

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By **SENATOR THOMAS KEATING**, on January 9, 1997, at  
1:00 p.m., in 413/415

**ROLL CALL**

**Members Present:**

Sen. Thomas F. Keating, Chairman (R)  
Sen. James H. "Jim" Burnett, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Benedict (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Dale Mahlum (R)  
Sen. Debbie Bowman Shea (D)  
Sen. Fred Thomas (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Eddye McClure, Legislative Services Division  
Gilda Clancy, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB5 1/7/97; SB45 1/7/97  
Executive Action: None.

*{Tape: 1 Side A; Approx. Time Count: 5 Minutes}*

**HEARING ON SB5**

**Sponsor:** Senator Ric Holden  
**Proponents:** John Bloomquist, Montana Stockgrowers' Association  
Representative Brad Molnar, Laurel  
Larry Brown, Northern Montana Oil & Gas  
Joan Mandeville, Montana Telephone Association  
Jacqueline Lenmark, American Insurance Association  
**Opponents:** Don Chance, Montana Building Industry Association  
Don Judge, Montana AFL, CIO  
Dave Cogley, Montana Building Industry Association  
Chuck Hunter, Department of Labor & Industry

Opening Statement By Sponsor:

SENATOR RIC HOLDEN, SD 1, Glendive, presented SB5. This bill represents the total repeal of the Independent Contractor Registration law and would return the law to its previous state prior to last session. In general, he feels we need to lift people up and help them climb the ladder of success, to move people ahead to the future. Layers of unnecessary and excessive regulation imposed by all levels of government, including federal, state and local can add thousands of dollars to the cost of a new home, making it difficult or even impossible for families to achieve home ownership. Most people don't realize the extent of overregulation which drives up costs. The National Association of Home Builders recognizes this as well as the people of Montana. Senator Holden does not ask for immediate action on the bill, but allows the opportunity to have the bill in the committee as a last desperate attempt to resolve the matter. He asks that we at least consider changing the law back to what it was prior to the last session.

*{Tape: 1; Side: A; Approx. Time Count: 7 Minutes; Comments: The Chairman temporarily left the room, the Vice Chairman asked if there were any further proponents, please note there were no proponents prior to this.}*

Proponents Testimony:

JOHN BLOOMQUIST, MONTANA STOCKGROWERS' ASSN. said from the Stockgrowers' perspective, there are several proposals before the Committee. He believes it is prudent to take every measure individually. From an agriculture perspective the 'C' test created some interesting questions and concerns in terms of agriculture. Last session created concerns and problems for them and everyone else in the State of Montana. They hope this session will address those problems.

REP. BRAD MOLNAR, LAUREL, commends SENATOR HOLDEN for his stand on this issue, however, Rep. Molnar does not believe going back to status quo is acceptable. This is a very minimum of what should be done. The proponents of this measure last time and during the summer and fall spoke of upward migration of liability. He stated SB354 did not address the problems and if we simply repeal this measure these issues will remain unaddressed. These are legitimate issues. On bonding requirements there is a 1947 law which, to REP. MOLNAR'S knowledge was never enforced. Now the Department realizes it is there and they want to enforce it. If we accept this and don't use this as a chance to repeal, if I as a single contractor with no employees put a roof on a house, but my back begins to hurt and I simply cannot finish the job, so I hire someone to help, before I can do that I have to register through the Department. How long do I have to wait before the job can be completed? REP. HOLDEN believes that this has been proven unworkable.

He said the provisions of this part of the law do not apply to a resident contractor who presents a financial statement certified by licensed C.P.A. attesting to a network of contracting in excess of \$50,000. If that is an exception, **REP. MOLNAR** would like to know why.

When the Contractors' Association, **SENATOR HOLDEN**, the Montana Building Industry Association (MBIA) as well as **REPRESENTATIVE MOLNAR** and a few others discussed the issue, it was decided not to take away the bonding because it can be used for licensing later. The Montana Construction Association (MCA) consists of 65% highway construction workers, this bond would mean nothing to them and yet they would be exempted. The bond would only be on the small contractor who simply wants to finish his contract. Over 3,000 people came to **REP. MOLNAR'S** meetings. He gave the example of a lady who was not able to work because of not being able to receive her license due to a situation with her former husband. Are we going to tell her she has no right to work because she cannot come up with the bond which guarantees the attorneys and the Department of Labor shall get their due if they ever take her anywhere? She must wait weeks before she can hire somebody in a pinch once or twice a year, when all she has to do is have a Work Comp. policy which is self-exempted and open. The other person fills out the form and sends it in and she is done. **REP. MOLNAR** feels it is time to eliminate the liabilities on the people of Montana, that we have been creating quite frankly without reason or forethought.

**Larry Brown, Agricultural Preservation Assn. And Northern Montana Oil & Gas Assn.**, would like to reaffirm the last two proponents' comments. It is for the same reasons that the two associations he is representing support this legislation.

**Joan Mandeville, Montana Telephone Association**, represented the telephone companies and cooperatives. Regulated telephone companies today are exempt from the contractor registration requirements. Cooperatives are not. They have concerns in that SB45 does correct that situation and this will be addressed by **Ms. Mandeville** during that hearing. If the Committee chooses not to pass SB45, they do ask that the Committee consider SB5 and simply repeal contractor registration altogether.

**Jacqueline Lenmark, American Insurance Association** stated she does not stand in support nor opposition to the concept of SB5. She would like to request one technical amendment to the bill. Refer to bottom of Page 1, in the first section, line 27 and 28, there is a change in the term 'guarantee to insure'. Surety bonds are being spoken of in this section. They do not operate in the same manner as an insurance policy and guarantee would be a more appropriate term if this section remains in law. **Ms. Lenmark** requested that change be made to return to the original word used in that section.

{Tape: 1; Side: A; Approx. Time Count: 18 Minutes.}

### Opponents' Testimony

Don Chance, Montana Building Industry Association, stated they are opposed to the repeal of the Montana Contractors' Act. They believe to does provide, with some modifications, dramatic improvement over circumstances they have had in previous years.

Don Judge, Montana AFL, CIO, said Rep. Molnar has already stated several of the arguments that they would have made about the reason the bill should not be repealed outright. They recognize there is need for amendment to the Contractor Registration Law and they are prepared to work with the Committee. They feel SB5 is too extreme and are opposed to it.

Dave Cogley, Montana Building Industry Association, is also a local contractor in Helena. He mentioned we have come a long ways in this issue in the past 20 to 30 years and we all should realize there are not a lot of problems. He feels that to loose this bill completely at this point would be a big step backwards. He believes there is a lot there to work from and acknowledged the need for improvement. He believes there are problems which are going to be whether or not this bill is rejected.

Chuck Hunter, Department of Labor & Industry, appeared in opposition to SB5. (EXHIBIT 1)

{Tape: 1; Side: A; Approx. Time Count: 21 Minutes}

### Questions From The Committee And Responses:

SENATOR BENEDICT asked SENATOR HOLDEN why the language of the law was changed from guarantee to insure. SENATOR HOLDEN responded it is his understanding that is how the law originally read and was either an oversight and did not mean much to anyone at the time. SENATOR BENEDICT then asked if in the event an agreement could not be made on SB45 and SB5 moves forward, would you have any objections to changing that to read guarantee. SENATOR HOLDEN responded this would probably be appropriate.

### Closing By Sponsor

SENATOR HOLDEN asked the Committee to focus on page 4, lines 13, 14 and 15. He believes if we proceed with this bill, legal counsel should be sought to find out exactly how this impacts this piece of legislation.

{Tape: 1; Side: A; Approx. Time Count: 25 Minutes}

HEARING ON SB45

Sponsor: Senator Ric Holden  
Proponents: Joan Mandeville, Montana Telephone Association  
Eugene Graf, Bozeman Homebuilders' Association  
Don Allen, Coalition Workers' Compensation System Improvement  
Jacqueline Lenmark, Montana Water Well Drillers' Association  
Chuck Hunter, Department of Labor & Industry  
Dave Cogley, Montana Building Industry Association  
Frank Armknecht, Valley Glass of Bozeman  
Sam Gates, Missoula Building Industry  
Tom Vanorio, Bitterroot Builders' Association  
Russ Eklund, Great Falls Home Builders' Association  
Bill Pierce, Montana Building Industry Association  
Opponents: Don Judge, Montana State AFL, CIO  
Representative Brad Molnar, Laurel

Opening Statement By Sponsor:

SENATOR RIC HOLDEN, SD 1, GLENDIVE brought before the Committee SB45. This is a contractors' revisionary bill. About a year ago SENATOR HOLDEN began working on this piece of legislation by contacting many of the people present in this hearing. SB45 is the product of this past year's negotiations and meetings. The lines and additions are changes made to old SB345.

On page 1, all of section 1, the changes are to simplify the bonding requirements.

On page 3, line 28 please note the words 'construction contractors' is added. We have had a problem. The construction industry brought us this bill because they wanted it to control their industry. Because we had such a broad definition of who was an independent contractor there was a problem. SB45 is presented to you to try to limit the focus of those involved in this piece of legislation. You will find throughout this bill the word 'construction contractor' which is an addition.

Page 4, line 3 is the beginning of the definitions of 'construction contractor'. On that same page, lines 13 through 19 show that we have so many definitions of a 'general contractor' and 'specialty contractor'. We have had too many definitions to consider which are too confusing. Those have been changed to simplify the definition of 'construction contractor'.

Page 5, line 23 essentially protects the private information of business owners and businessmen and eliminates the open public inspections of their private records.

Page 8, line 1 through 7 deals with the liability issue which is to protect people from liability. The changes you see there

clarify the liability coverage and provides for proof of verification of registration.

Line 10 begins 'exemptions'. Most of the people you find in the next section of law are already regulated and are already paying fees and dues to other departmental agencies to be regulated. These exemptions are very important because it will keep those people out of the construction industry area.

Line 29 states an area that most have not been in agreement on. In the old law anyone whose income was more than \$500. was required to register and this where we begin to jab and over-regulate the little guy. **SENATOR HOLDEN** stated the following example. The guy like myself who had to work summers to earn money through college. Had I been required to go through some registration and bonding requirements, I don't know that I would have been in compliance with the law. Also, I don't know if I would have even known about the law and if I did, I may have sat home. It may have taken away my spirit to do something with my future and collect this money and do something with my life. There are a lot of people who do not need to be part of this. That \$2500. amount may seem high today, but let me remind you that inflation is on-going. Four or five years from now the legislation could raise that limit to meet inflationary factors of our economy.

Referring to page 9, please note that agriculture was one of the first industries that initiated the opposition to this bill. **SENATOR HOLDEN** stated that those in agriculture deal with a handshake across the fence for much of what they do. They had many conflicting stories stating that they had to be registered or exempted or they had to be bonded. Those in agriculture want out of the bill. They were intended to be exempted out but now request that language be very clear.

Page 9, line 17 is another very important exemption. This deals with homeowner's working on their own home and not needing to be registered to work on home property.

Page 10, lines 19 through 22 pertains to Indian tribes. Other business industries which require professional licensing are exempted.

Page 10, lines 18 through 29 completely strip off the book. The language dealing with the method contractors have to advertise. Contractors had to have registration numbers displayed, etc. The language on advertising restrictions has been taken out.

Refer to page 13, lines 24 though 26. Under the old law the Department had the ability to walk through a business site and serve an employee to let him know he was out of compliance with the law. It was that employee's responsibility to notify his manager of the problem. This directs the state to deal with the management of the operation rather than the employees.

Page 16, line 14 is another substantial change in the way state government is expected to deal with the citizens of this state. This piece of legislation would place the Department on notice to have a legitimate reason to file a complaint against the business owner, otherwise the Department would have to pay the costs associated with this.

Page 17, line 5 deals with an important issue. **SENATOR NELSON** brought this issue earlier and identified this in her bill. This issue has affected everyone who is not a construction contractor. **SENATOR HOLDEN** stated at very minimum this issue needs to be deleted.

*{Tape: 1; Side: A; Approx. Time Count: 38 Minutes}*

**Don Chance, Montana Building Industry Association, (MBIA),** thanked **SENATOR HOLDEN** for his extensive efforts regarding this bill. The members of MBIA support SB45. They believe this bill will make the act more efficient with less administrative complications. They also believe SB45 will effectively correct the technical problems in the program. Over 80% of the MBIA members support the new law even with the first year glitches which were encountered. Most of the remaining 20% of the membership did not express concerns over the basic concept of the law, but did over administrative aspects of implementing the law. SB45 specifically addresses those concerns. The building industry now comprise approximately 10% of the state's employment base. Their membership alone represents about 40,000 employees. In essence, they are the 'little guys'. MBIA members build a vast majority of new housing in Montana and commercial structures, yet the typical member only builds 36 homes per year. They make this point because this issue has been characterized by the little guys vs. the big guys. We do not see it this way.

The Contractor Registration Law was an effective compromise within our industry to preserve the independent contractor provisions while reducing the problems of migrating business liability on Workers' Compensation noncompliance with uninsured employment laws. This is the best compromise the industry has found to deal with their members, some who have employees and many who do not.

The new bill provides four key benefits for the industry. It virtually eliminates administrative migration of liability from one contractor to another in the areas of Workers' Compensation insurance, unemployment insurance and wage claims. It also reduces the migration of liability between contractors and between a contractor and a homeowner in the case of a law suit. It provides a uniform, easy-to-use, confirmation system for everyone in the industry. Typically, when houses are built, 12 to 15 different subcontractor trades are used. It is a joint effort with a lot of different small business people. This is a method to confirm the status of all those individuals on the construction sight. This bill helps to prevent cheating on

Workers' Compensation which helps reduce rates for everyone in the industry.

The M.B.I.A. would like to suggest amendments to SB45 and also to make clear that **SENATOR THOMAS** was kind enough to sign on to have the amendments drafted but he is not endorsing these amendments at this point.

The first amendment deals with the bonding provision. The bill would eliminate the bonding requirement for independent contractors' entirely for all elements falling under this law. There is no enforcement currently under the bonding requirements. **Mr. Chance** stated they have been paying bonds to the Department of Labor for a number of years. There is another provision in the law and those bonds are very rarely used. The bond amount required by the contractors' registration law is so low that it is ineffective. Basically, the Department of Labor has much more effective enforcement tools which they utilize in the case of noncompliance and they do not draw upon the bond.

The second reason is that the bonding provision in the law currently is the single largest administrative headache for the Department and is also probably for those who try to comply with the law. By eliminating the bonding requirement, many of the complaints associated with contractors' registration would disappear. Finally, if we were to create a situation where we eliminated the bond for independent contractors without the employees and kept it in place for everyone else, we would be creating a wrong incentive. The employees would reason that if bonding is such a nuisance they would simply call themselves an independent contractor and go in that direction. We do not want to create that false incentive for people to break the law.

The second recommendation the MBIA would like to make is on page 10, sub 19. We have worked with **SENATOR HOLDEN** to make sure all licensing classifications and registration classification in the State should not have to comply with this law as they are complying with other statutes. For example the well-drillers' clarification on the oil and gas industry as well as a number of other changes have all been included in the new bill. Sub 19 is a catch-all that was added to the bill.

*{Tape: 1; Side: B; Approx. Time Count: 46 Minutes; Comments: Lost Approximately 5 Seconds of Conversation.}*

**Mr. Chance** mentioned anyone who has any form of professional license in the state would be exempt from this. If there was a situation where someone decided to become a builder and because they had a professional license in an entirely different area, would be exempt.

Finally, **Mr. Chance** stated they are not in agreement with exemption Sub. 8 which changes the dollar amount from \$500 to \$2500 as **SENATOR HOLDEN** mentioned earlier. Their preference is

that amount may be bumped to something like \$1,000 as opposed to \$2500.

**Joan Mandeville, Montana Telephone Association**, called attention to an amendment on Page 8, beginning at line 15 to exempt rural cooperatives from the bill. Currently all the regulated telephone companies in the State are exempt. The reason cooperatives fall into this bill is that their construction falls into two categories. The first is inside wiring on homes and the second is any major construction. For instance if they are doing outside construction and AT&T also wants to lay a wire in that same area they may do construction for AT&T. Most companies like AT&T have very tight technical specs and do a lot of their own inspections so **Ms. Mandeville** does not believe this has ever been a problem. She also submits inside wiring does not create any kind of a problem in the State with construction. They do not have any Workers' Comp. problems, and have been very active with safety. There is not an uninsurance problem with cooperatives. Montana Telephone Association would like to thank **SENATOR HOLDEN** for drafting SB45 and addressing that issue for them.

**Eugene Graf, Bozeman Homebuilders' Association**, represented 350 employees of the southwest Montana building industry. He believes more decisions which are made by free individuals and free society is better than government control. He supports Workers' Compensation and responsibility to his employees. He stated if he chooses not to be covered this one thing, but to coerce an employee for \$12 per hour to put his family in jeopardy is not right. SB45 with amendments allows us to do well and he believes it can be worked out so everybody wins.

**Don Allen, Coalition Workers' Compensation System Improvement**, stated he believes from the beginning SB354 everyone knew this bill was going to have to be improved. He believes the bill itself addresses most of the complaints the Coalition for Worker's Compensation System Improvement throughout the past one and one half years. He mentioned that most of the complaints that came in voiced the confusion because the independent contractors' exemption was changed in SB354. These people were concerned about the Contractor Registration Law. The Coalition agrees with the suggested amendments. The Coalition represents large and small employers and this is a key part of bringing about equity in the system and making it easier to have fairness in Workers' Compensation coverage for workers as well as employers.

**Jacqueline Lenmark, Montana Water Well Drillers' Association**, said the drillers support the exemption that is contained in SB45. They are licensed and bonded under another provision and they request we preserve that exemption in this bill.

**Chuck Hunter, Department of Labor**, is in support of SB45.  
(EXHIBIT 2)

**Dave Cogley, Montana Building Industry Association**, supported SB45. See EXHIBIT 3 for his testimony.

**Frank Armknecht, Valley Glass of Bozeman**, stated his company has been in the subcontracting supply business in Bozeman for the past 20 years. They would be opposed to the repeal of the law. They are in support of SB45 with revisions. Changing the registration period from one year to two to three years would be excellent. Also, the elimination of the bond requirements should help to administrate this new law.

**Sam Gates, Missoula Building Industry Association**, supported this bill with amendments, especially the part conducting bonding. Most of his business is specialty contracting. He only handles one to three employees most of the time. Elimination of the bond requirement would help the issues. He is in support of this bill.

**Tom Vanorio, Bitterroot Builders' Association**, explained they are a new chapter to the Montana Building Association. They were very much in favor of SB354 and thought it was giant step forward. The amendments from SB45 are even a better step forward and he cannot think of a better way to offer security to his clients than to show them that his subcontractors and his people are under this contractor registration.

**Russ Eklund, Great Falls Home Builders' Association**, which consists of approximately 90 members, stated he is a small volume builder, building three to five houses annually. He is in favor of the migration of liability from one contractor to another which helps reduce the potential liability to the homeowner.

**Bill Pierce, Montana Building Industry Association**, is also a home builder. He said he had many concerns about SB354. He is in support of the improvements to that bill with SB45. He commended **SENATOR HOLDEN** for his work on this bill.

*{Tape: 1; Side: B; Approx. Time Count: 64 Minutes}*

**Opponents' Testimony:**

**Don Judge, Montana State AFL-CIO**, said he classifies himself as a no-ponent as opposed to a opponent. They are not absolutely opposed to this legislation, it is a vehicle they can use for amending a law that has problems. He commended **SENATOR HOLDEN** for bringing SB45 in as well as SB5. Limiting this to construction contractors is exactly what they had intended the legislation initially to do a couple of years ago. There is a growing advent of numbers of independent contractors doing independent things across the state, therefore we are going to have an increased number of injured who will be suffering problems. We need those problems to be addressed. This is a great first step, but **Mr. Judge** hopes this doesn't mean in the future we won't look at some expansion to take care of industries

where injuries become frequent and we need to deal with those injuries. They do not have any big complaints about repeal of the bonding section. We just repealed the bonding wage protection bond on hotel and restaurant employees, primarily because it was not being used and had not been enforced.

**Mr. Judge** stated they do want to take a look at the amendments being offered by the Department of Labor with regards to the clarification of exemptions, licensed professionals which do include electricians, plumbers, sheet metal workers, iron workers and all sorts of other folks, need to be considered as part of the construction crew. That is their occupation and we need to be careful we don't limit the application of those folks. We agree that \$2500 is too high and that an amendment is offered to raise it from \$500 to \$1000. **Mr. Judge** does not think this is a problem for them.

Public registration is something they would like to ask the Committee to consider putting back in. The Department of Labor does not have the resources to enforce the law. They have essentially one person in the Department of Labor who is responsible for enforcing contractor registration laws at this point in time. If we have public exposure, for example someone is working at your house and you are not convinced they truly are an independent contractor, you would want to be able to find out if their registration number is valid, if that person is registered to do the kind of work they are doing. This bill proposes to strike that access by the public out. The public has the right to check to make sure that person is a registered independent contractor.

There is nothing we can see in here that protects the consumer. We have an amendment which in essence will allow anybody damaged by false or misleading information provided by an independent contractor to sue, and we also cover attorney fees. We think this is a reasonable consumer protection item, it exists now in the Oregon law it is essentially a copy from the Oregon law. We think it works well there and we would like to see it put into Montana law. He will be happy to work with the Committee on the final legislation.

**REP. BRAD MOLNAR, HD 22, Laurel**, addressed the statement opponent **Don Judge** made regarding this bill being a duplication of Oregon law. This law was lifted from Washington with four pages of amendments. Montana's Department of Labor visited there and described the Contractors' Compliance Division as a large room filled with phones constantly ringing. They said that state was having a lot of problems with independent contractors and their law is over 15 years old. **REP. MOLNAR** does not believe SB45 is a solution.

Over 3,000 people came to meetings in Wolf Point alone. At 24 degrees below zero over 225 people who wanted to hear about this bill attending his meeting. One of the comments afterwards was

"you could have heard a pin drop". This was a result of **REP. MOLNAR** reading them the law. The people gave **REP. MOLNAR** \$2,200 that night to fight the repeal of this law. This is industry-driven.

The MBIA, which spoke in favor of the bill here, said that SB45 will not work and their members will not accept it. For the same reason those members will not accept it, the 49,000 entities in this state so small, which only employ a spouse, also will not accept it.

Construction Contractor definition on Page 4 does not match the definition in Statute and one of the other should be selected. Also, under application for registration only one line is crossed out, and that is 'information public'. Out of 41 elected constitution of violations we are now down to 40. The courts have barred enforcement of this on the grounds of registration alone, stating that the court was correct in not muddying the waters on the other 40. Those are still valid, waiting for the court to open. Many of the statutes that are listed in that are not amended or addressed in this legislation.

Referring to page 8, **REP. MOLNAR** said, "Proof of verification is demonstrated by having a copy of the construction contractor's registration certificate that covers the time period during which the construction contractor performs the services", in regards to limiting liability. The liability of migration upwards is not by mistake. When a man climbs up the ladder as an independent contractor and falls down and his hard hat becomes a brain bucket, he is not likely to migrate liability to the contractor which hired him. The state does that. It is in statute. This does not limit that liability.

If an independent contractor falls down and wants to sue for a dangerous job site, our 'A,B' rules make him an employee against his will. Take away his rights to use the perks and we say he did not mind going on unemployment afterwards. He very much minded. **REP. MOLNAR** stated this is a falsehood perpetrated in meeting after meeting that he attended in the Department of Labor. He believes the Department of Labor creates the liability on every one of us.

**REP. MOLNAR** then explained that then we want to go from \$500 worth of business where we won't mess with to \$1,000 by some and \$2,500 by others. We will protect the constitutional right to enter the trades or collect up to \$1,000 or see if that person has it. The U.S. Supreme Court has ruled that the state shall lay no impediment to the interest of the common occupations. What is more common than digging a hole, pounding a nail, or smoothing out concrete?

**REP. MOLNAR** stated that **SENATOR HOLDEN** mentioned that agriculture wants out of this. About one-third of the proponents said they like it because they are out of it. Contractors also want out of

it. They have as much right to not have government regulation telling them what they may and may not do. When we shut down a job because someone is not registered someone may have to wait quite awhile to get their work finished. It is onerous to each of us personally.

Referring to page 9, sub. 13, **REP. MOLNAR** stated in regards to a whether the property is occupied by the owner's or not, the owner is exempted. Actually, this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months. So, we buy a house, fix it up and find out we are transferred, we have violated the law.

In regards to the elimination of 'C', the war on independent contractors by the Department has been steady. Previously we had the 'A,B'. Now we have a piece of paper which costs \$25 which is worthless. The courts have struck this down and this does not advocate a person's rights under Workers' Compensation law. Now we must pass 'A,B' which consists of three pages of rules to cover those two sentence fragments and no one can get through them. **REP. MOLNAR** stated the rules from those three pages contradict each other.

*{Tape: 2; Side: 1; Approx. Time Count: Approximately 83 Minutes}*

**REP. MOLNAR** said if you want to be an independent contractor in the State of Montana you will ask for a number. If the state gives you one, you defend that number and if it is taken from you, you do not work.

It is **REP. MOLNAR'S** opinion that if we want enforcement of workers' compensation laws, enforce the laws we already have. It is a \$50,000 fine and up to ten years imprisonment for not having Workers' Compensation on employees. If an independent contractor is issued a certificate, but determines through the 'A,B' test that he is not a contractor, he is an employee. That is the liability we give to the people of Montana. Many MBIA members in support of SB45 were asked by **REP. MOLNAR** to read him the law they supported. They could not and many of them changed their minds when they found out the upper migration of liability was still there.

In reference to **Chuck Hunter's** comment about additional exposure to Uninsured Employment **REP. MOLNAR** explains recently elected U.S. Congressman **Rick Hill** stated the effect of the Uninsured Employers' Fund was minimum \$5,000,000 and top end \$10,000,000. That is what this will cost us.

In response to **Don Chance's** statement that this will limit the migration of liability **REP. MOLNAR** stated that he would like **Mr.**

**Chance** to show him how this statute, in conjunction with existing law, accomplishes that.

**REP. MOLNAR** stated if he were a fly-by-night contractor, he would love this law. For eighty dollars he could become a registered contractor with the appearance of legitimacy. He believes most of the statements made by the proponents were ingenuous but false. When the Department was charged with educating people about this bill using 15% of their money the chose to sell the bill. Therein lies the problem.

He believes the effective date of this bill should be changed from July 1, 1997 to "if the courts ever allow us to implement this it shall be placed immediately upon the people".

{Tape: 2; Side: A; Approx. Time Count: 86 Minutes}

#### Questions From Committee Members and Responses:

**SENATOR EMERSON** asked **REPRESENTATIVE MOLNAR** if anyone had ever sat down and asked if we can get along without these things and what few regulations do we need? What do we need these licenses for? For instance, what about a barber, we do not need a state license for barbering. The barbers could have their own organization and if someone wants to belong to it, that's fine, but we don't need a barber's license. How many things creating a bill like this could just be dropped out and let the people take care of their own problems? **REP. MOLNAR** stated this had been discussed somewhat. When **Ms. Eckinger** of the Department of Labor was asked instead of writing this bill stating that "if you do this" we will excuse you from this liability. When asked about eliminating that liability from statute she said "no". He took the six or seven pieces of liability that he could find and questioned why we would take liability from this contractor who did not have Worker's Comp. insurance and take it off his back and make it the responsibility of some one who did not have anything to do with it. Why is it if a contractor is not registered and doesn't have Work Comp. or Unemployment, that the liability goes up to the next contractor? The legislature created this liability and the people of Montana are paying for it. If we have shut down someone's job site, did he not pay a penalty because of legislation that we have passed? **SENATOR EMERSON** then responded that if a person is responsible for themselves and what they do, we can't expect to protect all the customers. We can't expect to stop someone from hiring some scam artist because we cannot run around and take care of everybody. Can we go back to the basics and add the few that we need? I can see the necessity of Workers' Compensation that had a good beginning but there is so much other stuff I'm wondering if we can't just get rid of. **REP. MOLNAR** said that is what he is attempting to do. If you hire me as an independent contractor and I slip on your stairs, this is case law of liability, but the

liability that we created is the only thing the legislature can go after and that is what he has attempted to do.

**SENATOR KEATING** asked **Mr. Hunter** about the reference made to the uninsured employer law regarding the possibility of an increase of claims under the uninsured employer law because of the lessening of the state regulation and control of the individuals working as construction contractors. Under the uninsured employer law, how much money is spent annually with regards to benefits paid? **Mr. Hunter** responded that in a general way it varies from year to year based upon the number and severity of claims. It is in the neighborhood of \$200,000 per year. **SENATOR KEATING** then inquired how the Department collects for those benefits. **Mr. Hunter** said the Uninsured Employers' Fund is funded solely by penalties which are applied to employers who are suppose to have the mandatory Workers' Compensation insurance and do not. The penalties are equal to the amount that should have been paid in premium plus up to 100% penalty on top of that. The top price is essentially 200% of the premiums that should have been paid had they had the insurance for the time period. **SENATOR KEATING** stated according to the Constitution, Workers' Compensation is the remedy for the employer who provides that coverage and the State law states that if an employer does not provide Workers' Compensation they are subject to a \$10,000 fine and imprisonment or both. He asked **Mr. Hunter** if that is correct. **Mr. Hunter** responded that is correct, although he believes the fine can be up to \$50,000. **SENATOR KEATING** then said that the Uninsured Employment law is a safety net for the employer who chooses to go bare and exempts him from that fine or that felony activity. **Mr. Hunter** said it is not a shield and in fact, in the Uninsured Employers' law it directly exposes them to tort liability as well as liability for repaying any benefits that we would pay out of the fund. The fund will pay benefits to the individuals in a like-fashion as insurance companies, but then that injured worker can seek under tort liability to sue that employer for unsafe practice and not having coverage as well as the Department coming after that employer for the cost of the benefits we have paid out in addition to the penalties that we would apply. **SENATOR KEATING** then asked **Mr. Hunter** that although there is no statement of intent on this bill, under the Independent Contractor Bill 354 which had a statement of intent and allowed rule-making authority, besides the general rule-making authority of the Department under the Independent Contractors' Statutes, the Department still has rule-making authority has it not? **Mr. Hunter** said this is correct. **SENATOR KEATING** asked if anything we do here in this bill can be modified by a rule after we are gone. **Mr. Hunter** said it cannot be modified as we would still have the ability write rules regarding this legislation but we cannot change what is in the legislation. **SENATOR KEATING** understands that rules cannot supersede statute but the statute, depending on interpretation can be modified by rules.

**SENATOR BENEDICT** asked **Mr. Hunter** if on the Uninsured Employers' fund the penalties and fines from people who do not carry Workers' Compensation insurance accrue to that fund. **Mr. Hunter** responded that this is correct. **SENATOR BENEDICT** then asked how much is in that fund now in excess of its liabilities. **Mr. Hunter** answered that a rough estimate it is about \$1,000,000 in excess of the administrative costs. **SENATOR BENEDICT** inquired if that is the reason the Department does not have a problem with the fact they may have additional costs in the Uninsured Employers' fund. **Mr. Hunter** said that \$1,000,000 in the fund could be wiped out very quickly with several catastrophic injuries, however, their experience has been they have only been paying out \$200,000 on an average year. In the event of more average years, they do have some cushion for that fund.

**SENATOR EMERSON** questioned **Don Judge** about his statement regarding the fact we need something to give the customer the right to sue. He asked that **Mr. Judge** repeat that statement. **Mr. Judge** stated he felt **REP. MOLNAR** was confused about **Mr. Judge's** statement about the Montana Contractor law. He was not stating that it was designed on the Washington law but the amendment he is offering is statutory in Oregon. The legislation in Oregon allows anybody who has suffered a damage as a result of providing false or misleading information as a contractor then has the right against to a civil suit against that individual. **SENATOR EMERSON** asked if we already have that right to sue if somebody gives false information. **Mr. Judge** said he is not sure it is clear as to who has the right to sue in a case like that.

**SENATOR BARTLETT** asked **Eddie McClure, Legislative Attorney**, on page 5 of SB45 the bill sponsor proposes to strike subsection 2 which deals with the applications being public record and open to public inspection. **SENATOR BARTLETT** would like to know where the constitutional provisions would come into play even if this were taken out of the statute. Would this records still be open to inspection under the Constitution? **Eddie McClure** responded she is unsure why subsection 2 is requested out but her guess is it would still be available for public record. **SENATOR HOLDEN** stated this was taken out in an attempt to protect the private information of owners and construction contractors and still the Department would have the ability to check the validity of their registration forms and certificates. **SENATOR BARTLETT** requested that the staff research this for the Committee before any action is taken. She is trying to avoid a situation in which this language is stuck and then everyone assumes that immediately becomes proprietary information which is not available to the public if that is not going to be the case. **SENATOR KEATING** agreed with this. He said under the freedom of information clause there nevertheless is proprietary reservation of information, however, that is a fine line and generally up to the discretion of the Department. He said the Committee should have a reading on that.

**SENATOR BENEDICT** asked **SENATOR HOLDEN** in SB45 part 'C' is taken out of the Independent Contractor registration and yet the \$2,500 is not removed. SB3 gets into three different sections of the code where SB45 just strikes section 'C'. **SENATOR HOLDEN** responded that this may be an oversight on his part and you would certainly want to consider **SENATOR NELSON'S** legislation.

*{Tape: 2; Side: A; Approx. Time Count: 104 Minutes}*

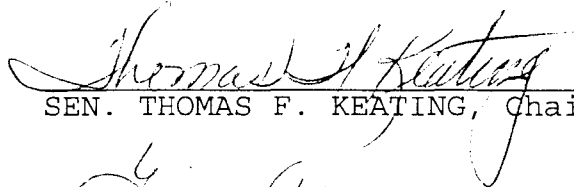
Closing Statement By Sponsor:


**SENATOR HOLDEN** would like to emphasize the importance of the \$2500 exemption which is written into the bill. He has heard hours of reasons why that should be decreased and still strongly feels it should remain as is. Regarding the elimination of the bonds, the bonding issue was included although he is not in favor of the bonding requirements. He stated that for a fair discussion among the Committee that he would leave it in more simplified form but realistically he thinks this should be eliminated as the Department and other members have requested.

**NOTE:** Carl Schweitzer, Montana Contractors' Association, Inc., submitted a synopsis of his comments after the hearing on 1-9-97.  
(EXHIBIT 4)

ADJOURNMENT

Adjournment: 2:35 p.m.

  
SEN. THOMAS F. KEATING, Chairman

  
GILDA CLANCY, Secretary

TFK/GC