

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 7, 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 408
Executive Action: None

HEARING ON HB 408

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Kalispell, stated HB 408 was a bill to provide for payment by the State of costs and attorney fees of small businesses that prevail in actions where the State's position was not substantially justified. Small businesses were too often deterred from challenging the State. If the State brought an action and the small business, or an individual, felt they had been wronged by the State; taking on big government and their attorneys was often a difficult and costly task. He believed there should be some course of action to recover the fees from the State, when the State had taken a position that was not necessarily justified.

The House added a few amendments to the bill **REP. SLITER** said that came from the Department of Justice. Page 1, lines 29 and 30, the term was added "business regulatory function of the State" and "does not include functions performed by a criminal justice agency". Page 2, line 15, as well as lines 23 through 25, language was added that comes from Montana Rules of Civil Procedure dealing with the definition of "substantially justified". As the bill came out, the definition of small business had a network of less than \$3 million and fewer than 250 employees. In talking with the NFIV and the Chamber, there really were not any guidelines as far as defining a business with a net worth, so "net worth" was dropped, and the "number of employees" dropped to anything fewer than 100 employees would be considered a small business under this bill.

REP. SLITER said as far as payment of these awards, should the State's position not be substantially justified, there was a provision in Section 6 that stated the State can pay the awards from liability insurance, or pay it out of a self-insurance pool. Upon that payment, during the first week of the next legislative session, they would be required to report to the legislature and possibly get an appropriation to recover that money. Basically, holding agencies, commissions, departments, and political subdivisions of the State responsible for their actions, were asking for more expedient review and closer scrutiny on insuring the State does not bring any unnecessary action against small business.

Proponents' Testimony:

Jim Tutwiler, representing the Montana Chamber of Commerce, would like to support HB 408. They believed this legislation, if enacted, would help to promote more scrutiny of cases at the State level, lead to less litigation, lead to more predictability in what businesses could expect when involved in a possible court action or administrative hearing initiated by the State. The Chamber members contend this bill would help the taxpayers and businesses would be favorably impacted.

Mr. Tutwiler related the best way to offer their perspective on HB 408 was to share with the Committee what they had heard from small businesses around the State of Montana over the last two years. The concerns they heard quite consistently were situations employers found themselves when a grievance was filed against them, such as an alleged incident of discrimination on the job, controversial workplace rules, termination or pending termination, etc. Employers have had cases where a grievance had been filed, months elapsed, sometimes a year, sometimes approaching two years; exchange of information, statements (low level litigation) and then after months of dialogue the case would be dropped. The person who made the grievance would walk away from the case, leave the State and could not be found. What happened then was the employer had spent \$6,000 and perhaps up to \$10,000, which was an enormous amount of money for a very small

business to protect themselves, and yet there had been no resolution or conviction. They found cases where a grievance had been filed, the interchange began as the dialogue was changed between the State and small businesses only to find at some point in time, the case would get into the Federal system. They had heard it wasn't worth the time and effort to try to fight the case, as it may take two years and may cost \$20,000 and small businesses do not have that much money so the businesses settled out of court. There were situations when both sides resolved their differences, but in that process the State intervened and imposed new conditions on the employer, even though the parties had agreed the issue was resolved.

Mr. Tutwiler further explained, the best case this bill would address and help was where the grievance was filed, the employer did his homework and contested the grievance, months go by, the case then came before the hearing and the hearing process terminated in the conclusion that the employer who had broken the law was not at fault and free to go. In that case, the person who made the grievance had been supported by the State, the State in fact has been an advocate. The employer, who was protecting itself, was out perhaps \$10,000, was innocent of the charges and was really the loser in terms of the impact on his business. The Chamber related HB 408 had been worked on, amended, tightened up and would result in closer scrutiny in cases that were pending. The bill in no way was a shield, or protection, or encouragement to condone any kind of unlawful business practice. The bill in no way suggested there should be a law that protected employers from taking actions in the work place that were not lawful, legal, or productive. The bill would be cost saving and would make the process more balanced and more fair.

Greg Van Horssen, Montana Housing Providers, represented the group of individuals who were in the small business of providing housing across Montana. He was simply echoing the comments of **Mr. Tutwiler** and supported, on behalf of Montana Housing Providers, HB 408 and requested the Committee for a do concur.

Informational Testimony:

Beth Baker, Department of Justice, stated the department did not have a position on the bill; however, she drafted several of the amendments and would answer any questions if needed.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE gave an example where a small business had a charge brought against them by the city or county; however, the city or county was simply trying to enforce State law and was not successful in the process and **SEN. SPRAGUE** asked **Beth Baker** how would the employer stand, assuming he was not guilty? **Ms. Baker** stated she didn't believe this bill covered any actions other

than those brought by the State; although, the party had a remedy in Section 25-10-711, which was referenced in the bill, but not included in the bill. The opposing party may be entitled to costs if the court found the claim or defense was frivolous or pursued in bad faith by the State or political subdivision.

SEN. CASEY EMERSON asked **Ms. Baker** when an employee went to the State for unemployment insurance benefits, a hearing ensued and witnesses were taken from their jobs to testify at the hearing, (which does cost the employer additional money) would that be reimbursable under this bill? **Ms. Baker** stated if the action was brought by the employee for a hearing before the Board, that would not be covered by this bill. This bill only covers actions brought by State agencies.

Closing by Sponsor:

REP. SLITER stated he hoped the Committee would act favorably upon his bill. He requested **SEN. STEVE BENEDICT** to carry this bill on the Senate floor if HB 408 was concurred in by the Committee.

ADJOURNMENT

Adjournment: The meeting was adjourned at 8:30 a.m.


SEN. JOHN HERTEL, Chairman


LYNETTE LAVIN, Secretary

JH/11

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE _____

3-7-95

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DATE March 7, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 408 Rep. Sliter
HB 454 Rep. Harper

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Jim Twitter	MT Chamber	408 HB	✓	
Greg Van Horn	Montana Housing Producers	408 HB	✓	
Charles R. Brooks	Blyss Chamber	408	✓	
Beth Baker	Dept of Justice	408	Technical Information	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY