

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 2, 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: HB 360, HB 326, HB 502
Executive Action: SB 313 DO PASS
HB 147 BE CONCURRED IN
HB 336 BE CONCURRED IN
HB 556 BE CONCURRED IN AS AMENDED
HB 360 BE CONCURRED IN AS AMENDED
HB 326 BE CONCURRED IN AS AMENDED
HB 502 BE CONCURRED IN

HEARING ON HOUSE BILL 360

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, Butte, distributed copies of amendments as per EXHIBIT #1 and said HB 360 provided for an exception to the original cost rule when a public purchase was in the best interest of the public. He referred to Line 17, saying public

interest was to be ensured. He said if a public utility bought property from another utility, the original cost plus appreciation, and not the acquisition price, was what could be rate-based. **REP. QUILICI** said he was addressing the issue because it could be in the public interest and could benefit the rate-payer to acquire the property at market value and not have to build other facilities. He said **HB 360** could benefit Montana consumers by helping utilities acquire property. He asked that **HB 360** BE CONCURRED IN.

Proponents' Testimony:

Nancy McCaffree, Public Service Commission, read her written testimony, **EXHIBIT #1A**.

Margie Thomas, Montana Power Company (MPC), expressed support for **HB 360**, and gave the following example of how the exception to the original cost rule affected MPC. She said about a year ago facilities in central Montana became available for sale; however, because of the original cost rule, MPC felt it was appropriate to bid the original cost price. She reported consequently, the bid was not accepted. If MPC had been able to bid higher, the acquisition of the property would have benefited its rate-payers. **Ms. Thomas** said a power plant would not acquire property through full-market prices unless it would be able to earn a return on the entire purchase price. She said **HB 360** would let the Commission consider whether the entire purchase price should be allowed in certain situations.

John Alke, Montana Dakota Utilities (MDU), said in the mid-80's, MDU needed more power to meet its customers' needs and was fortunate that one of its partners in two generating stations was willing to sell some of its share to MDU. He stated the share was sold at a price above the original cost appreciated, but significantly less than new construction would have cost.

Mr. Alke reported in three rate cases which occurred in Montana, North and South Dakota, litigation revealed that MDU needed the power, acted prudently in acquiring the shares and made wise business decisions. He said both North Dakota and South Dakota allowed the full cost of acquiring the shares in the rate-setting, while in Montana it was not. **Mr. Alke** said the Commission felt the original cost statute precluded the full purchase price of the shares; therefore, MDU was penalized for doing the correct thing. He said both the Commission and he felt **HB 360** was a good statute, but emphasized it only gave the discretion to mandate it. **Mr. Alke** asked the committee's support of both **HB 360** and the amendments.

REP. NORM MILLS, HD 19, Billings, said he was representing himself as a consulting communications and electrical engineer. He said he had been involved in rate cases both inside and outside the United States, and most cases involved the cost development of acquisition of plants from other companies. He

stated there were many ways to evaluate plants, and one was called replacement cost new, less observed depreciation, i.e. another way to establish value of property at the time of transfer from one utility to another. He said it was a more fair way to determine plant value than original cost less depreciation, because original cost did not consider inflationary factors. **REP. MILLS** said **HB 360** was a good bill because it was advantageous to every Montana rate-payer.

Dan Walker, US West, expressed support for **HB 360**.

Tom Hopgood, Citizens Telecommunications Company, expressed support for **HB 360** for reasons already stated.

Joan Mandeville, Montana Telephone Association, said Montana cooperatives were not regulated; therefore, they did not come under this statute; however, small regulated Montana companies did. She said her association supported **HB 360**, especially the amendments, and explained **HB 360** as written today, including some of the acquisition costs, could read "a portion of the purchase price". She maintained the intent of acquisition cost was the amount above the depreciated original cost which would be included in the rate-base. **Ms. Mandeville** explained **HB 360** would give the Commission the discretion it needed and continued the safeguards which were already in place. She urged favorable consideration for **HB 360**.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **Margie Thomas** if she prepared any amendments and she said she did. **SEN. BENEDICT** referred to Amendment #5 and suggested "previously dedicated to public use" be inserted in order to conform to the title. **Ms. Thomas** said the above phrase would not need to be included, but **SEN. BENEDICT** contended the title of a bill was required to conform to the body of the bill. He suggested **Ms. Thomas** meet with **Bart Campbell**.

SEN. TERRY KLAMPE referred to Amendment #2 and asked if "in its discretion" was superfluous. **Mr. Campbell** stated it could be eliminated.

SEN. CASEY EMERSON commented the Public Service Commission should have enough sense and judgment to consider the concerns; therefore **HB 360** could be eliminated. **Dan Elliott** said 69-3-109 was heavily relied on by the Public Service Commission to set rates, explaining the Legislature passed the cost statute in the 1970's because the book value of property, or original acquisition price, proved to be easier to understand.

SEN. EMERSON asked what would happen if **HB 360** was eliminated. **Dan Elliott** said it might be in the public interest for utility companies to pay a higher-than-original cost when buying property

from each other. He said HB 360 alleviated the potential contention which could arise from that.

Closing by Sponsor:

REP. QUILICI said there were times when the legislature was required to pass specific legislation so regulators would know what the intent of the legislation was, which was a reason for HB 360. He agreed with SEN. KLAMPE that "may" in Amendment #2 would probably be sufficient. He said HB 360 was good for utilities because if they were furnishing the money to buy a certain property, they should be able to rate-base it upon the Commission's recommendation it was in their best interest. He said if they couldn't buy the property, they would build new facilities which would cost everyone much more.

HEARING ON HOUSE BILL 326

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD 64, Missoula, said the idea for HB 326 came to her when a constituent who was a licensed electrician was frustrated because his work was increasingly being done by unlicensed workers, which created a threat to Montana consumers. She said he was asking for the right to monitor his own profession; therefore HB 326, which had already been amended several times. She distributed and explained copies of amendments as per EXHIBIT #2, and segments from Montana Code as per EXHIBIT #3.

Proponents' Testimony:

Ron Van Diest, Montana State Coalition of Electrical Workers, expressed support for HB 326 for several reasons. (1) The State Electrical Licensing Board looked at the bill as cost-neutral to Montana, and the bill would help circumvent some of the loss which could come from the trend of moving from state to municipal control in the area of state license inspection. He said the licensing cycle for electricians and plumbers was three years, which would necessitate only one inspection of any given electrician in three years. (2) The bill had a good bipartisan sponsorship and had basic self-regulation. Most professions were required by Montana law to display a business license or permit and state statutes required licensed electricians to carry the license with them at all times; therefore, no time was lost in trying to find the license when the inspector asked to see it. (3) The bill would fit into the Uniform Operations Bill.

REP. NORM MILLS, HD 19, Billings, Registered Electrical & Mechanical Engineer, said he had experienced working through state agencies to hire employees with good-sounding credentials, only to discover the employees had no experience or training.

REP. MILLS said inspectors had both the right and responsibility to check the licenses of those doing the actual craft labor, which was protection for both the consuming public and employer paying the bill.

Jerry Driscoll, Montana Building Construction Trades Council, said **HB 326** would allow the checking of licenses by other licensed employees, which would save money for Montana and would allow someone to know if the work was being performed by unlicensed employees. He said **HB 326** was a good bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. EMERSON asked if the changing of a light bulb was a job site. **REP. COCCHIARELLA** said it was not; therefore, the person would not need to be a licensed electrician.

SEN. MIKE SPRAGUE asked what would happen if a foreman asked a worker to move electrical conduit a short distance. **Jerry Driscoll** said licensed electricians dealt only with electricity. **SEN. SPRAGUE** asked if the requirement was certification or license. **Mr. Driscoll** said it was a license, which was issued after work experience and passing a test. **SEN. SPRAGUE** asked if it really was a journeyman. **Mr. Driscoll** said it was.

SEN. BILL WILSON referred to **EXHIBIT #3, 37-68-301, Subsection 1, Line 5,** and asked about "permit", wondering about its definition and if it should be included in **HB 326**. **Jerry Driscoll** said if a person was licensed in another state, but had not yet received a Montana license, that person would get a permit reciprocity with other states. **Mr. Driscoll** said it would not be necessary to include "permit" in **HB 326**.

SEN. EMERSON asked if it would be acceptable, under **HB 326**, for an unlicensed plumber to do the job in a private home. **Jerry Driscoll** said if the house was not being built by the owner, but was being built for resale, certain areas in the house would need a licensed plumber. **SEN. EMERSON** wondered if there would be a problem for the home owner with a licensed electrician checking an unlicensed plumber. **Mr. Driscoll** said electricians could only check electricians and plumbers could only check plumbers, etc.

Closing by Sponsor:

REP. COCCHIARELLA said the man who requested she carry **HB 326** said he was having trouble paying his Workers' Compensation premium because he was seeing unlicensed people doing his licensed professional work; also, he was being undercut by those who were not paying Workers' Compensation, or other requirements of the law, while he was in compliance. She reminded the committee **HB 326** was not asking for more state FTE's; rather, it allowed people in the business the authority and backing to

monitor what went on in their work. **REP. COCCHIARELLA** encouraged the passing of **HB 326**.

HEARING ON HOUSE BILL 502

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD 64, Missoula, said **HB 502** was brought to her by Montana realtors, who realized the playing field would be even if radon notification was required to be provided to potential buyers. She contended **HB 502** made the timing better for the realtors when selling homes.

Proponents' Testimony:

Steve Mandeville, Montana Association of Realtors, said **HB 502** narrowed the application to inhabitable buildings, both residences and businesses, and said buyers could not back out of the transaction because of radon disclosure. He urged passage of the bill, stating it was helpful to both the public and the realtors.

Adrian Howe, Montana Department of Health and Environmental Sciences, said the Health Department supported **HB 502** on behalf of the realtors as well as public health activities.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. KLAMPE said he had recently read radon did not pose a health threat and wondered why it was still a worry. **Adrian Howe** said the newspapers picked only bits and pieces from the study, the sampling was only 580 persons and was based on typical radon concentrations in homes which was much less than the EPA action amount.

SEN. EMERSON asked **Mr. Howe** why he believed the EPA rather than the newspaper. **Mr. Howe** said radon was a human carcinogen, the study of which was based on minor studies extrapolated and not on laboratory animal studies and extrapolated to humans. He referred to a study done in Sweden which supported the minor data which had been accumulated.

SEN. EMERSON asked if it would be preferable to remove the entire bill, rather than make the minor changes. **Steve Mandeville** said he would not want to see **HB 502** eliminated because the realtors believed in full disclosure, i.e. the public should know the hazards involved in buying property.

Closing by Sponsor:

REP. COCCHIARELLA said HB 502 was not asking for mandatory testing by realtors, but was providing them with a usable tool in the sale of homes. She said this became a problem when out-of-staters who knew about radon and mandatory testing laws moved into Montana and bought homes. REP. COCCHIARELLA said HB 502 elevated the reputations of the realtors and was supported by them because they wanted to be sure all were on the same playing field regarding the demands for radon tests in all parts of Montana. She said radon was the greatest environmental health risk to Montanans and she urged passage of HB 502.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON SENATE BILL 313

Additional Information: SEN. KEN MESAROS distributed copies of EXHIBIT #4 and discussed parts of it with the committee. He said Maine had passed the legislation and there had been no adverse effects on their Medicaid program. SEN. MESAROS said the information in EXHIBIT #4 supported the fact the Medicaid program had not experienced a negative impact, nor had the mail order pharmacy program been jeopardized; yet, Montana consumers could realize savings in pharmaceuticals. He said not all pharmacies would meet the criteria, but if they met the same criteria as the mail order pharmacies, they had access to the same discounts.

Questions From Committee:

SEN. TERRY KLAMPE asked if volume purchase would be done through cooperative buying. SEN. MESAROS said mail order pharmacies had certain criteria to get the discounts, i.e. volume, prompt payment, etc. He said if a group of pharmacies could pool and meet the same criteria, they would have the same option.

SEN. BILL WILSON asked Jerome Anderson his thoughts on SB 313. Mr. Anderson said if SB 313 passed, pharmaceutical discounts would have to be given to others besides pharmaceutical businesses. Mr. Anderson said the effect would be the loss of the discount from 15.2%, which was mandated by the Federal Government, to the 20.8% price level. He stated the passing of SB 313 would result in a 14% increase of pharmaceutical prices for HMO's and mail order, which would affect 50-100 thousand Montanans. Mr. Anderson said SB 313 was not in the best interests of cutting costs.

SEN. STEVE BENEDICT asked if the best price rebates were being phased out. Mr. Anderson said it was a Medicaid area, and further commented he had a letter which stated SB 313 would penalize the company who did not offer the same rebate across the board to everyone who was offered Medicaid or HMO, which in turn

would prevent the state or any political subdivision from purchasing from the company.

SEN. KLAMPE asked if the 700,000 Montanans not in HMO would be affected if **SB 313** didn't pass. **Jim Smith, Montana Pharmaceutical Association**, said they would; however, there was no sure way to know how the manufacturers would respond -- they could raise prices to their HMO and mail order customers. **Mr. Smith** said prices over the counter should decrease for those who were not part of the HMO or mail orders.

SEN. BENEDICT asked **Mr. Anderson** about "best price" who referred to **EXHIBIT #4**, page 800, Social Security Act, and discussed the highlighted areas.

SEN. EMERSON commented if one believed in the free enterprise system, one would believe **SB 313** was a good bill.

Motion: **SEN. TERRY KLAMPE MOVED DO PASS FOR SB 313.**

Discussion: **SEN. FORRESTER** said he had checked with Maine and with Bergum Drug to compare prices for a month's supply of Tagamet and Prozac. He said Maine, about a year after passage of the bill, was about \$6 cheaper for Tagamet and Prozac was within \$1-\$2. **SEN. FORRESTER** said he offered an amendment because the Maine consumer wasn't benefiting from the passage of the bill, explaining his amendment would have mandated offering the discount to the consumer.

SEN. KLAMPE asked for comment regarding the fiscal note. **SEN. MESAROS** said another fiscal note was being prepared, but had not yet been presented because it was waiting for executive action.

SEN. FORRESTER commented if **SB 313** came onto the Floor with the present fiscal note, there would be trouble with the Contingent Voidness clause. **SEN. MESAROS** said a new fiscal note would be generated; the fiscal note from SRS indicated zero or \$3 million, if the whole 6% were lost.

SEN. FORRESTER asked if union health plans would be affected adversely, even with the new fiscal note. **SEN. MESAROS** said they would not because HMO's or mail order pharmacies were not affected; rather, **SB 313** allowed a group of retail stores, if they met the same criteria, to experience the discounts.

SEN. KLAMPE commented manufacturers in Maine pulled the discounts upon passage of the bill, but within two months they were back in, and were bigger than before the passage of the bill.

SEN. FORRESTER asked why the price differences weren't more significant when he had checked. **SEN. KLAMPE** said it was not valid to compare one state with another because of differing factors.

SEN. EMERSON remarked if all retail pharmacies qualified for the discount, manufacturers would raise their prices slightly.

Vote: The motion SB 313 DO PASS CARRIED 6-2 by roll call vote #1.

EXECUTIVE ACTION ON HOUSE BILL 147

Motion/Vote: SEN. GARY FORRESTER MOVED HB 147 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON HOUSE BILL 336

Motion/Vote: SEN. TERRY KLAMPE MOVED HB 336 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON HOUSE BILL 556

Bart Campbell presented amendments HB055601.ABC, EXHIBIT #5 and the proposed amendments by the American Council of Life Insurance, EXHIBIT #6, were distributed.

Motion/Vote: SEN. BENEDICT MOVED TO ADOPT AMENDMENTS AS PER EXHIBITS #5 & #6. The motion PASSED UNANIMOUSLY by voice vote.

Discussion: SEN. EMERSON asked if the amendments pertained only to the bill. Mr. Campbell said they deleted one section which had been amended in the original bill, and included two other sections which needed cleanup language.

Motion/Vote: SEN. BENEDICT MOVED HB 556 AS AMENDED BE CONCURRED IN. The motion CARRIED 7-1 on voice vote, with SEN. FORRESTER voting "NO".

EXECUTIVE ACTION ON HOUSE BILL 360

Motion: SEN. CASEY EMERSON MOVED TO ADOPT AMENDMENTS, EXHIBIT #7, hb360amd.

Discussion: Bart Campbell explained EXHIBIT #7 (amendments).

Vote: The motion TO ADOPT AMENDMENTS CARRIED UNANIMOUSLY by voice vote.

Motion/Vote: SEN. GARY FORRESTER MOVED HB 360 AS AMENDED BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON HOUSE BILL 326

Bart Campbell distributed amendments, HB032601.ABC, EXHIBIT #8.

Motion: SEN. BILL WILSON MOVED HB 326 AS AMENDED BE CONCURRED IN.

Discussion: SEN. KLAMPE asked if the bill included checking on fishing licenses. SEN. HERTEL said HB 326 specifically referred to electricians and plumbers.

SEN. EMERSON said SB 326 reinforced the operation of unions, instead of private individuals.

SEN. WILSON said it was not a union issue, nor was it out of line.

SEN. FORRESTER said SB 326 was a good bill because it could prevent the licensed company owner having unlicensed people working, except in the case of an unlicensed worker who could work for a licensed electrician for four years, register with the state, take the electrical test and get a license. He said the person on the job site could be the superintendent of the job, the homeowner, etc.

{Tape: 2; Side: A}

SEN. KLAMPE asked if there wasn't a law already that stated an employer or boss could make sure the employees were licensed.

SEN. FORRESTER said the Department of Commerce rehired an inspector who came to Billings and found 10-12 electrical contractors who were not in compliance with current law. He explained HB 326 allowed for inspection by on-the-job people.

SEN. KLAMPE wondered if HB 326 would cause problems on the job.

SEN. FORRESTER said it would not, because now there would be enforcement of the law.

SEN. EMERSON asked if a licensed electrician could string wire and nail boxes better than an unlicensed one. SEN. FORRESTER said work done by a licensed electrician would ensure it was correct, because he had passed a test.

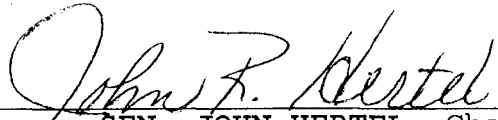
Vote: The motion HB 326 AS AMENDED BE CONCURRED IN PASSED UNANIMOUSLY by voice vote.

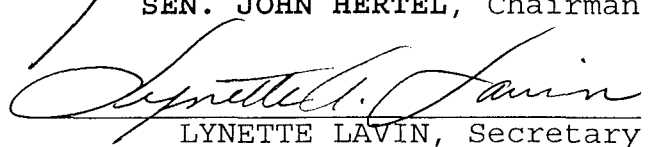
EXECUTIVE ACTION ON HOUSE BILL 502

Motion/Vote: SEN. GARY FORRESTER MOVED HB 502 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:05 a.m.


SEN. JOHN HERTEL, Chairman


LYNETTE LAVIN, Secretary

JH/11

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE _____

3-2-95

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 326 (third reading copy -- blue), respectfully report that HB 326 be amended as follows and as so amended be concurred in.

Signed: John Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 6.

Following: "INSPECTOR,"

Insert: "AN EMPLOYEE OF THE DEPARTMENT OF COMMERCE,"

2. Page 1, lines 15 and 23.

Following: "INSPECTOR,"

Insert: "an employee of the department,"

-END-

brought to Susan
3-3-95

changed to: Sen. John Harp

AS
SA Amd. Coord.
Sec. of Senate

Sen. Larry Forrester
Senator Carrying Bill

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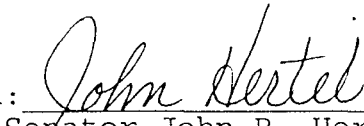
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1995


MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 313 (first reading copy -- white), respectfully report that SB 313 do pass.

Signed:



Senator John R. Hertel, Chair


Amd. Coord.
Sec. of Senate

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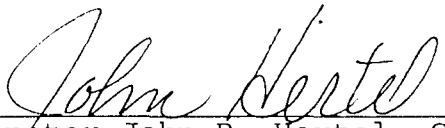
SENATE STANDING COMMITTEE REPORT


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
MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 502 (third reading copy -- blue), respectfully report that HB 502 be concurred in.

Signed:


Senator John R. Hertel, Chair


Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

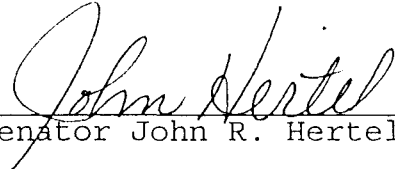
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SENATE STANDING COMMITTEE REPORT

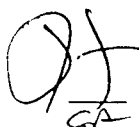
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
MR. PRESIDENT:

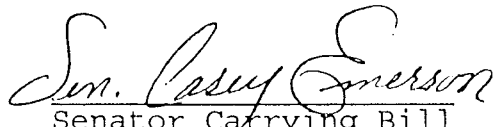
We, your committee on Business and Industry having had under consideration HB 336 (third reading copy -- blue), respectfully report that HB 336 be concurred in.

Signed: 

Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

491119SC.SRF

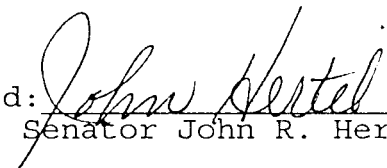
SENATE STANDING COMMITTEE REPORT

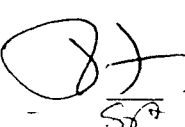
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
MR. PRESIDENT:

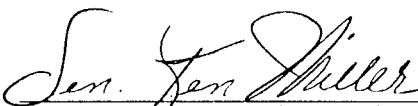
We, your committee on Business and Industry having had under consideration HB 147 (third reading copy -- blue), respectfully report that HB 147 be concurred in.

Signed:


Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate

 Senator Carrying Bill

491117SC.SRF

SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

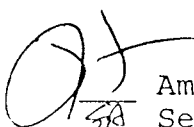
We, your committee on Business and Industry having had under consideration HB 360 (third reading copy -- blue), respectfully report that HB 360 be amended as follows and as so amended be concurred in.

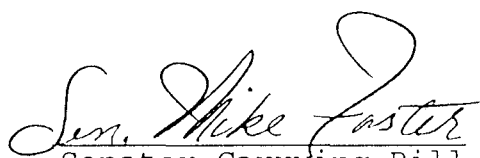
Signed: 
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 5.
Following: "PURCHASES"
Insert: "CERTAIN"
Strike: "FROM ANOTHER PUBLIC UTILITY"
2. Page 1, line 15.
Following: "some of"
Strike: "the"
Insert: "an"
Strike: "cost of"
Insert: "adjustment for certain"
3. Page 1, line 16.
Strike: "from another public utility"

-END-


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

491145SC.SRF

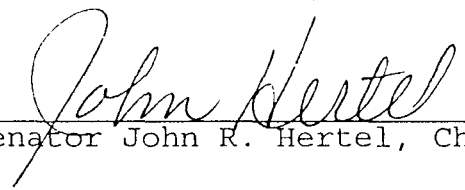
SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

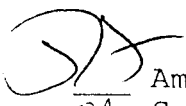
We, your committee on Business and Industry having had under consideration HB 556 (third reading copy -- blue), respectfully report that HB 556 be amended as follows and as so amended be concurred in.


Signed: _____

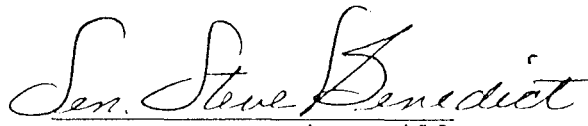

Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 10.
Following: "33-2-1218,"
Insert: "33-2-1394,"
2. Title, line 13.
Strike: "33-17-1001,"
3. Title, line 14.
Following: "33-22-1803,"
Insert: "33-22-1811,"
4. Title, line 15.
Strike: "33-31-311"
Insert: "33-31-111"
5. Title, line 15.
Following: "MCA;"
Strike: "AND"
6. Title, line 16.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"
7. Page 6, line 20.
Following: "payment"
Insert: "on or"
8. Page 8, line 13.
Following: "insurers"
Insert: "or, in the case of a renewal, the line of insurance has
not become available from an authorized insurer"
9. Page 8, line 20.
Following: "~~and~~"
Insert: "and"

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

491137SC.SRF

10. Page 8, line 21.

Strike: subsection (5) in its entirety

Renumber: subsequent subsection

11. Page 15, line 17.

Strike: "1995"

Insert: "1996"

12. Page 17, line 1.

Following: "~~sueh~~"

Insert: "all other"

13. Page 42, line 4.

Insert: "Section 31. Section 33-2-1394, MCA, is amended to read:

"33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees -- court approval -- applicability. (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) A Except as otherwise provided, a legal action by a third party does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994. A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation estate will lie

against a former special deputy liquidator or any employee, agent, or independent contractor retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place."

Renumber: subsequent sections

14. Page 43, lines 18 and 19.

Strike: "The" on line 18 through "fees" on line 19

Insert: "A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings"

15. Page 68, line 18 through page 69, line 18.

Strike: section 53 in its entirety

Renumber: subsequent sections

16. Page 71, line 14.

Strike: "hospital indemnity,"

17. Page 88, line 27.

Strike: "report" through "license"

Insert: "statement"

18. Page 90, lines 1 through 22.

Strike: section 74 in its entirety

Insert: "**Section 74.** Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need

requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization must be considered an insurer for the purposes of [sections 78 through 81]."

19. Page 90, line 24.

Following: "Each"

Insert: "individual"

20. Page 106, line 17.

Insert: "Section 95. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage -- required plans.

(1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days

after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not ~~less~~ more than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of

minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Renumber: subsequent sections

21. Page 107, line 7.

Insert: "NEW SECTION. **Section 99. Effective dates.** (1)

[Section 31 and this section] are effective on passage and approval.

(2) [Sections 1 through 30 and 32 through 98] are effective October 1, 1995."

-END-

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 3-2-95 BILL NO. SB 313 NUMBER 1

MOTION: DP SB 3/3

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

3/2/95

I vote yes on HB 502

yes on HB 360
& yes on Amendments

yes on HB 326
yes on Amendment

Shirley Benedict

Proxie

Vote yes on Bills ~~288~~

360, 326 & 502

Mike Gray
2/2/95

*(Presented by Rep. Zuilica)*Amendments to House Bill No. 360
Third Reading Copy

March 2, 1995

1. Title, line 5.
Following: "PROPERTY"
Strike: "FROM ANOTHER PUBLIC UTILITY"
Insert: "THAT PREVIOUSLY HAS BEEN DEDICATED TO PUBLIC USE"
2. Page 1, line 15.
Following: "may"
Insert: ", in its discretion,"
3. Page 1, line 15.
Following: "some of"
Strike: "the"
Insert: "an"
4. Page 1, line 15.
Following: "acquisition"
Strike: "cost of"
Insert: "adjustment for"
5. Page 1, line 16.
Following: "a public utility"
Strike: "from another public utility"

Under some circumstances, the public interest may be served by allowing into ratebase a purchase price above book value, i.e. original cost depreciated. For example, picture a small utility not regulated by the PSC, such as a cooperative, with a small service territory surrounded by a larger utility, regulated by the PSC. It may be the larger utility could more than offset a purchase price higher than book value for the property with operating efficiencies, i.e. consolidation of payroll functions, office building functions, etc. Under the present law, the PSC probably cannot include more than the original cost purchase price (book value) in the purchaser's rate base.

The Public Service Commission supports the bill as written. The bill is permissive and specifies that the Commission must find that purchase prices above original cost depreciated (book value) are in the public interest before they may be added to rate base. If this bill, as written, is enacted into law, the PSC will review very carefully the factual circumstances of each request before including values above original cost as part of the purchasing utilities rate base.

Thank you for your time.

Testimony: House Bill 360
Senate Committee on
Business & Industry
March 2, 1955

Nancy McCaffree, Chair
Public Service Commission

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1-A

DATE 3-2-95

BILL NO. AB 360

Mr. Chairman and members of the Committee:

One of the principle statutes that governs how the PSC sets rates is the "original cost" law. A utility company's rate base generally reflects the original cost of plant and equipment devoted to public service, less depreciation - or book value. The determination of book value is a fairly straightforward matter when a utility purchases or constructs new plant and equipment, but becomes more complicated when it purchases used assets from another company.

The general rule is that the original cost of property purchased by a utility is the depreciated cost of the property to the first owner devoting it to public service. Thus, if a utility purchases assets from another utility at a price which exceeds the book value, then the purchaser's rate base is limited to the book value.

This is necessary to prevent utilities from artificially inflating rate bases by acquiring property at unrealistically high prices. Also, once property is devoted to public service, ratepayers should not have to pay twice for the same asset because the property is sold to another utility. Such sales between utilities during the period prior to 1930, and the "watered common stock" that was used to pay for them is thought to be a significant factor contributing to the Great Depression.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3-2-95

BILL NO. HB 326

Amendments to House Bill No. 326
Third Reading Copy

*(Presented by
Rep. Cotchiarella)*

For the Committee on Business and Industry

Prepared by Bart Campbell
March 1, 1995

1. Title, line 6.

Following: "INSPECTOR,"

Insert: "AN EMPLOYEE OF THE DEPARTMENT OF COMMERCE,"

2. Page 1, lines 15 and 23.

Following: "INSPECTOR,"

Insert: "an employee of the department,"

37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979; amd. Sec. 1, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 inserted (2) requiring a license or permit of a person wishing to perform electrical work prior to referral

for employment by an employment agency or labor union; and made minor changes in style.

Cross-References

Installation of new security alarm systems by electrician, 37-60-409.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a

Senate Bill 313
'Equal Access to Pharmaceutical Manufacturers Discounts'
Sponsored by Senator Ken Mesaros (SD 25)
February 27, 1995

Question: Will the Montana Medicaid Program 'lose' \$3 Million over the 1997 Biennium if SB 313 is Passed.

Answer: Not likely! Federal law requires drug manufacturers to provide a 'rebate' to state Medicaid programs. The rebate amount for 1995 is calculated as: *the greater of approx. 15% of the average price of a drug; or the difference between the average manufacturers price (AMP) and the best price for the same drug.* This formula is applied to every unit of a drug dispensed through each state's Medicaid program, and is used to calculate the rebate each state receives every quarter from the federal govt.

'Best price' is the lowest price available from the manufacturer to any purchaser (excluding the federal government) in the United States during any given reporting period. Manufacturers report this information quarterly to the Health Care Financing Administration--HCFA. Drug manufacturers set the 'best price' and the 'average manufacturers price' for the drugs they produce.

Presently, the Montana Medicaid program is receiving rebates of more than 15%. This is because the difference between the AMP and the 'best price' is greater than 15%. But the amount of money this difference represents may increase or decrease at any time, for any number of reasons. Many factors affect the AMP and 'best price' a manufacturer charges for a drug. SB 313 alone will not cause significant movement in either the AMP or the 'best price' for any given drug.

The amount of the rebate Montana receives is a consequence of the many market factors that affect drug prices.

Question: Have other states enacted similar legislation; and if so what has their experience been?

Answer: The state of Maine enacted H.P. 558-L.D. 755, An Act to Improve Access to Pharmaceuticals, in April of 1994. There have been no adverse impacts on the Medicaid Program in Maine. **No reductions in Medicaid Rebates have been caused by the Equal Access legislation enacted in April, 1994 (See Attached).**

Question: Has legislation been introduced in Maine to repeal the Equal Access legislation?

Answer: **Yes.** On February 17, 1995 a repeal of Maine's equal access law was introduced: L.D. 584. The interests supporting repeal in Maine are the same interests working to defeat SB 313 in Montana: brand name drug manufacturers and their trade association, the Pharmaceutical Manufacturers and Research Association (PhRMA); managed care organizations, the insurance industry.

Question: Will passage of SB 313 cause significant changes in the 'average manufacturers price' (AMP) and 'best price' calculations used by HCFA to determine the rebates to states?

Answer: **No.** Legislation enacted in Montana, with less than 1% of national market, will have no immediate, significant impact on AMP or 'best price.' These are carefully made calculations: a combination of national (and international) economic factors, all working simultaneously and independently in the marketplace.

However, if a significant number of states, or states with major populations, were to enact similar legislation it might cause some movement in 'best price' or 'average manufacturers price.'

In addition to state legislation, here are a few other things that could have, or are having, an impact on AMP and best price for individual manufacturers' drugs:

- Patents expire for brand name drugs, and generic equivalents become available;
- New drugs are discovered, patented and marketed;
- Research yields new drugs with which to treat or cure certain diseases or conditions: AIDS, MS, the common cold, etc.;
- The Dow Jones breaks 4000 on February 23, 1995;
- Pharmaceutical industry buyouts: mergers, acquisitions, takeovers, etc. Merck might purchase Eli Lilly, or vice versa. Glaxo might buy Bristol Meyers Squibb, or vice versa.
- Pharmaceutical markets in the Third World expand and grow. Third World Nations opt to respect and honor U.S. Patent protections;
- Congress passes the Balanced Budget Amendment to the Constitution;
- The Food and Drug Administration is eliminated, and the Pharmaceutical Industry is effectively 'deregulated' in this session of Congress.

Question: Will passage of SB 313 require manufacturers to extend the 'best price' to all purchasers.

Answer: **No.** SB 313 requires that manufacturers sell their products to all purchasers **'on the same terms and conditions.'** Not for the same price. Not the 'best price' to any and all purchasers. Section 2 of SB 313 sets forth six (6) economic criteria that manufacturers may use in determining the prices they charge, including: discounts based on volume; discounts based on prompt payment; discounts based on market share movement agreements; etc.

Question: Will passage of SB 313 prohibit Physicians' ability to give free samples to their Patients.

Answer: **No.** Physicians are not **Purchasers**, as defined in SB 313. Further, the practice of 'drug sampling' does not meet the definition of a **'Covered Transaction,'** as defined in SB 313. Passage of SB 313 will not prohibit, eliminate, restrict or in any way interfere with the practice of 'sampling.'

Question: Will passage of SB 313 eliminate Mail Order pharmacy services in Montana.

Answer: **No.** SB 313 will put community pharmacies and other institutional purchasers, including mail order pharmacies, on the same level playing field. Let all purchasers have equal access to prices, based on economics, and let them compete evenly and fairly for the business of Montana prescription drug consumers. **In essence, SB 313 says to pharmaceutical manufacturers: 'level the playing field in Montana and let the consumer choose where and from whom to purchase the prescription drugs they need.'**

In Conclusion...

Question: What is the chance that the Montana Medicaid program will lose approx. \$3 million in manufacturers rebates during the 1997 biennium if SB 313 is enacted into law?

Answer: About the same chance that a major earthquake will strike the Helena valley during the second half of the 1995 Legislative Session: It could happen, but it's not likely.

(This information was prepared by The Montana State Pharmaceutical Association and The Montana Retail Association. For further information, contact Jim Smith @ 443-1570; or Brad Griffin @ 442-3388).



Angus King
Governor

Kevin Concannon
Commissioner

State of Maine
DEPARTMENT OF HUMAN SERVICES
Augusta, Maine 04333

February 28, 1995

Jim Smith
Executive Director
Montana Pharmacists Association
P.O. Box 4718
Helena, MT 59604

Dear Jim,

Here are the average monthly payments for prescription drugs under our Medicaid program. The law was enacted in July 1994. I have given you the six months immediately preceding the legislation, and the first eight months following it's enactment. I am not able to put my hand on September's figures immediately, but you said you needed these figures ASAP. If you need September's figures, I will get them to you tomorrow.

Month	Average Payment
February 1995	\$29.17
January 1995	\$29.19
December 1994	\$28.76
November 1994	\$28.90
October 1994	\$29.01
September	N/A
August 1994	\$29.12
July 1994	\$28.88
June	\$28.60
May	\$29.20
April 1994	\$27.65
March 1994	\$27.64
February 1994	\$27.35
January 1994	\$27.31

We have not done an analysis of these figures yet.

If we can be of any assistance, please do not hesitate to contact us again.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Robert E. Carroll Jr.'
Robert E. Carroll Jr.
Pharmacy Programs Manager

Maine Community Drug Store Coalition

P. O. Box 327, Hallowell, Maine 04347

Joseph Bruno
President

Christine Burke
Executive Director

February 22, 1995

EXHIBIT 4
DATE 3-2-95
FILE SB 313

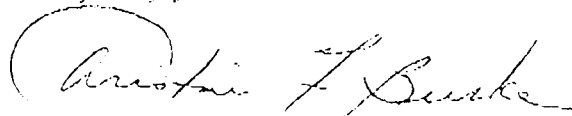
John Hertel, Chair
Senate Business and Industry Committee
State of Montana
Helena, Montana

Dear Senator Hertel,

This letter is to inform you that the Maine Community Drug Store Coalition does not support repeal of P.L. 716. The Maine legislature overwhelmingly endorsed that legislation last year in order to end discriminatory drug pricing in the state of Maine. Despite retaliatory tactics by many manufacturers of brand-name pharmaceuticals designed to pressure us into repealing the law, we stand firm in our commitment to the law. It is our strong belief that a fair and competitive market for brand name pharmaceuticals will benefit the consumers of the State of Maine, as well as assist the many chain drug stores and independent pharmacies remain open for business.

We will be happy to supplement this letter with more information in the coming weeks. We would like to be able to demonstrate the fact that the enactment of this law has not had an adverse impact on business in our State, nor has it adversely impacted our State Medicaid program. However, compiling that documentation will take some time. Still, we wanted you to know now of our full support of the existing law, and our fervent commitment to defeating the repeal effort spearheaded by the pharmaceutical manufacturers. Please feel free to call us should you have any questions.

Very truly yours,



Christine F. Burke
Executive Director
Maine Community Drug Store Coalition

cc: Members, Senate Business and Industry Committee

NACDS

National Association of Chain Drug Stores

MEMORANDUM

FAX TRANSMITTAL FORM

TO: Jim Smith

COMPANY: Montana Pharmaceutical Association

FAX #: 406-449-3843

FROM: Robert Nickens

COMPANY: NACDS

FAX #: 703-549-0771

NUMBER OF PAGES (including cover sheet): 3

MESSAGE: Please see attached bullet-point summary.

EXHIBIT

4

DATE

3-2-95

X

SB 313

RESPONSE TO THE MONTANA FISCAL NOTE ON SB 313

o The majority of the Montana Medicaid savings under "equal access" will result from lower payments to community pharmacies because the pharmacies will be able to buy drugs at lower prices from drug manufacturers. The Montana fiscal note fails to recognize that, under "equal access", pharmacies' costs of buying prescription drugs would be lower, and therefore, the state's reimbursement amounts to pharmacies would be lower. As a result of "equal access", states would probably not continue to pay pharmacies at the same current product payment allowance for product cost since it would likely be lower under "equal access" to discounts.

o Because of the erosion of "best prices" in the marketplace with or without "equal access" legislation, the state would still do better under "equal access." The PRIME model estimates that Montana drug manufacturer rebates will be \$5.6 million in 1996 without "equal access" and \$2.9 million with "equal access." However, total Montana Medicaid drug program expenditures will still be lower by a total of \$978,000 in 1996 (\$283,000 state share) under "equal access" because of lower Medicaid product payments to pharmacies.

o The reduced costs in paying pharmacies for the Medicaid drug product component would be more than offset by the loss of manufacturer rebates. However, the fiscal note assumes that 20 percent discounts will exist in the market in 1996 and 1997, and that Montana Medicaid will receive these discounts without "equal access", but lose them under "equal access". This is not an assumption shared by most federal Medicaid analysts.

o The drug manufacturer rebates to the states will, in fact, be lower under "equal access", but not necessarily for the reasons cited in the fiscal note. First, the equal access model anticipates that discounts greater than 15 percent will not exist in the market with or without equal access legislation. That is because the average Medicaid discount has been decreasing from about 24 percent off AMP in 1991 to about 18 percent off AMP now. It is not anticipated that discounts greater than 15 percent will exist in a few years, probably not in 1996 or 1997. However, under equal access, the state will collect fewer rebates because the AMPs will be lower. A 15 percent discount off a lower AMP will result in fewer rebates. The lower payments to pharmacies as a result of their lower drug product costs more than offsets the loss of rebates. Therefore, under "equal access", net Montana drug program costs are lower than they would have been without "equal access."

o The rebate amounts predicted to be lost are \$1.7 million in 1996 and \$2.05 million in 1997 on total rebate amounts of \$6.8 million and \$8.2 million respectively. This amounts represent approximately 25 percent of total rebates expected. There cannot possibly be a loss of this magnitude each year since the manufacturers still have to give a minimum rebate of 15 percent. The fiscal note says that the rebates can be expected to decrease by 5 percent each year, which would be \$344,000 and \$410,000 respectively. In addition, the state may expect to lose these "best price" rebates anyway because the general trend is that these discounts are eroding with or without the legislation.

o Increase in Mail Order Prescription Prices (Buttrey Mail Order): The fiscal note does not indicate the current prices being received by the state employees program from Buttrey. Under "equal access", however, community pharmacies would receive discounts from drug manufacturers, obviating the need for the state to use a mail order operation. State employees and retirees could receive their prescription drugs from community pharmacies, and the state would likely see the same savings as they are now from the mail order operation. In addition, if these individuals were using the same pharmacy for their acute and chronic care medications, there would be better drug monitoring, and less of a chance for adverse reactions from prescription drugs.

SOCIAL SECURITY ACT

42 USCS § 1396r-8

termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

(ii) By a manufacturer. A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) Effectiveness of termination. Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) Notice to States. In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) Application to terminations of other agreements. The provisions of this subparagraph shall apply to the terminations of agreements described in section 340B(a)(1) of the Public Health Service Act [42 USCS § 256b(a)(1)] and master agreements described in section 8126(a) of title 38, United States Code.

(C) Delay before reentry. In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) **Amount of rebate.** (1) Basic rebate for single source drugs and innovator multiple source drugs. With respect to single source drugs and innovator multiple source drugs, each manufacturer shall remit a basic rebate to the State medical assistance plan. Except as otherwise provided in this subsection, the amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to each dosage form and strength of single source drugs and innovator multiple source drugs shall be equal to the product of—

(A) the total number of units of each dosage form and strength dispensed under the plan under this title [42 USCS §§ 1396 et seq.] in the quarter (or other period) reported by the State under subsection (b)(2); and

(B)(i) for quarters (or periods) beginning after December 31, 1990, and before October 1, 1992, the greater of—

(I) the difference between the average manufacturer price (after deducting customary prompt payment discounts) and 87.5 percent of such price for the quarter (or other period), or

(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug (except that for calendar

quarters beginning after December 31, 1990, and ending before January 1, 1992, the rebate shall not exceed 25 percent of the average manufacturer price, and for calendar quarters beginning after December 31, 1991, and ending before January 1, 1992, the rebate shall not exceed 50 percent of the average manufacturer price);

(ii) for quarters (or other periods) beginning after September 30, 1992, and before January 1, 1994, the greater of—

- (I) 15.7 percent of the average manufacturer price for the drug;
- (II) the difference between the average manufacturer price for the drug, except that for the calendar quarter beginning after September 30, 1992, and before January 1, 1993, the amount of the rebate may not exceed 50 percent of such average manufacturer price, and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug;

(iii) for quarters (or other periods) beginning after December 31, 1993, and before January 1, 1995, the greater of—

- (I) 15.4 percent of the average manufacturer price for the drug; or
- (II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug;

(iv) for quarters (or other periods) beginning after December 31, 1994, and before January 1, 1996, the greater of—

- (I) 15.2 percent of the average manufacturer price for the drug;
- (II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug; and

(v) for quarters (or other periods) beginning after December 31, 1995, the greater of—

- (I) 15.1 percent of the average manufacturer price for the drug; or
- (II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug.

(C) For the purposes of this paragraph, the term “best price” means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B), any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government).

The best price shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount; [.]

(D) In the case of a covered outpatient drug approved for marketing after October 1, 1990, any reference in this paragraph to "October 1, 1990" shall be a reference to the first day of the first month during which the drug was marketed.

- (2) Additional rebate for single source and innovator multiple source drugs. (A) Each manufacturer shall remit an additional rebate to the State medical assistance plan in an amount equal to:

(i) For calendar quarters (or other periods) beginning after December 31, 1990[,] and ending before January 1, 1994—

(I) the total number of each dosage form and strength of a single source or innovator multiple source drug dispensed during the calendar quarter (or other period); multiplied by

(II)

(aa) the average manufacturer price for each dosage form and strength, minus

(bb) the average manufacturer price for each such dosage form and strength in effect on October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved; [.]

(ii) For calendar quarters (or other periods) beginning after December 31, 1993—

(I) the total number of each dosage form and strength of a single source or innovative multiple source drug dispensed during the calendar quarter (or other period); multiplied by

(II) the amount, if any, by which the weighted average manufacturer price for single source and innovator multiple source drugs of a manufacturer exceeds the weighted average manufacturer price for the manufacturer as of October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved.

- (B)(i) For the purposes of subparagraph (A)(ii), the term "weighted average manufacturer price" means (with respect to a calendar quarter or other period) the ratio of—

(I) the sum of the products (for all covered drugs of the manufacturer purchased under a State program under this title [42 USCS §§ 1396 et seq.]) of—

(aa) the average manufacturer price for each such covered drug; and

Amendments to House Bill No. 556
Third Reading Copy

BILL NO. HB 556
(presented by Bart Campbell)

For the Committee on Business and Industry

Prepared by Bart Campbell
February 27, 1995

1. Title, line 10.
Following: "33-2-1218,"
Insert: "33-2-1394,"
2. Title, line 13.
Strike: "33-17-1001,"
3. Title, line 14.
Following: "33-22-1803,"
Insert: "33-22-1811,"
4. Title, line 15.
Strike: "33-31-311"
Insert: "33-31-111"
5. Title, line 15.
Following: "MCA;"
Strike: "AND"
6. Title, line 16.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"
7. Page 6, line 20.
Following: "payment"
Insert: "on or"
8. Page 8, line 13.
Following: "insurers"
Insert: "or, in the case of a renewal, the line of insurance has
not become available from an authorized insurer"
9. Page 8, line 20.
Following: "and"
Insert: "and"
10. Page 8, line 21.
Strike: subsection (5) in its entirety
Renumber: subsequent subsection
11. Page 42, line 4.
Insert: "Section 31. Section 33-2-1394, MCA, is amended to read:
"33-2-1394. Settlement of actions against rehabilitator,
liquidator, and employees -- court approval -- applicability. (1)
If any legal action against an employee for which indemnity may
be available under this section is settled prior to final

adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) Except as otherwise provided, a legal action by a third party does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994. A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation estate will lie against a former special deputy liquidator or any employee, agent, or independent contractor retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place."

Renumber: subsequent sections

12. Page 43, lines 18 and 19.

Strike: "~~The~~" on line 18 through "~~contract~~" on line 19

Insert: "A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings"

13. Page 68, line 18 through page 69, line 18.

Strike: section 53 in its entirety

Renumber: subsequent sections

14. Page 71, line 14.

Strike: "hospital indemnity,"

15. Page 88, line 27.

Strike: "report" through "license"

Insert: "statement"

16. Page 90, lines 1 through 22.

Strike: section 74 in its entirety

Insert: "Section 74. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization must be considered an insurer for the purposes of [sections 78 through 81]."

17. Page 90, line 24.

Following: "Each"

Insert: "individual"

18. Page 106, line 17.

Insert: "Section 95. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage -- required plans.

(1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small

employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not ~~less~~ more than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Renumber: subsequent sections

19. Page 107, line 7.

Insert: "NEW SECTION. Section 99. {standard} Effective dates.

(1) [Section 31 and this section] are effective on passage and approval.

(2) [Sections 1 through 30 and 32 through 98] are effective October 1, 1995."

PROPOSED AMENDMENTS TO HOUSE BILL 556
FIRST READING COPY

(presented by
Sen. Benedict)

Prepared by Denny Moreen
American Council of Life Insurance
March 1, 1995

1. Page 15, line 7
Following: "(4)"
Insert: "(b)"

delete/Bart Campbell

2. Page 15, line 17
Strike: "1995"
Insert: "1996"

3. Page 17, line 1
Following: "for"
Insert: "all other"

Amendments to House Bill No. 360
Third Reading Copy

*(Bart Campbell
presented)*

March 2, 1995

1. Title, line 5.

Following: "PROPERTY"

Strike: "FROM ANOTHER PUBLIC UTILITY"

Insert: "THAT PREVIOUSLY HAS BEEN DEDICATED TO PUBLIC USE"

2. Page 1, line 15.

Following: "may"

Insert: ", in its discretion,"

3. Page 1, line 15.

Following: "some of"

Strike: "the"

Insert: "an"

4. Page 1, line 15.

Following: "acquisition"

Strike: "cost of"

Insert: "adjustment for"

5. Page 1, line 16.

Following: "a public utility"

Strike: "from another public utility"

Amendments to House Bill No. 326
Third Reading Copy

*(Presented by
Bart Campbell)*

For the Committee on Business and Industry

Prepared by Bart Campbell
March 1, 1995

1. Title, line 6.

Following: "INSPECTOR,"

Insert: "AN EMPLOYEE OF THE DEPARTMENT OF COMMERCE,"

2. Page 1, lines 15 and 23.

Following: "INSPECTOR,"

Insert: "an employee of the department,"

DATE March 2, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 360 Rep. Philippi
HB 326 HB 502 Rep. Cocchiarella

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
MARGIE THOMAS	Montana Power Co.	360	✓	
Bon VanDiest	I.B.E.W.	326	✓	
Zick Ahmann	Montana Assoc. Realtors	502	✓	
Joe Zuber	Dent 36	360	✓	
Nancy McCaffree	PSC	360	✓	
Dan Elliott	PSC staff	360	✓	
Tom Heygood	Citizens Telecomm	360	✓	
John Alke	MDU	360	✓	
Adrian Howe	MDHES	502	✓	
Steve Manderville	MT Assoc Realtors	502	✓	
Jerry Driscoll	mt State Building trades	326	✓	
Dan Walker	US WEST	H 360	✓	
Joan Madwill	Mont. Tel. Assoc.	H 360	✓	
Norm Spills	House	H 360		

LH 326

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY