

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 22, 1997, at 9:00 a.m., in Room 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 83; 1/13/97
Executive Action: SB 83; SB 56; SB 80;
(SB 17 & SB 39 Tabled)

HEARING ON SB 83

Sponsor: SENATOR MIKE SPRAGUE, SD 6, BILLINGS

Proponents: John Cadby, MT Bankers Assoc.

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 9:00 AM; Comments: N/A.}

Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, SD 6, BILLINGS. I bring you SB 83. This bill came about in the last session (1995) and was introduced as Senate Joint Resolution 19. It was to go to the full Legislature for prioritizing in sub-committees to study the feasibility of

Questions From Committee Members and Responses:

SENATOR BENEDICT asked what the inducement would be for a foreigner to park a large chunk of their assets in a depository account here in Montana. He also asked if a depository pays interest?

Mr. Stephen Maly replied that a depository is not designed as a money-making instrument for the customer, although it would provide opportunities for the customer to make money through very limited investment possibilities in tax-exempt instruments. That is one avenue they can take. The main motive for a foreign person to put money in this type of an institution is its location, remembering that these types of people are extremely wealthy (there is a minimum deposit of \$200 thousand) and who have their assets spread around the world in money-making adventures. It is a safe country. No one is going to steal their money, appropriate it or tax it. Secondly, they can use the opportunity to avoid paying what they would consider onerous taxes in their home country. France, for example, is a very, very highly taxed country. We don't feel that many would come from the advanced, industrialized democracies like France, but there are countries like Taiwan and Turkey where there are very wealthy people and their wealth is very much at risk. One of the features of the depository that would make it unique in the world as well as in the U.S. is the potential to merge financial capital with holdings of platinum made in Montana. That is one of the ways that they can protect the value of their monetary assets in a depository by investing them in platinum, gold, etc. which has a pretty steady rate of appreciation. This is not a part of the bill--the state would not be engaging in this transaction.

SEN. CASEY EMERSON asked what the depository might yield for the State of Montana?

SEN. SPRAGUE answered that he remembered well that they had tried to project what the potential gain would be for Montana. The best projection was if they could raise \$200 billion on deposit, they might be able to come up with the goal of \$1 billion a year. As this process has evolved some other analysis has come by. For example, if 10% of all current offshore banking facilities decided to use Montana for 10% of their asset diversification, we could be looking at \$1 trillion on deposit and our legislation has not proposed a 1% fee but in fact a 2.5% fee which is a marketable, comparable value for this kind of service. We are talking sizeable revenue relatively to income to the State of Montana.

{Tape: 1; Side: A; Approx. Time Count: 9:20 AM; Comments: N/A.}

SEN. BEA MCCARTHY asked that if this legislation passes, will you, **SEN. SPRAGUE**, go through the steps of how this legislation will be set up. **SEN. SPRAGUE** deferred the question to **Mr. Maly**.

creating Montana as a depository state. It was called The Foreign Investment Depository. The words have been changed and moved around. We now call ourselves the Senate Joint Resolution Subcommittee on The Foreign Capital Depository. The word investment had connotations that some were uncomfortable with so it is now capital. We are encouraging foreigners to bring their assets to a depository in Montana for which the State of Montana will derive revenue. I would like to pass out a series of questions, answers and comments that you may look at (EXHIBIT 1).

The Foreign Capital Depository committee was a bi-partisan effort. Our findings came out on time, under budget and unanimous. Many of the committee members had a lot of skepticism going in and were united coming out. The report is substantial and there are copies available for those who desire one. I would like to make it clear that this is not a bank. Therefore, it cannot be put in the same parameters. It is new for Montana and new for North America. There are offshore banking facilities in other countries, but not here. Our goal is to create what we would like to think of as a snow white depository for the Treasure State of Montana.

We have had interest in this type of a depository. With the stability of our federal government and of our currency, others in not so stable a country have expressed an interest in depositing their assets in our country. The point of this bill is to create an attraction for foreign capital to be deposited here in Montana and this capital would not be ill-gotten gain or laundered money. We have made a special effort in this bill to discourage that as best we can. This is a good bill for Montana and in turn for Montanans. **Stephen Maly** from the Legislative Council is here to answer specific questions concerning this bill.

Proponents' Testimony: None

Informational Testimony:

John Cadby, MT Bankers Assoc. We have simply served as a resource in providing the subcommittee with information when requested and tried to aid them in their research and study in this project. We don't have a position for or against the proposed legislation. We do have an amendment that our council in researching the bill proposed. (EXHIBIT 2) It simply makes it clear that the depository would only serve non-resident aliens; it would not serve any U.S. citizen or Montana citizen. That is clear throughout the bill. It meets, I believe, the approval of the sponsor.

Opponents' Testimony: None

Mr. Maly stated that the process would be engaged with rule making primarily early on by the Board of Banking and also by the Department of Commerce. The Board of Banking would have the responsibility of writing rules that govern how a charter is to be issued. The bill specifically states how a corporation would qualify to obtain this charter, but the Board of Banking has the additional responsibility to fill in details. One of the most important rule-making functions of the Board has to do with determining the identity of the persons obtaining the charter. Identity checks would be made on those people who seek to obtain the charter. The charter seekers are not necessarily non-resident aliens. The most likely seekers of a charter would be major, transnational banking institutions that would likely establish a subsidiary here in Montana for this purpose. A new corporation could also be formed for this purpose. Much investigation would be done on these people to be sure they were not crooks.

Once the rules of how the charter would be issued, there would be rules to establish how the institution would run itself. Again, one of the key considerations is designing and implementing a "know your customer" policy. I am focusing on these elements because most of the objections raised earlier on had to do with attracting money launderers and other types of financial criminals. The bill is replete with design elements that are there to deter those people.

Once the rules are established and published and once a charter is sought, the Department of Commerce has the responsibility to regulate, examine and supervise the institution as they do banks. The federal government would not have any oversight of this institution unless it is a foreign bank that wants to establish a corporation, a subsidiary, in Montana. In that instance alone, the Federal Reserve System is the overall regulator. The bill requires the institution to comply with all the requirements of the Bank Secrecy Act which is a federal law which was designed to curtail money laundering. The IRS would also have a roll in making sure this institution is complying with federal law.

SEN. MCCARTHY continued with the question of where would this depository be situated. **Mr. Maly** responded that the charter corporation would choose a site that would be conducive to their clientele. A very sizeable vault would be a necessity.

CHAIRMAN JOHN HERTEL inserted a question about why would people deposit money here in Montana and what is in our law here in Montana that would allow this depository and not in other states?

Mr. Maly responded that in Montana Constitution we have a right of privacy provision. We are not unique in that regard. There are about 8 or 9 other states that have basically the same provision. In the arena of individual financial records, there are significant court cases that have been tried that indicate that that provision in our Constitution does not protect anyone's

financial records from discovery, from inquiries, etc. However, there are very strict restrictions on gaining access to personal financial records in federal law. There is a federal privacy act that is actually more powerful than our own state's right to privacy.

CHAIRMAN HERTEL then stated that if this bill was passed, would it not be challenged as far as the Montana State Constitution was concerned.

Mr. Maly stated that on a Constitutional basis, it would address equal protection. This is an unusual construct in that it is providing privileges to non-resident aliens exclusively. Since Americans may not make use of this institution, an American might take issue with this and try to bring it to court and say that this is unfair. They might just want to test the logic or they may want to destroy this kind of institution legally.

{Tape: 1; Side: A; Approx. Time Count: 9:32 AM; Comments: N/A.}

SEN. DEBBIE SHEA asked what would foreigners have to do in the operation of this institution. **Mr. Maly** answered "none" unless they were partners in the charter of the depository.

SEN. BENEDICT asked if the federal government would be able to get their hands on some of the tax revenue coming to Montana? **Mr. Maly** replied that he could not envision how they would go about that. **SEN. BENEDICT** then asked if there were any other state doing this kind of thing. **Mr. Maly** answered "no". New York is doing something analogous to this.

SEN. EMERSON asked if the 2.5% is feasible and if it might not be possible to have the freedom to make an adjustment. **Mr. Maly** said "no" because that 2.5% rate is set in statute. It would have to be changed by the Legislative body to a different rate. **Mr. Maly** handed out (EXHIBIT 3) to show what type of revenue might be gained predicated on different volumes of deposit. The chart simply shows what kind of money would come into the state using a fee of .5% up to 2.5%.

SEN. MCCARTHY asked about Section 22 which covers the depository services. It looked to her like a regular catalog of normal banking services rather than what she would envision in depository. In particular, line 6, #G which says they would issue a debit card and an ATM card to their clients.

Mr. Maly explained that the institution may not engage in lending. The provision for a debit card is the exception to that in that the depository might charge interest on what they might consider a temporary loan, even though it is not a loan because the client has the assets on deposit. It is not a loan but they could charge interest on it. These people are not looking for liquidity, but they might like access to some portion of their assets if they needed it. The use of a debit card would be the

easiest way for them to do this. The institution would not be lending as banks do.

SEN. WILLIAM CRISMORE asked if there had been anyone contacting this group who was interested in the charter of the depository?

Mr. Maly responded that there had been a lot of contact with international banks and major U.S. banks and also major trust companies. Because the U.S. Treasury Dept. does not like this and because it is controversial, those who had shown interest declined to participate so they would not be seen too soon by the Feds. There has been an inquiry over the phone and they sounded interested and we have had some correspondence.

{Tape: 1; Side: B; Approx. Time Count: 9:47 AM; Comments: N/A.}

SEN. BENEDICT stated that the bill could set up a limited number of these charter depositories and asked if this were correct?

Mr. Maly responded that that is correct.

SEN. BENEDICT followed on with a question concerning the fiscal note and asked **Mr. Maly** to highlight important items in this fiscal note. **Mr. Maly** replied that there are a couple of inaccuracies that are worth noting. Number 9, on Page 1 states that the Foreign Capital Depository will pay the Department of Commerce a fee equal to 1 1/4% of the total value of the assets. None of that money goes to the Department of Commerce. All the money based on volume of assets goes to the General Fund and the Revenue Department collects that money twice a year. However, the DOC collects fees from applicants and from charter holders. There is a \$5,000 application fee. There is a \$50,000 initial charter fee and a renewal fee of \$10,000 or less thereafter. The idea was for the process to pay for itself. But the revenue generated will go to the General Fund.

On the back of the fiscal note, continued **Mr. Maly**, under the first paragraph, Long Range Effects of Proposed Legislation, the last line, "any potential revenues will depend on the number of depositories and the popularity of their services" BUT it will really depend on the number of customers and the volume of assets placed on deposit or in vaults. There could be one depository or there could be 50, but the thing that is going to generate revenue are the customers and how much they are willing to put into the depository.

On the last paragraph under Technical Notes, **Mr. Maly** said that he didn't quite understand completely, but that his understanding was, even though this bill is excepted from many provisions of the States Bank Act, it also falls under many provisions of the Bank Act especially in regard to dissolution of the Institution. There is a specific provision in the bill that prohibits someone from trading their ownership in the Depository.

SEN. MCCARTHY stated that there was a provision in the bill for selling the charter. On page 12, Section 20, it reads that the sale or transfer of charter is prohibited and there is a penalty.

SEN. EMERSON stated that under the "Assumptions" in the Fiscal Note, under number one, there will be only one financial institution applying for a foreign investment depository. He then asked if the idea is to take the first accepted charter through the courts to find out how it would go in Montana.

Mr. Maly replied that yes, this is unusual and an experiment. It is unlikely that many charter seekers would come banging on the door.

CHAIRMAN HERTEL stated that due to the fact that the Banking Board is the entity that has the rule-making authority, they are really going to be the ones involved in this. Could someone tell us the make up of that institution?

Annie Bartos, Chief Legal Council of the Department of Commerce. The Banking Board is quite advised by the Governor's office. It consists of seven members. The Chairman is Tom Ryan, Hamilton; representatives who are bankers from national banks as well as state charter institutions, Doug Morton, Kalispell, Banker; Skip Baxter, Thompson Falls, Banker; Jerry Wiedebush, Plentywood, Banker; Loren Tucker, Virginia City, County Attorney, Madison County; Shirley Gierke, Miles City.

{Tape: 1; Side: B; Approx. Time Count: 9:56 AM; Comments: N/A.}

Closing by Sponsor:

SEN. SPRAGUE closed. Thank you for a good hearing. There is a lot to learn and the bill should make good night reading. I would appreciate your support in this bill primarily because I feel that it is important for Montana to stand united in the process and send a clear message that we are open for business even in the international arena.

{Tape: 1; Side: B; Approx. Time Count: 10:09 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 83

Amendment Motion: **SEN. STEVE BENEDICT** moved to AMEND SB 83.

Vote on Amendment: The motion to amend SB 83 CARRIED UNANIMOUSLY.

Motion: **SEN. BENEDICT** moved SB 83 DO PASS AS AMENDED. (EXHIBIT 4)

Discussion: **SEN. CASEY EMERSON** suggested that the 2.5% is set very high and sounds a bit greedy. He feels there should be more freedom in the bill for negotiation.

Vote: The DO PASS AS AMENDED for SB 83 CARRIED UNANIMOUSLY.

{Tape: 1; Side: B; Approx. Time Count: 10:15 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 17

Motion: SEN. BEA MCCARTHY MOVED SB 17 DO PASS.

Discussion: SEN. BENEDICT feels this bill is not broad enough and does not feel protection should only be offered to one group of citizens. He does not feel that the bill can be amended. The title says, "Senior Insurance & Securities Fraud Protection Act". There are protections for insurance companies from consumer fraud but we don't have protections for consumers from insurance companies. He has a bill in now that addresses this but it is protection for everyone.

CHAIRMAN HERTEL stated that he had visited with the sponsor yesterday and she apologized for not getting some kind of action in regard to what we heard in the hearing. She promised to have some amendments available quickly.

SEN. DEBBIE SHEA sees many problems with the bill and would like to see some kind of action taken.

Substitute Motion: SEN. BENEDICT MOVED TO TABLE SB 17.

Vote: The TABLE motion ON SB 17 PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 39

Motion: SEN. SHEA MOVED SB 39 DO PASS.

Discussion: SEN. EMERSON said that he had asked the question of how many crop insurance companies had gone bankrupt and none had been recorded. And this insurance has been sold for 50-70 years. He doesn't see any need for it. SEN. BENEDICT said that he echoes those sentiments. Reinsurance is going to cost the policy holder money. SEN. SHEA said that yes it would cost them something but better that than to have the company go bankrupt and the farmer would then receive nothing. SEN. EMERSON said that it would not cost anyone anything, because none of these companies have gone bankrupt yet. They are better financed now than they ever have been. SEN. BENEDICT said that these companies have reserves and there is protection for the policy holders. This is a bill in search of a problem. SEN. MCCARTHY said that she believes that there is a federal insurance program so if the farmer could not afford the normal route, he could always get the federal crop insurance at a lower rate.

Substitute Motion: SEN. BENEDICT MOVED TO TABLE SB 39

Vote: The motion to TABLE SB 39 CARRIED with SENATOR SHEA voting NO.

{Tape: 1; Side: B; Approx. Time Count: 10:24 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 56

Motion: SEN. SHEA MOVED SB 56 DO PASS.

Amendment Motion: SEN. BENEDICT MOVED TO AMEND SB 56.

Discussion: Bart Campbell explained the amendments. (EXHIBIT 5)

Vote on Amendment : The motion to amend SB 56 CARRIED UNANIMOUSLY

Substitute Motion: SEN. CRISMORE MOVED SB 56 DO PASS AS AMENDED.

Discussion on Substitute Motion: SEN. EMERSON questioned the fees that were being required for registration of private cemeteries and the renewal fees. He felt that they were excessive. SEN. BENEDICT said he doesn't like registration fees either but in most cases when the Dept of Commerce is regulating companies, they can spread this cost over many entities and keep the fees fairly even. There are only 10 private cemeteries in the state so this will not generate a lot of money to oversee 10 cemeteries. The overseeing requires someone to go on-site, not just auditing books, etc. SEN. SHEA had spoken with a couple of her constituents and they felt relieved that it was not going to be more. SEN. EMERSON asked if there were some way to amend the bill and lower the fee. SEN. BENEDICT answered that the fee was only in the fiscal note and would be set by rule by the Dept.

Vote: The DO PASS AS AMENDED motion on SB 56 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 80

MOTION/VOTE: SEN. SHEA MOVED SB 80 DO PASS. THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment:



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW