the term of the contract. Pages 1-9 were mostly language clean up, changing "bond" to "security" and listing the type of security that could be used. This was present practice, not new. Section

10, because of the request for the proposal, eliminated the need for the decision to be in writing. The two major amendments were on page 11. Mr. Eicholtz would answer any questions.

Proponents' Testimony:

Marvin Eicholtz, Department of Administration, gave EXHIBIT #1 to summarize the bill.

Bob Pyfer, Montana Credit Unions League, declared HB 163 also clarified the authority for credit union members to use U.S. certificates of deposits as bid security. This was being done now, so it was a good clarification.

Opponents' Testimony:

Jim Nys, Personnel Plus, read his written testimony, EXHIBIT #2.

Michael Hahm, President, Western Telephone and Data, agreed with Mr. Nys' testimony. He explained he had tried to bid on a state contract but when he called to get a bond, he found they required that a company collateralize the bond at the full bid amount. He would have had to put up \$200,000 in collateral for a bid bond of 10% that they would write for \$20,000. In the meantime, he would have \$200,000 in cash and assets tied up in the bond. That wouldn't work for him as a small businessman. The bank wouldn't write a letter of credit after the fiasco with the new banking regulations. Mr. Hahm presented a letter to the Committee he had sent to Robert Person, Montana Legislative Council, dated November 29, 1994, EXHIBIT #3. This bill does not go far enough in helping small businesses.

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. TERRY KLAMPE asked Marvin Eicholtz if he had tried to obtain a performance bond. He answered that he had. However, one can recover only actual damages and actual damages were generally a lot lower than what was required on the performance bond.

SEN. SPRAGUE replied that everyone seemed to think this was a step in the right direction. Have you worked with those gentlemen trying to design HB 163 prior to this meeting? Mr. Eicholtz said he worked with Mr. Nys. The Department of Administration would support an amendment for full discretion on performance bonds. The Department chose to bring it down from 25 to 10 because they thought this would be more acceptable. Mr. Eicholtz stated in 1991 the Department tried but was not successful. This session the Department decided to go half way, but would very much prefer to amend the bill to full discretion.

SEN. SPRAGUE asked what were the circumstances and rationale that made the seven year contract necessary. Mr. Eicholtz said there

were exemptions to the current 3 year limit, i.e., telecommunications, data processing systems, DOR liquor agencies, SRS's Medicaid management information system. A simple example would be the services of a photocopier. If the vendor knows he had to recoup his cost over 1-3 years, the state's up-front cost would be more, but if it was for a longer period the vendor would give a better price.

CHAIRMAN HERTEL asked **Mr. Eicholtz** about the 3rd purpose of the bill on **EXHIBIT #1**. Today can only Montana institutions be used? Does the bill propose using institutions outside Montana. **Mr. Eicholtz** replied any institution could be used. **CHAIRMAN HERTEL** again asked if better rates would be available by going outside Montana. **Mr. Eicholtz** replied it wasn't so much the rates as the convenience of the bidders.

SEN. KLAMPE queried if the bill were to be amended to grant full discretion, would the two cases looked at today require performance bonds? **Mr. Eicholtz** replied that the Nys' case would not and he was not sure in the Hahm's case. The risk would have to be evaluated. **SEN. KLAMPE** asked how the committee could trust the Department to make the discretionary decision if risk was involved. **Mr. Eicholtz** said governments tend to over-regulate and it costs them more for the protection.

SEN. SPRAGUE inquired if the Committee were to go with full disclosure, what would be the obstacles in trying to get the bill passed. **Mr. Eicholtz** replied that the 1991 bill affected construction and subdivision contracts but HB 163 does not. He did not think there would be as much opposition as in 1991.

SEN. HERTEL directed anyone wishing to amend the bill to contact **Bart Campbell**, Legislative Council and he would draw them up.

Closing by Sponsor:

REP. KASTEN stated she would support an amendment giving full discretion to the Department of Administration. Their past history showed they had done well with this. She did not wish to have an impediment for businesses, yet she did not want the state at risk. She would support an amendment for more flexibility but suggested other steps be taken more slowly. **REP. KASTEN** hoped this would open the gate to more people bidding on the jobs.

HEARING ON SB 170

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, commented that the in-state bidder preference had been a thorn for a number of years. It created debate on both sides. He stated it was up to the Committee to act as Solomon and divide this baby. SB 170 eliminated the in-state bidder preference by deleting the

language in the law on page 2 and 3 referring to percentages of bidder preferences. **SEN. KEATING** stated the Department of Administration and the various divisions of government, in soliciting bids for supplies and services, had difficulty administering the bidder preference. It was ineffective and not very helpful. It had cost the state money. In many cases, the acceptance of the bid added to the cost of the services and supplies that were purchased.

SEN. KEATING referred to the 1988 Auditors Report which indicated that bidder preference added several million dollars to the cost of government. He insisted it was worth taking a look at SB 170. During the last two years the Department of Administration calculated they had paid approximately \$86,000 more for products because of preference. **SEN. KEATING** stressed this was only one department. He reminded the Committee that the goal was to cut the budget and being on the subcommittee responsible for that he could attest to the fact they would kill for \$25,000. He stated the Legislative Auditor found that 67% of the cases would have gone to other Montana companies that were excluded from preference because their headquarters were out-of-state. This was an unfair attempt to monitor Montana businesses.

SEN. KEATING added the auditor had also found only 1.8% of the dollar purchases would be affected. This indicated the bidder preference really doesn't have much affect. Thirty states had eliminated their in-state preference and replaced it with a reciprocal rule. This bill had a reciprocal rule. If Montana bidders go to another state to bid a project Montana's in-state bidder preference worked against them. They go in with a 3% handicap. In 1991 construction companies were able to get exemptions from the bidder preference. They have 3 different areas exempted.

SEN. KEATING stated SB 170 also does away with the Montana Made title having preference; it was too difficult to make that judgement. There were products bought out-of-state, brought to Montana, packaged and sold as Montana Made products. The preference was too hard to monitor; the law was not clear enough.

Proponents' Testimony:

Marvin Eicholtz, Department of Administration, stated the preference laws are very confusing and have never been challenged. **Mr. Eicholtz** presented Problems With Preferences, **EXHIBIT #4**. He also presented the Montana Bidding Preference Chart to the Committee, **EXHIBIT #5**. Preferences often conflict with federal law; there had been challenges that it was not constitutional, the NAFTA and GAT agreements were totally against preferences. The reason the Department wished to get rid of them was the preference doesn't do what it was intended to do and the Department does not support the theory additional jobs were created. To do the preferences correctly, one would need to have a regulatory organization. For example, the Montana Made label,

was fine as long as there were no challenges. There could be serious problems if it was ever challenged as there was no way to prove it.

Ed Burghardt, District Manager, Unisource, stated his company was a major paper and plastics distributor in the State of Montana. The bill, as it was written, stated that an in-state bidder was one who was incorporated within the State of Montana. However many businesses incorporated in other states have businesses here and employ many Montanans. He stated his company had been in Montana since the late 1920's, owned 3 properties (in Billings, Great Falls, and Missoula), had 8 delivery trucks licensed and operating in the State of Montana, employed 42 Montanans, and would have an annual payroll this year of \$1.2 million.

Mr. Burghardt stated; however, because they were incorporated in the State of Pennsylvania, they were considered an out-of-state bidder. This inequity not only applied to state level purchases but also school districts. In Libby the school district paid an additional 2.5% on their paper bid of \$17,000 because of the in-state bidder preference. This costs the tax payers money. He expressed his companies definitely were in support of the bill.

Greg Thrall, Branch Manager, Border States Electric Supply, read his written testimony, **EXHIBIT #6**.

Joe Chauvin, Branch Manager, Graybar Electric Co., read his written testimony, **EXHIBIT #7**. He read a letter that he had submitted to Lois Menzies, **EXHIBIT #8**. He also gave the committee a letter written to the legislators from **Robert Patterson, Manager, Crescent Electric Supply Co.**, who was unable to attend the meeting on such short notice, **EXHIBIT #9**.

Dan Walker, Representative of U.S. West Communications, expressed support of SB 170. He stated their business had become more competitive and now operated in 14 states. The headquarters was in Colorado. He stressed Montana erecting a barrier such as in-state bidder preference seemed unreasonable and unwise, especially since other states had in place reciprocal rules which damage our in-state people.

Opponents' Testimony:

Pat Melby, Columbia Paint Company, remarked his company paid all the property taxes, income taxes, had several employees, and used Montana products in their factory. They support keeping the preference, especially the Montana Made preference. In 1987 they diligently helped work on HB 417. His company realized it takes extra time and work to administer those laws. **Mr. Melby** stated the Department of Administration was a major part of HB 417 and he was surprised that the DOA would try to repeal this law and neglect to tell them, considering they had worked so closely with the DOA to get it passed in 1987. He said he had sympathy for some of the corporations that appeared in the hearing which were

located in the State of Montana but had their corporate base elsewhere. He suggested amending the statute to include them in the preference rather than repealing the whole thing. He commented it was surprising that US West, after pulling 600 jobs out of Montana and relocating them elsewhere, would come to the hearing and ask for the law to be repealed so they can receive equal treatment. **Mr. Melby** asserted the appropriate approach would be to work on the bill and amend it to make it easier for the DOA to administer the laws; repealing it was not the way to go.

Leon Stalcup, Montana Restaurant Association, said one of their members, Imperial Foods, was a value added company which provides food products that were for sale only in Montana. They have 34 employees with an average salary of \$12/hour. **Mr. Stalcup** speculated they might relocate if SB 170 were to pass. The universities and school districts also found this policy difficult to administer. However, they understand that in economic development the one thing that should be allowed on a local level, was the elimination of imports, thus helping the local economies. He stated the fiscal note only dealt with the cost side of local government. He added that all of the money which goes into the preference also goes to Montana employees and corporations and is regenerated often 7 to 1.

{Tape: 1; Side: B}

Larry Topp, Missoula, started his own food company 15 years ago. He disagreed with SB 170 because it would be bad for small business and that was what Montana was made of.

Bill George, had 3 wholesale houses. He claimed he needed the 3%; without it, he would be put out of the bid business. **Mr. George** reported he had 75-80 employees, delivery trucks, and 30 years of experience. If they were to lose the 3% he would have to drop 35-40 employees who paid income taxes to the state. Small businesses help the State of Montana.

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. SPRAGUE asked **SEN. KEATING** about the section in the fiscal note which addressed the money saved. Recently there circulated a milk bill to decontrol milk. He asked if this bill affected even the milk industry. Does it affect all businesses? **SEN. KEATING** answered SB 170 would affect all businesses, but to compare it to the milk industry, a price controlled industry, would be difficult.

SEN. EMERSON asked **SEN. KEATING** if a comparison was made in the fiscal note to show what may be lost in taxes when the business goes to out-of-state companies. **SEN. KEATING** answered the contractors previously objected to removing the preference

because out-of-staters could come in, bid, and bring their own equipment. However, their equipment was subject to Montana taxes just like the in-state contractors.

SEN. BENEDICT asked **SEN. KEATING** if companies similar to Carpenter Paper, which employed many in-state people, like mail order, take the money and leave the state. **SEN. KEATING** answered that mail order does not get involved in bidding for state contracts. **SEN. BENEDICT** clarified he was talking about mail order office products catalogs. **SEN. KEATING** replied he has no knowledge in that area and deferred the question to Marvin Eickoltz. **Mr. Eickoltz** stated he did not have much information in that area but to his knowledge the state did not deal much with mail order office supplies or computers.

SEN. BENEDICT asked if the state dealt with people who do not have a presence in the state but come here with a brief case. **Mr. Eickoltz** replied he was sure the state dealt with people whose products and businesses were out-of-state.

SEN. MILLER asked **SEN. KEATING** to elaborate on how many other states have preferences and asked him to elaborate on reciprocal action. **SEN. KEATING** referred to **EXHIBIT #4**, stating Wyoming had reciprocal laws. If one of Montana's companies went to Wyoming and put in a bid, Wyoming would automatically add 3% to the bid making it higher because Montana had preference laws.

SEN. MILLER asked **SEN. KEATING** if he would be in favor of Montana adopting a reciprocal law. **SEN. KEATING** stated that it was already included in SB 170.

SEN. FORRESTER stated he did not see how the reciprocal language would do any good. He did not see how it would help companies like Graybar. Wouldn't they still be subject to 3% under the reciprocal law? **SEN. KEATING** pointed out that if **SEN. FORRESTER** would stop and think about it he might be able to understand. The reciprocal language was included to be like other states so Montana would have the protection until such time as someone challenged it and it was declared unconstitutional. SB 170 puts Montana on the same playing field as other states and it was a matter of protection.

Closing by Sponsor:

SEN. KEATING reminded the Committee he had warned them this would be a problem for Solomon. He sympathized with the opposition. The in-state bidder preference was enacted to protect Montana companies from the fly-by-nights and big corporations. However, it had not always been helpful and it had created much confusion. He stated 76% of the bids that went to Montana corporations would have gone to another Montana corporation anyway. The bidder preference can work against the insider also.

SEN. KEATING reported other committees had tried to come up with criteria for in-state presence but it would be just as confusing to try to define that and enforce it. He stated competition works. Should the government be involved in enforcing preference laws? He claimed it just comes back against the taxpayers in increased costs through the state, county, and school districts. Passage of SB 170 would make the marketplace more competitive, thus ensuring the ability to purchase things at the market value.

HEARING ON SB 224

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, remarked that SB 224 defined relationships between real estate brokers and buyers or sellers in real estate transactions. It culminates a lot of work by many people who realized there was need of some changes and redefining of roles and duties. He added there would be some amendments to this bill.

Proponents' Testimony:

Collin Banks, Montana Association of Realtors, stated that one of the things he liked about being in the real estate business was the opportunity to sell a buyer anything in town due to the multi-list service. He stated he enjoyed being able to get to know the buyers, spend time with them and have a chance to understand what they need and what their limitations were. **Mr. Banks** pointed out the problem with that; however, was the law had the idea that everyone who sold real estate was an agent or sub-agent of the seller. **Mr. Banks** stated this was a fallacy. He asked if he spent months with a buyer, how could he truly represent a seller whom he had never met. He reported there was a move to recognize the fact that there were different relationships that exist between buyers and sellers. SB 224 was a culmination of a number of years of debate and conflicting laws.

Al Littler, Montana Association of Realtors, remarked he would like to try to give a perspective on the changed atmosphere in the real estate industry and expand on the history of how SB 224 came about. **Mr. Littler** read his testimony, **EXHIBIT #10**. He also presented a letter from **Clayton Fiscus, Fiscus Realty, EXHIBIT #11**.

Mr. Littler related in the early days there were arguments between brokers which led to the multiple listing system. In the 1970's the Federal Trade Commission attacked the multiple listing system as an anti-trust situation. Realtors resorted to the premise that multiple listing was not a marketing situation but rather an agency/sub-agency relationship. The Federal Trade Commission continued its attack; however, and realtors began to entrench themselves in the agency/sub-agency system. Finally,

both sellers and buyers began to hire agents, which led to more arguing. Computers now printed data sheets of inventory accessible to any customer, **EXHIBIT #12**. The market had begun to change and so had the realtor's rôles. Sometimes the rôle of the agent was to provide a marketing system; buyers and sellers made decisions in their own best interest. There were other checks and balances involved in underwriting and financing.

In 1980, **Mr. Littler** reported the debate on agency became so heightened that the National Association of Realtors created a Presidential Advisory Committee (a PAG) to study the relationship. The Committee returned with a traditional point of view. The realtor could be an agent for the seller, an agent for the buyer, or a dual agent -- but nothing more. The realtors called for a "time out". In many states legislatures were making laws which allowed brokers to respond to the marketplace and negotiate their business contract for a fee equal to services rendered. The first report was unacceptable, so the President of the National Association of Realtors created a second Presidential Advisory Group. The PAG report, **EXHIBIT #12-A**, reported a realtor could be an agent for the seller, an agent for the buyer, or a dual agent, but the non-agency business relationships existed.

Mr. Littler explained there were nine critical points to this legislation. SB 224 stated realtors advocated the common law of agency and if they had a contract with the seller they owed him certain duties. However, they also owed duties to the buyer regarding disclosure and ethics. In a dual agency situation, one must be loyal to both sides. He stated in his agency, half of the listings were sold by agents in their office. If someone listed a piece of property, but a sister wanted to buy it, the agent would of course be more loyal to his sister. It was a limited dual agency which was disclosed to both sides. He stated he had never seen a buyer or seller refuse this situation. This legislation protected the old way of doing things. There were obligations in this legislation and it clarified the dual agency system. The legislation not only took care of the way realtors were operating in the State of Montana but it provided that the licensees would be able to perform in the new contracts. It made clear that they had duties to the two principles in the transaction, they had disclosure duties, and they must operate ethically. It helped the Board of Realty Regulation in administering rules and regulations concerning licensing because they had the power to revoke a license. Attorneys preferred this bill because it had a clearly written standard for measuring performance.

Zane Sullivan, Legal Counsel for the Montana Association of Realtors, stated that, nationally, there was not a uniform model law but the National Association of Realtors had proposed nine points that the state examined when addressing agency relationships and non-agency relationships. Some states had adopted those nine points into law and some had totally rejected

them. Pre-1950, it appeared there were no case decisions that addressed agency. During 1950-1960, some decisions were seen that said the agent represented the seller; this was traditionally true, but the marketplace in Montana had changed the same way it had changed nationally. People were coming in to buy and wanted a representative. Nothing in the existing statutory scheme addressed buyer representation. The Board of Realty Regulation had put language into the existing material that referred to buyer representation. Until 1991 there was nothing in our law that addressed, pro or con, the ability of the agent to be a dual agent until the Board of Realty Regulation made a change in its' regulation in 1991.

Mr. Sullivan stated there was a need to address how real estate licensees do business and how they relate to the consumer. One of the problems parties faced in transactions was disclosure of material conditions affecting property and disclosure; also, circumstances relating to a buyer's time-frame as well as his capability to buy. Right now there was a regulation that addressed "material condition" but there was no definition of this term.

Mr. Sullivan explained the purpose of the SB 224 was to try to clarify that which had not been addressed or had been too vaguely addressed in state or case law. The purpose of SB 224 was to set aside the old Band-Aids, establish clear parameters of the obligations of the licensee, determine what the buyer could expect, and what the seller could expect. It imposed some duties on real estate licensees. If they violated the duties, they would incur a liability. By the same token, the obligation would be more clear. On page 1, line 19, there was a discussion of adverse material fact. He expounded this came into play in our conditional of property scenario and in the buyer's capability. An adverse material fact deals with two elements; what were the conditions effecting the real property, such as structural, value, or a documented health risk. Those items, if they were known, should be disclosed to a buyer. Also, if something was known about the buyer's ability to pay, i.e., a bankruptcy the previous year, the buyer's agent would have the obligation to disclose that this was not a workable buy\sell agreement.

Mr. Sullivan also defined on Page 4, line 15, Mandated disclosure addressed the deformation of seller agency, subagency for the seller, statutory brokerage, buyer agency and dual agency. Page 7, Sec. 3, line 6, considered what the relationships and obligations were of the licensee to the various parties in each of the settings. "A seller's agent was obligated to the seller to... (list of obligations)". Line 24, Item 4 addressed what the buyer's agent's responsibilities would be. Page 8, line 11, addressed a statutory broker and his obligations. Line 22, addressed dual agent and the obligations. One of the keys to this legislation was the mandated disclosure. The bill addressed what must be contained in a disclosure document provided to the parties and when that disclosure must be made on Page 10, line 7.

At the end of the bill were the mandated disclosure forms. He doesn't believe that, from a liability standpoint, this bill changed what the general public "thinks" was the existing law in Montana, but was a clarification of the law and an attempt to set it out in writing and mandate disclosure.

Russell Hill, Montana Trial Lawyers Association, stated the association was a conditional proponent of the bill; it had some concerns with a few aspects of the bill. He admitted the supporters had been very forthcoming with the MTLA. He stated this was a good faith attempt not to change law but to clarify it. **Mr. Hill** claimed this was a complex attempt and felt realtors may assume some duties and obligations and liabilities under this bill that they didn't have in the common law. They chose to make the trade-off between a vague/flexible common law to something that is clear and mechanistic. The "reasonable standard" was incorporated in this bill.

Mr. Hill pointed out Page 1, line 19, the definition of adverse material fact was slightly different from the treatment of adverse material fact that appeared in the disclosure forms prescribed at the end of the bill. He stated there should be consistency. There were differences in the bill. Sometimes the bill used the term "actual knowledge" and sometimes it used the term "knowledge". He pointed out the legal significance of attempting to clarify current law and put very clear and definite duties on agents. The bill was less aggressive when it described what realtors should know but don't know either through neglect, understandable problems, or errors of omission. He said the general projections for errors of co-mission are very strong, as it was clear there was less flexibility in dealing with specific fact circumstances on errors of omission.

Mr. Hill drew the Committee's attention to Page 14, Section 3, line 17 and explained if one of the agents didn't abide by the technical rules, that agent would be statutorily in violation. He stated Subsection 7 needed an amendment because it claimed there was a relationship between a buyer, seller and their agent that was construed as conclusively establishing the obligations to the extent that the disclosure reflected this law. He rendered that was true, but there were some things in the law that were not in the disclosure. He suggested that after the word "construed" in subsection 7, "in conjunction with this chapter" or "in conjunction with the statute" be inserted.

Mr. Hill further related Section 3, subsection 1, page 7, the statute was intended to replace common law as it applied to those relationships. The result, if the bill passed, would wipe the slate clean on all the court decisions that had to do with common law.

{Tape: 2; Side: A}

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. BENEDICT questioned Mr. Sullivan about bankruptcy. How would the agency find out about a person's prior credit history without doing a disclosure form for the buyer. He wondered if the agent would be in trouble if the agency did not conduct their business with the same due diligence as a bank. Mr. Sullivan replied this was intended to stay within the realm of what the agent actually knew. The agents would not be required to investigate their clients. If the licensee had the information, he would be obligated to disclose it.

SEN. BENEDICT asked Mr. Sullivan how he would address Mr. Hill's inference that this negated all existing case law. Mr. Sullivan stated that Mr. Hill was exactly correct, that it had been done intentionally. There were significant court cases in which the licensee was taken to task in class action suits because the client was not deemed to have informed consent. In Montana the same problem occurred. Realtors had a whole series of Band-Aid case decisions and bits and pieces in the statutes that tried to address certain situations, but there were gaping holes. They didn't know when the agents' responsibility starts or stops. Realtors wished to throw out the baggage and start fresh with a series of good definitions.

SEN. EMERSON told Mr. Sullivan it sounded as if limits and regulations were being set on agents. Would that affect sellers and buyers and would it be cumbersome for those people? Mr. Sullivan replied that SB 224 does set obligations on the sellers and buyers, one of which required a buyer to do some investigation; they should not expect someone else to carry the ball for them. The bill clearly sets out the parameters and stated what can be expected from the licensee. SEN. EMERSON stated it seemed they were getting a lot of government paperwork under the presumption of protecting the buyer and seller. Weren't there less law suits in the past? Mr. Sullivan replied that he guessed there were, but pointed out the complexity of life these days. He said he would like to see the same situations exist as back then, but that would not be realistic.

SEN. MILLER asked Mr. Sullivan what he thought of Mr. Hill's suggested amendments. Mr. Sullivan stated that they have discussed some language items about the type of knowledge. He thought there were a few amendments that were proposed to address Mr. Hill's concerns.

SEN. FORRESTER asked Al Littler if he saw a listed property, with a person's sign in a yard, could he call the selling agent or did he have to find another one. Mr. Littler said this bill would require the realtor to fully disclose to his/her relationship

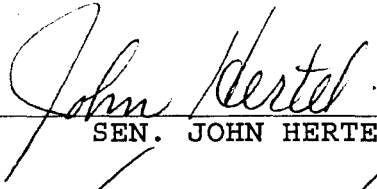
with the seller and required them to act ethically. **SEN FORRESTER** asked if he was to use **Mr. Littler** as his agent, what would **Mr. Littler's** profit margin be, as opposed to being agent to just one. **Mr. Littler** replied the commission is broken between the two firms and then between the two agents, four ways.

Closing by Sponsor:


SEN. CHRISTIAENS closed by declaring he believed this bill clarified issues that concern most buyers and sellers. It handled the what, when and how of disclosure. He gave the committee a fact sheet, **EXHIBIT #13**. He stressed Montana had been discovered and because of that there would be more and more real estate transactions in the coming years.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:25 a.m.



SEN. JOHN HERTEL, Chairman



LYNETTE LAVIN, Secretary

JH/11

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE _____

2-1-75

NAME	PRESENT	ABSENT	EXCUSED
STEVE BENEDICT, VICE CHAIRMAN	✓		
WILLIAM CRISMORE	✓		
CASEY EMERSON	✓		
GARY FORRESTER	✓		
TERRY KLAMPE	✓		
KEN MILLER	✓		
MIKE SPRAGUE	✓		
BILL WILSON	✓		
JOHN HERTEL, CHAIRMAN	✓		
Bart Campbell	✓		
Hunter Jarvis	✓		

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HB 163 INFORMATION SHEET

"AMENDING BID SECURITY AND CONTRACT SECURITY REQUIREMENTS"

Sponsored by Rep. Kasten

At the request of the Department of Administration

♦ **Purpose.** This bill makes three basic changes to Montana's purchasing laws. First, it changes the requirements for bid and contract performance security to make it easier for businesses to bid on state contracts. Second, it permits state contracts to be issued for a period up to seven years. Third, it permits businesses to obtain bid or contract performance security from financial institutions outside of Montana.

♦ **Bid and contract performance security.** Under the current law, the state is excessively protected in the event that a vendor does not honor a bid or a contract. This bill would give the department the option of requiring bid security only when deemed necessary to protect the state and would reduce the amount of contract performance security required from 25% to a minimum of 10%. The result is that vendors would find it easier to bid on state jobs and costs to the state would be lower.

♦ **Extend contract periods.** This part of the bill gives agencies the option of issuing contracts for up to seven years, including any renewals or extensions. Currently, contracts can only be issued for up to three years. As major state purchases become more complex and costly, it becomes more cost-effective to enter into contracts for longer periods. The longer contract period permits the cost of capital investment on the part of the vendor to be spread out, resulting in lower costs to the state.

The current three-year contract limit was set in 1983, but includes exemptions for three state programs to enter into contracts for up to ten years (DOA purchase of telecommunications and data processing systems, DOR's liquor agencies, and SRS's medicaid management information system).

♦ **Change Montana financial institution requirement.** This amendment allows the state to accept financial security instruments used for bid and contract performance security from any properly insured federally or state chartered bank, savings and loan association, or credit union -- not just a bank or savings and loan in Montana. This will assist vendors who conduct their banking in locations other than Montana.

- ♦ **Minor amendments.** This bill includes several minor amendments:
- ♦ Changes the word "bond" to the more correct term "security."
 - ♦ Adds insured credit unions as a source of bid and contract

performance securities.

- ◆ Removes the requirement that the determination by an agency to use the "request for proposal" method of procurement instead of the "competitive sealed bid" method *must be in writing*.

- ◆ Removes the requirement that the determination by an agency to renew a contract *must be in writing*.

- ◆ **Definitions.** "Bid security" is used as a tool to ensure that vendors submitting bids to the state will actually enter into a contract if awarded to them. By statute, the state must require 10% of the bid price for bid security for service contracts over \$10,000. This bill would make requiring bid security an option for the state instead of mandatory. "Contract performance security" is used to ensure that the contract holder will actually perform the contracted service. By statute, the state must require 25% of the total contract price for contract performance security for service contracts over \$10,000. This bill would reduce that amount to a minimum of 10% and clarify how to calculate that amount.

- ◆ **Impact on construction contracts and political subdivisions.** The bid security and contract performance security amendments in this bill will not impact state construction contracts or procurement contracts issued by political subdivisions in any way. See Section 18-2-315, 18-4-124, and 1-4-132, MCA.

- ◆ **Impact on future legislatures.** Permitting the option of extending state contracts up to seven years does not restrain future legislatures because, by statute, every state contract must contain a "non-appropriation" clause. See section 18-4-313, (3), MCA.

For more information on this bill contact: Marvin Eicholtz, Administrator, Procurement and Printing Division, Department of Administration, 444-3053.

**TESTIMONY OF JAMES A. NYS
IN OPPOSITION TO HB 163
February 1, 1995**

My name is Jim Nys, I am the owner of what formerly was a Montana owned and operated temporary employment contracting firm located here in Helena. Over the past six years, I built my firm into a successful business that employs hundreds of Montanans in part based on the fact that as an independent business, my payroll and profit stayed in Montana. My status as an independent business man ended a few weeks ago, as a direct result of the purchasing policies of the state of Montana. I find that even though I asked for HB 163, I cannot support it because it does not go far enough to have any effect on the problems I, and I assume others, have or will confront when dealing with the state purchasing system.

■ The bill requires performance bonds at 10 % of the face value of a contract [Section 11]

Reducing the requirement from 25% to 10% has no effect on availability or cost of the required performance security. No surety company has yet been willing to write a performance bond to guarantee contracts performed by independent temporary service contractors under the conditions set down by the state of Montana.

■ The bill continues requirements which increases the cost of government [Section 11]

The requirement for performance bonds increases costs of doing business with the state because vendors must pass through the cost of the bonds to the jurisdiction which requires the bond. Although I can clearly see the need to protect the public's interest in construction projects or other public works, I do not see where the same justification applies to "people services" such as I provide.

■ The bill unfairly disadvantages certain smaller independent businesses and discourages competition [Section 11]

Small independent businesses form the core of the economy in Montana. The fact that they do not wish or cannot afford to tie up thousands of dollars in a non-productive deposit account or have their assets tied up as bid collateral does NOT automatically mean

they are any less capable of providing quality services to public sector clients. Even if I had a hundred thousand dollars free to tie up as collateral I do not believe it is a prudent management decision to do so.

The bill also continues, inexplicably, to treat service providers differently. According to information provided by the department of administration many other service providers including attorney's architects and consultants are exempt from the rules requiring bid security.

■ The extension of contracts to seven years may not serve the public interest and seems impractical.

In my industry, it is nearly impossible to bid contracts for more than a few months at a time because of the volatile nature of the major components of our cost which include workers' compensation, payroll taxes and increases in the wage required to attract and retain qualified workers. As a result, it seems as though we would rarely wish to extend a contract more than once or twice since the state will not allow for contract adjustments due to legally mandated cost increases. It also seems like the competitive picture might change enough in seven years to make a contract of such length disadvantageous to the state. Finally, contracts of such length discourage new business ventures since more established competitors will have a seven year lock on public sector business.

Given the state operated for years without a performance bond requirement and, as far as I know, never suffered any loss, I wonder if the bill could not be amended to either give the department discretion to waive bonds based on demonstrated past performance or to exempt us from the procurement process entirely. I believe HB 163 is a step in the right direction and, with appropriate amendments, is one I could otherwise support.



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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2-1-95

BILL NO. HB 163

November 29, 1994

Robert Person
Executive Director
Montana Legislative Council
Room 138
State Capitol
Helena, MT 59620-1706

Dear Mr. Person:

Thank you for your time and energy regarding the Request for Proposal for the Legislative Messaging Service. I have enjoyed your company during the proposal process but find that I will be unable to submit a bid for the project after all. My staff has dedicated an incredible amount of energy and creative thought to custom designing an information management system to fit the parameters outlined in the RFP, the project design and analysis proceeded smoothly until we ran into a roadblock. That roadblock was complying with the bonding requirements.

The bid bond and performance bond requirements for this project made it unfeasible for my company to participate. The bonding process was less than advantageous for my company, which left me with the alternatives of bank guarantees and cash commitments that would have left us unable to perform the work that we have already committed to do.

It's regrettable that we cannot go forward with this project, but feel that we would be "stretching ourselves to thin" financially if we were to proceed. Therefore we will not be submitting a bid.

Thank you again for the opportunity to participate in the process.

Sincerely yours,

Mike Hahm
President
Western Tel & Data

PROBLEMS WITH PREFERENCES

Source: Procurement and Printing Division
Department of Administration

*(presented
by Marvin
Eicholtz)*

1. Preferences in general restrict competition. With preferences in place, tax dollars are used to support Montana businesses rather than buying more goods. In the most recent two-year period, this department alone paid approximately \$86,000 more for products due to the preferences. (This figure only includes purchases made through the purchasing and publications and graphics bureaus and does not include purchases made by the university system, the department of transportation, or several other state agencies with delegated authority.)

2. Preferences often have the effect of passing state business from one Montana business to another. The Legislative Auditor found in a study of preferences in 1988 that in 67% of the cases, sales would have been awarded to other Montana vendors if the preference had not been applied. The study also found that the "non-preferred" Montana businesses paid property and income taxes, hired Montana labor and had a place of business located in Montana. To date, 552 of the Montana vendors on the central bidders list are businesses located in Montana which do not qualify for preference because they are incorporated in another state. This number has doubled since the OLA study in 1988.

3. Except in a few costly instances, preferences rarely make a difference. The Legislative Auditor found in their study in 1988, that only 1.8% of the dollar purchases of the state were impacted by the application of preferences. Preferences rarely come into play for reasons such as: the low bid vendor was a Montana business anyway; the preference-eligible vendor was so high that preferences didn't make a difference; or, only vendors eligible for the same preference bid on a contract. For example, only \$60,000 worth of the approximate \$3.2 million spent for state printing in 1994, was awarded as a result of the printing preference.

4. But when it hits, it hits hard. Preferences don't often apply to state purchases for a variety of reasons. When they do however, the price difference the state is required to pay can be dramatic. For example, within the last two years, the state paid \$55,000 more for natural gas, \$4,900 more for electrical supplies, and \$9,800 more for police vehicles due to preferences. An even more striking example is in the purchase of traffic line paint at the Department of Transportation -- DOT paid approximately \$78,000 more in this biennium for this product alone due to the application of preferences. Of even greater interest is that just two companies in the last two years -- the paint company and the natural gas company, realized 74% of the state's total measurable impact due to preferences. (Total measurable impact in this instance means the \$86,000 paid out at DOA and the \$78,000 paid by DOT for this one

product. Highway and road construction is not included.)

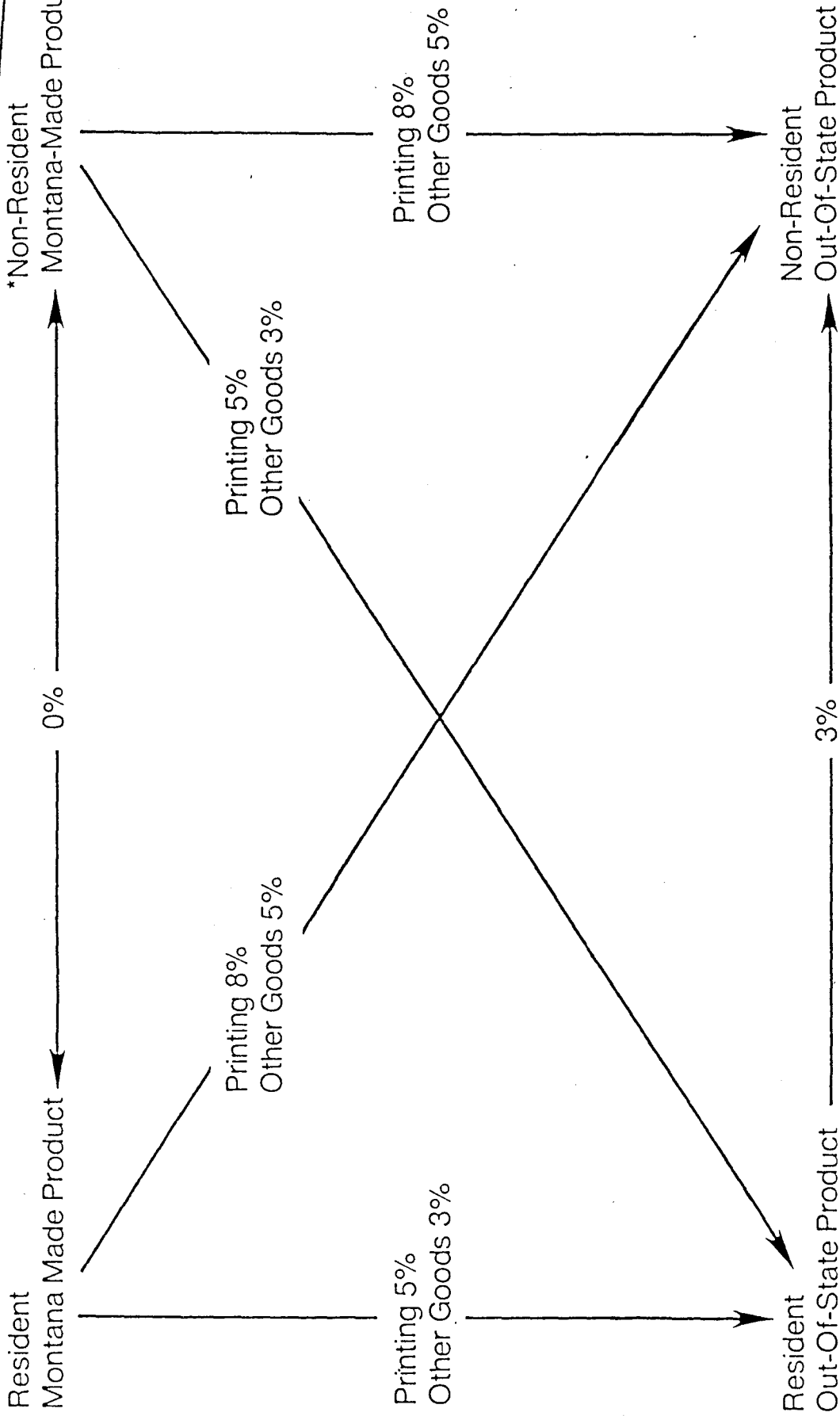
5. Reciprocal preferences hurt Montana businesses. Thirty states have reciprocal laws in place to penalize the 12 states which still have preferences. The implication is that any time a Montana vendor bids on state contracts in 30 other states, they are penalized 3-5%. In 1991, the Montana construction industry was successful in removing a resident preference for construction projects. Many of the construction companies found that they were losing out-of-state contracts due to reciprocal laws.

6. The existing law is nearly impossible to administer due to untenable definitions and confusing requirements. Because of the confusion associated with the law, the Department of Administration relies on a chart to demonstrate to state purchasing staff how to, at least consistently if not accurately, apply the preference laws. In addition, the current definitions of "Montana-made," "political subdivision," "public works" and "resident" each cloud the application of the law.

7. Preferences often conflict with federal law, the U.S. Constitution, the North American Free Trade Agreement (NAFTA) and the General Agreement on tariffs and trade procurement codes (GATT).

Montana Bidding Preference Chart

EXHIBIT NO. 5 JUST
 DATE 2-1-95
 BILL NO. SB 170 (presented by Marvin Sidlitz)



* A non-resident bidder bidding a Montana made product is considered a "resident" for bidding purposes. 18-1-103 MCA.



**BORDER STATES
ELECTRIC SUPPLY**

A Division of Border States Industries, Inc.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2-1-95
BILL NO. SB 170

FEBRUARY 1, 1995

DEAR LEGISLATURE'S AND FELLOW COMMITTEE MEMBERS:

I WANT TO THANK YOU FOR TAKING THE TIME TO LET US TALK TO YOU ON BILL #SB170.

AS YOU KNOW THER IS A 3% PREFERENCE LAW IN THE STATE OF MONTANA. THAT IS ANY MONTANA CORPORATION HAS A 3% PREFERENCE OVER ANY OUT STATE CORPORATION, IN WHICH IS WHY WE ARE HERE TODAY. THE COMPANY I WORK FOR AND A PART OWNER OF IS A NORTH DAKOTA CORPORATION.

BUT IS THIS LAW FAIR TO THE BUSINESS'S THAT HAVE A PRESENCE WITH IN THE STATE. I MEAN THE BUSINESS'S THAT HAVE ESTABLISHED A PLACE NOT A POST OFFICE BOX NUMBER.

IF A BUSINESS LIKE BORDER STATES, GRAYBAR, CRESENT ETC, BID ON A STATE PROJECT WE HAVE A DISADVANTAGE.

LETS SAY WE BID ON A ITEM AND MY BID IS 1.00 EACH AND A MONTANA CORPORATION BIDS 1.02 EACH. THEY WOULD GET THE BID, NOW THIS .02 CENTS IS NOT ALOT OF MONEY, BUT WHAT HAPPENS IF THERE IS 10'000 ITEMS THAT IS TO BE PURCHASED. THAT IS 200.00 OF OUR TAX PAYERS MONEY AND WHICH I AM ONE OF.

WE CURRENTLY HAVE A PLACE OF BUSINESS AT 206 PLAINVIEW IN BILLINGS, HAVE BEEN IN THE STATE OF MONTANA SINCE JANUARY 1ST OF 1986.

WE HAVE THE FOLLOWING FIGURES FOR YOU:

83,000 SQUARE FOOT WAREHOUSE

26 FULLTIME EMPLOYEE'S

2-OVER THE ROAD TRUCKS THAT WE PURCHASED APROX. 17,600.00 IN FUEL.

REAL ESTATE TAXES-24,704.00

STATE INCOME TAX-12,990.00

STATE UNEMPLOYMENT-6,014.00

STATE WORKMENS COMP.-23,729.00

NOW IS THIS FAIR TO MY FELLOW EMPLOYEE'S THAT WE GET DISCRIMINTAED AGAINST ON STATE BIDS OR PROJECTS.

THEY ALSO PAY STATE TAXES, BUY HOMES, CARS SUPPORT THE LOCAL ECONOMY AND COMMUNITY.

SINCERELY;



**BORDER STATES
ELECTRIC SUPPLY**

A Division of Border States Industries, Inc.

October 7, 1994

John C. Bohlinger (R)
2712 Virginia Lane
Billings, MT 59102
652-7257
259-5698

Dear Mr. Nelson:

Hello. My name is Greg Thrall. I am the branch manager for Border States Electric Supply located in Billings, Montana.

I would like to address the 3% preference law that we must deal with on State bids since our Corporation is setup out of state. It is in North Dakota with our corporate offices located in Fargo.

We have 25 full-time employees that live in the Billings area. They purchase homes, cars, food and clothing here. They also pay state taxes. We have three delivery trucks that travel the Highways of Montana, buying fuel at what I consider a very high state tax.

We just spent a little over \$300,000.00 on remodeling our place here in Billings.

It is true that our corporation is out of state but we are not. I believe that the 3% law is unfair to people and businesses that support our local economy. I know when this law was written it was to protect from out of state firms, but I do not think we are an out of state firm. There are other businesses that feel the same way.

Would you please look into this problem and advise how we may deal with this 3% law?

Sincerely,

Greg Thrall
Branch Manager

GT:DB

J. H. CHAUVIN
MANAGER

A. M. BAKER
OPERATING MANAGER

GraybaR
ELECTRIC COMPANY, INC.
1465 MONAD
BILLINGS, MONTANA 59101

TELEPHONE (AREA CODE 406) 252-0171

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 2-1-95
BILL NO. SB 170

February 1, 1995

TO: The State Legislators

FROM: Joe H. Chauvin
GRAYBAR ELECTRIC CO., INC.
1465 Monad Road
Billings, MT 59101
PHONE: 1/406/252-0171

SUBJECT: Bill 170 -- 3% Preference
Room 401

We oppose the 3% Preference Law! We feel this discriminates against us and any businesses with a sizable presence in Montana, because we are incorporated outside of the State.

1. We have a new 1.5 million dollar building which we pay property taxes on.
2. We have 17 employees who pay income taxes, property taxes, gasoline taxes, auto-registration taxes, various user fees, and other taxes not mentioned.
3. We are required to buy 2 business licenses to the State of Montana.
4. We also pay corporate taxes on our sales and earnings.

With all these taxes to the State, we should be allowed to at least bid to the State on an equal level with others.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8

DATE 2-1-75

BILL NO. 170

August 17, 1994

Lois Menzies
Director, Department of Administration
Box 200101
Room 155
Mitchel Building
Helena, MT 59620-0101

Dear Mrs. Menzies:

Just recently, we lost a bid for the State (Montana State University) on light fixtures and poles for approximately \$500,000. The State actually paid 2% more for these items than they would have if they purchased them from us.

We have a new building built last year over 1.5 million dollars. We have 17 people from Montana, living and paying taxes here. We have 3 outside salesmen covering the whole state of Montana, paying the bed tax and the high gasoline tax, and yet this State adds 3% to our bids because we are incorporated outside the State of Montana.

The law was written to protect road contractors from out-of-state bidders who also had a 3% preference against them. It was also meant to protect businesses from out-of-state bidders who had no presence in Montana.

In your quest to save money for the State, provide fairness to companies who locate here and their employees who raise their families here, I hope you can get this antiquated law off the books. We have many counter parts in all business categories who are also affected.

Many of them will not bid on State jobs, because it's a waste of time after the 3% has been added.

Thank you in advance for your help in this matter.

Sincerely

Joe H. Charvin
Branch Manager



205 MOORE LANE
BILLINGS, MONTANA 59101
PHONE 406 252-0216
FAX 406 252-1729
MAIL: PO BOX 20998
BILLINGS, MT 59104-0998

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 2-1-95
BILL NO. SB 170

Dear Legislator,

The purpose of this letter is to voice my opposition to the "In State Bidder Preference" provision in the State Purchasing Code. It is my understanding that the 3% preference was originally instituted to protect resident highway contractors from large, out of state concerns. In addition it was also designed to discourage out of state competition from material suppliers who engaged in a "we have nothing to lose" attitude with respect to the bidding process. The reasoning was sound, however, the ramifications are much broader.

Crescent Electric Supply Co. operates six branches in Montana. These are located in Billings, Bozeman, Great Falls, Helena, Missoula, and Kalispell. In each location we own the commercial property on which we pay substantial property tax. We employ over forty people who pay state income tax, gasoline tax, automobile tax, etc. These are all Montana residents who spend their income to maintain residence within the state. They are also Montanans who are being adversely affected by this archaic law. Our sales are in the millions of dollars yearly. Many of our products are purchased through in-state agents who are also adversely affected by this statute.

We have declined to bid certain state projects knowing that we are at a 3% disadvantage from the start. Consequently the state usually winds up paying more for material than they would have to if proper bidding procedures were in place. It would appear to me that we are not only being penalized by losing the sale, but also having to pay higher taxes because the state is not buying at competitive levels. I can assure you that the 2% or 3% that the State of Montana is paying by excluding competitive bids is substantial.

It is my sincere desire that this law be stricken from the books. If that should fail, I would hope that it could be rewritten so as not to exclude companies with the economic presence we represent. Thank you for your consideration.

Robert J. Patterson
Robert J. Patterson
Manager
Crescent Electric Supply

Growing Together Through Customer Satisfaction

Floberg REALTORS®

923 Broadwater Square
Billings, MT 59101
Bus. (406) 245-6161
Fax (406) 248-7653

January 27, 1995

Senator John Hertel
Montana Senate
Capital Station
Helena, MT 59620

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 2-1-95
BILL NO. SB 224

Dear Senator Hertel,

I plan to testify in support of Senator Christiaens' Senate Bill 224 on Wednesday morning. As you know, this bill clearly lists the duties a real estate licensee owes sellers and buyers under the various business relationships.

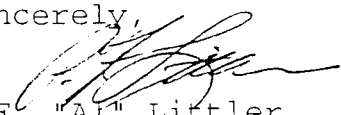
In an open and competitive marketplace sellers and buyers don't have to use the services of brokers. However, should any member of the public choose to use the services of a broker, he or she deserves to know the duties that they can expect from a real estate licensee in the State of Montana.

This "model" Legislation has a long history of development. It takes into consideration all the pros and cons about the common law of agency. It recognizes business relationships that go on daily, but are not covered by the regular agency law. This legislation (1) benefits the selling and buying public, (2) gives licenses specific duties to perform in their business relationships, (3) gives the Board of Realty Regulation and the courts a clear list of duties from which to judge licensee performance in disputed business relationships and/or contracts.

For years I've testified before various committees on technical issues concerning the practice of real estate brokerage and the rights of people to buy and sell real estate and to develop that property to its highest and best use. Senator Al Bishop has made it clear to me that I should do only two things: (1) make my points clear and short (2) answer the questions that are on the minds of the legislators. I've made my points in this letter. Lord willing, I'll see you Wednesday to answer questions, if any.

Thank you for giving this important bill your careful consideration.

Sincerely,


A.F. "Al" Littler
Broker / Owner
General Manager

cc: Senator Chris Christiaens

Fiscus Realty

1111 MAIN STREET
P.O. BOX 50328
BILLINGS, MONTANA 59105
(406) 252-6400

January 31, 1995

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2-1-95
BILL NO. SB 224
(presented by
al Jitter)

Dear Senator

Please **SUPPORT SB 224**. Proposed agency legislation to be heard in Senate Business and Industry February 1, 1995 Room 410.

Why?

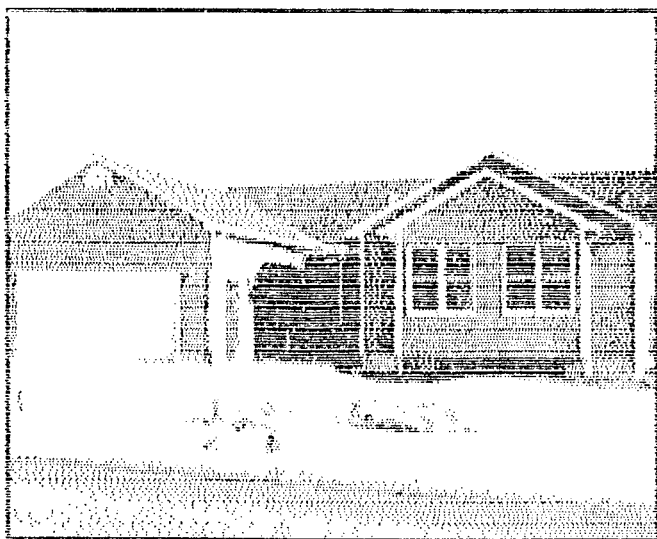
1. This legislation will allow buyers and sellers to understand the relationship with their Real Estate agent by clarify the duties and responsibilities the agent is required to perform.
2. This legislation is market driven and will be compatable with what buyers and sellers are demanding in their Real Estate business deals today.
3. Buyers and sellers are demanding specific relationships with agents which current laws do not provide.
4. This legislation spells out the duties and responsibilities of a Real Estate agent that will protect buyers and sellers even though they do not contract for a special agency relationship.
5. Current law is a mass of amendments and is very antiquated toward the way business is done today.

This legislation is supported by the National Association of Realtors and has been implemented in many states.

Thanks you for your time.

Sincerely,

Clayton Fiscus
Fiscus Realty
Broker/Owner



PROVIDED BY AF "AL" LITTLER
 245-6161 OFFICE
 652-4848 HOME
 698-3328 MOBILE

SENATE BUSINESS & INDUSTRY
 EXHIBIT NO. 12
 DATE 2-1-95
 BILL NO. SB 224

Billings Assoc. of Realtors RESIDENTIAL 01/11/95 10:23 AM
 ML# 43566 Status ACT Type SINGLE L/Office METRO1 L/Price \$ 109900
 Address 1739/ /ST ANDREWS DRIVE City BILLINGS Orig LP \$ 109900
 Subdiv LAKE HILLS SUB Unit# 1 Cnty YELLOWS Zone R-96 Area# 1
 Legal LOT 5, BLOCK 27 Lot SqFt 13300 Acres .00

----- PUBLIC SCHOOLS -----
 Elementary BENCH Jr High CASTLE Sr High SKYVIEW

----- GENERAL INFORMATION -----
 Style RANCH Year Built 1994/NEW #Bedrooms 3.0
 SqFt/#SqFt 1297/ 84.73 Garage/Desc 2/ATTACHED #Bathrooms 2.0
 SqFt Up/Main 0/ 1297 Roof/Lot SHINGLE/VIEW #Levels 2
 SqFt Lw/Bsmt 0/ 1297 Basement FULL /NONE
 Siding OTHER /FRAME Color BLUE

Rem: NICE OPEN FLOOR PLAN W/VAULTED CEILINGS & VIEW, WE WILL ADD CLOSET TO
 DEN UPON REQUEST, CENTRAL AIR, LOW MAINT. EXTERIOR W/COLOR LOK SIDING,
 METAL FACIA/SOFFIT, MAIN FLOOR UTILITIES, DOUBLE SINKS IN MASTER BATH
 CD LISTER ERNIE BUTTON, TAXES NOT SPREAD.

----- ROOM DESCRIPTIONS -----
 Living Room M/VAULTED Mstr Bedroom M/BATH #Full Baths 0 2 0 0
 Kitchen M/EATIN 2nd Bedroom M/NA #Half Baths 0 0 0 0
 Dining Room M/EATAREA 3rd Bedroom M/NA #Showers 0 2 0 0
 Family Room N/NA 4th Bedroom N/NA #Bedrooms 0 3 0 0
 Utility Room M/NA Other Room N/NA #Fireplaces 0 0 0 0

----- ADDITIONAL FEATURES -----
 Oven/Range Y/FREE Micro N Pool N/NONE Tot# Fireplaces 0
 Refrg N Disp N Comp N Ext Feat NONE /NONE Alley N
 Dishw Y UgSp N Well N Misc Feat NONE /NONE Fenced N
 Other Appl NONE /NONE Restr/Disc1 SEEDEED/ONFILE Cable Y
 Int Feat NONE /NONE HOA Incl NONE /NONE HOA Fee/Month \$ 0

----- UTILITIES AND ENERGY INFORMATION -----
 Heating GFA Water PUBLIC Gas Water Electric
 Cooling CENTRAL Sewer PUBLIC \$ 0 \$ 0 \$ 0

----- FINANCIAL INFORMATION -----
 Possession CLOSING Taxes \$ 0 Points N Annual SID \$ 0
 TaxID UNKNOWN SID Payoff \$ 0
 Financing C/\$/F/V/ / / / / /
 ** (c) MLS INFORMATION DEEMED RELIABLE BUT NOT GUARANTEED ** Completed Y



MONTANA ASSOCIATION
OF REALTORS®

The Voice for Real Estate™ in Montana

EXECUTIVE OFFICES
208 North Montana, Suite 105
Helena, MT 59601

Telephone 406 443-4032
In Montana 800-477-1864
Fax 406 443-4220

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 12A

DATE 2-1-95

BILL NO. SB 224


(cover letter)

February 2, 1994

Dear Chairman Harte,

Pursuant to my promise made at
the hearing on SB 224 last Tuesday,
enclosed is a copy of the "P.A.B." report
which was referred to at the hearing.

Please include this report in the
committee's record (hearing) for the
bill.

Thank you,


SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 12-A

DATE 2-1-95

BILL NO. SB 224

*(presented by John Shontz
at the request of Al Littler)*

Report of the Presidential Advisory Group on the Facilitator/Non-Agency Concept

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

(unbound report)

October 1993

NATIONAL ASSOCIATION OF REALTORS®

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GOVERNMENT AFFAIRS UPDATE

Montana Association of REALTORS®
208 N. Montana, Ste. 105/Helena, MT 59601

In Montana 800-477-1864 or 406-443-4032/FAX # 406-443-4220

SENATE BUSINESS & INDUSTRY:
EXHIBIT NO. 13
DATE 2-1-95
BILL NO. SB 224
presented by Sen. Chris Christiaens (bill sponsor)

The Government Affairs Update is published bi-weekly during the legislative session and summarizes some of the bills which are most important to REALTORS® and property owners. The Update will be mailed to MAR directors, Legislative, Political Affairs, RPAC, Issues Mobilization and Property Manager committee members, local board contact coordinators, board presidents and Executive Officers. During the session, the MAR lobbyists will monitor approximately 250 bills. Not all of them are in the Update. If you have questions on specific bills

please call the numbers listed below.

INFORMATION

Copies of bills can be downloaded from the state bulletin board system or obtained from your county Clerk & Recorder's office. For more information call 1-800-962-1729.

Hearing Schedule: Read your daily paper.

Tracking status: Call Anne at 1-800-477-1864.

To contact a legislator: 1-406-444-4800

1-900-225-1400

To FAX a legislator: 1-900-225-1600

Report # 1 of the 54th Legislature

January 17, 1995

After a slow start, the Legislature is beginning to move forward with normal speed. As of today, about 1,500 bills have been requested. An additional 150 bills will probably be introduced through the remainder of the session.

Your Association is tracking about 225 bill draft requests (requests by Legislators for bills to be drafted). To date, about 35 of those bills have been introduced. Your Association is tracking each of these requests and bills daily.

Bills affecting subdivisions, zoning, water and sewer are currently being drafted. None have yet been introduced; your association is working to assure that the bills meet REALTOR® needs BEFORE they are introduced.

One bill and a bill draft that have surfaced to date are:

SB 12 - This bill was introduced by Senator John Harp at the request of the Board of Realty Regulation. The bill would allow the Board to fine licensees up to \$5,000 per license violation in addition to suspension or revocation of a license. The bill was heard last week by the Senate Business and Industry Committee. The Committee tabled the bill until it can review a omnibus licensing bill suggested by the Dept. of Commerce. The omnibus bill will standardize certain administrative procedures for all boards in Montana. Your Association made comments on the bill at the hearing regarding the size and application of any potential fine.

LIMITED AGENCY BILL - Senator Chris Christiaens from Great Falls will introduce a bill next week that will substantially reduce REALTORS® exposure to litigation. A "talking points" paper is printed on the reverse side of this report. A big thanks to Al Littler for preparing the "talking points." If you would like more information on the bill, please call Anne Alberts, Legislative Intern, at the MAR office and request the Limited Agency Bill Summary. The summary will be sent to you via mail. In addition, the bill will be available on the state's legislative bulletin board within a week. Zane Sullivan and John Tabaracci, MAR Legal Counsel, deserve a big thanks for their dedication in making sure this bill will protect REALTORS® and Montana consumers.

Talking Points

Business Relationships in Real Estate Transactions

The current law governing real estate licensee relationships with buyers and sellers of property is antiquated. Furthermore, the current law is the result of a scattering of many small amendments to the status over a period of many years. For example, Montana law does not clearly allow a licensee to represent a buyer in a real estate transaction; the licensee working with the buyer technically represents the seller unless a licensee/buyer written agreement is actually signed.

The real estate industry proposes legislation that will:

- (1) Modernize the law to meet many of the current practices.
- (2) Clarify for consumers what a licensee can and cannot do on behalf of a buyer or seller.
- (3) Require that a licensee fully disclose to each consumer the kinds of representation that can be offered to a consumer and fully disclose to the consumer what each representation entails.
- (4) Places obligations on a licensee even if the consumer chooses not to sign a written agreement.

The legislation clarifies in the law the types of business relationship that consumers generally ask of licensee. **IMPORTANTLY**, the bill will require that the licensee fully disclose to the consumer the possible relationships to the extent that the consumer understands the relationships and makes an enlightened choice.

- (1) The classic licensee/seller agreement is, of course, where the licensee works for the seller. The licensee will have to disclose the relationship to prospective buyers.
- (2) Many buyers want licensees to represent them in a transaction. The bill clearly established the perimeters in which licensee can represent a buyer in a transaction. The licensee will have to disclose the relationship to prospective sellers.
- (3) At times a real estate office will contract to sell a property and represent the buyer (rather than one office listing the property on behalf of the seller and a second office showing the property to buyers). The bill will permit the office to appoint a licensee to represent the interests of the buyer and a licensee to represent the interests of the seller, thus assuring that both buyers and sellers have a professional assist them with their concerns in the transaction. This dual business relationship must be disclosed and agreed to by the buyer or seller.
- (4) The bill assures that an unsuspecting consumer/seller is not liable for false statements made by a licensee and visa-versa.
- (5) Many consumers do not want a formal or written business relationship with a licensee. The bill allows for such a relationship and clearly holds the licensee responsible to treat all parties to the transaction in an honest manner.

DATE February 1, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB 163 Rep. Kasten
SB 170 Senator Keating SB 224 Senator Christiansen

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Check One

Name	Representing	Bill No.	Support	Oppose
GREG THRALL	Border States Elec.	SB 170	X	
JOE CITAVIN	GRAYBAR ELECTRIC CO	SB 170	X	
LEON STALEY	MT Rest. Assoc	SB 170		X
ED BURGARDT	Unisource	SB 170	X	
MARVIN EICHOLTZ	DOA	SB 163 SB 170	X X	
Jim NYS	Personnel Plus	SB 163		X
MIKE HAM	WESTERN TEL + Data	SB 113		X
Pat Melby	Columbia Paint Co.	SB 170	X	✓
J. Shostz	MT Assoc Realtors	SB 224	X	
A.F. Little	The Professional Ebers Realtors	224	X	
COLLIN BANGS	MT ASSOC. REALTORS	224	X	
ZANE SULLIVAN	MT. ASSOC. of Realtors	SB 224	X	
Bob Pyfer	MT Credit Union League	HB 163	X	
DAN WALKER	US WEST	SB 170	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 1, 1995
 SENATE COMMITTEE ON Business & Industry
 BILLS BEING HEARD TODAY: HB 163,
SB 170 SB 224

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Russell B Hill	MTLA	SB 224	?	
J. Shontz	MT Assoc REALTORS	224	X	
Mr. Al Littler	" " "	"	X	
Mr. Zane Sullivan	" " "	"	✓	
Mr. Collin Banks	" " "	"	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY