

# MINUTES

## MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 14, 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 286; SB 312; 2/10/97  
Executive Action: None

### HEARING ON SB 286

Sponsor: SENATOR BRUCE CRIPPEN, SD 10, BILLINGS

Proponents: Peter Blouke, Director, Department of Commerce  
Paul Peterson, Coalition of Montanans Concerned  
with Disabilities  
Peter Leech, Clinical Social Worker, CMCD  
Michael Regnier, CMCD  
Bob McCarthy, County Attorney, Silver Bow County  
Bud Williams, MT Innkeepers Assoc.

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 9:06; Comments: N/A.}

Opening Statement by Sponsor:

**SENATOR BRUCE CRIPPEN, SD 10, BILLINGS.** SB 286 is an act that provides for the inspection of the construction of a facility or alteration of a primary function areas for accessibility to persons with disabilities. It requires accessible exterior routes regulating the alteration of a primary function area; it provides for a disclaimer on building permits and certificates of occupancy. There are people here to explain their problems. Basically the problem is while most buildings have been made accessible on the inside to people with disabilities, most of them are inaccessible outside--in the area parking lots, the loading zones, etc. For example, there may be an eight foot parking space but usually with the idea of the person exiting from the rear of the vehicle. Most vans have exits on the side of the vehicle. Current Montana law does not require building code inspectors to inspect parking areas. The solution is presented in SB 286 and that is to amend the building code laws to require inspection of exterior features to make them accessible for people with disabilities.

The federal law requires accessibility in the interior as well as on the exterior. There are those who are in violation of the law. So there could be the possibility of lawsuits against those who are not in compliance with the federal law. This bill would provide uniformity and help those who do not follow the federal law by giving them specific codes to build or remodel by. The inspections are paid for by building permit fees.

Section 2 is a disclaimer. Contractors can understand that even though they have complied with state building codes, that does not necessarily mean that they have complied with all the ADA requirements. This will give them the full scope of guidelines for meeting the ADA requirements.

Section 3 and 4 get to the meat of it. Section 3 deals with accessible exterior routes. In rural areas they often don't require pavement, but they are still under the law and they can be held responsible. There are other ways you can provide a stable, non-resistant surface. Section 4 deals with older buildings who are retrofitting and that is when this would come into effect.

Section 5 is a definition section. On page 5, line 17, the definition of primary function area is given and tells what areas are not part of this primary function area. There may be some amendments that strengthen this and further clarify. Section 6 is the purpose of the state building codes. There are some amendments that deal with this section also. Section 7 deals with existing laws. Section 9 deals with applicability and it will go into effect on or after October 1, 1997.

*{Tape: 1; Side: A; Approx. Time Count: 9:21 AM; Comments: N/A.}*

**Proponents' Testimony:**

**Peter Blouke, Director, Department of Commerce.** I rise in support of SB 286. I have spent a large part of my own career in state government working with these groups and know the importance of independence with these people. To insure that they have access to the same things that we do is important. The bill is the right thing to do. It is in the federal law. I would like to direct your attention to the fiscal note. There is a fairly heavy fiscal note attached to it. We are requesting 3 1/2 FTE's. If it the Legislatures desire to insure the ADA criteria are implemented, we do need this staff to follow through and enforce this. This staff and these costs are not additional costs that would accrue because we are asking for more staff. Our fees are based upon the scope of the project. As the new construction or new retrofitting permits are issued, then the fees based on the expanded scope, including ADA requirements, would come to the Department through part of the permitting process. So the fact that we are asking for new staff is not what drives the additional revenue coming to the state. This is not going to cause a direct increase of the fees. If the Legislature wants to insure the accessibility of the disabled, then we need the resources to be able to review the plans which is very time consuming.

**Paul Peterson, State Chairman, Coalition of Montanans Concerned with Disabilities.** We have five chapters around the state with about 300 members and about 35-40 very active core people. We want to stress the common sense nature of the law. People have built buildings with the interiors accessible but the exteriors still are lacking. We tried to figure out the best solution to this problem and we feel that there needs to be a change in the state statute. We are only addressing new buildings and the old buildings that choose to retrofit. We have letters of support (EXHIBITS 1, 2, 3, 4, 5 AND 6).

**Peter Leech, Clinical Social Worker.** I would like to hand in my written testimony (EXHIBIT 7).

**Michael Regnier, CMCD and Chair of the Governor's Advisory Council on Disability.** I would like to hand in my written testimony (EXHIBIT 8).

**Bob McCarthy, Silver Bow County Attorney.** I would like to hand in my written testimony (EXHIBIT 3).

**Bud Williams, MT Innkeepers Assoc.** We believe that it is our responsibility to make our buildings accessible to our customers. We stand ready to support the bill.

**Opponents' Testimony:** None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked of the 90,000 people handicapped in Montana what would the breakdown be of people in wheelchairs, walkers or just health problems. Mr. Leech did not have a break down.

{Tape: 1; Side: B; Approx. Time Count: 9:52 AM; Comments: N/A.}

SEN. EMERSON asked how many FTE's do you now have inspecting buildings? Jim Brown, Bureau Chief, Building Codes responded that there are 33 total inspectors. Six are building inspectors. The remaining are electrical, mechanical, plumbing, etc. There are three plan reviewers. The six are out looking at buildings all the time. SEN. EMERSON felt that this is plenty of inspectors and that 3½ more inspectors are not needed.

SEN. EMERSON asked what happens when you go in and tell a business that they should improve their accessibility for disabled persons? Mr. Peterson replied that there are different reactions from good to not so good.

SEN. BEA MCCARTHY stated that the technical notes indicated that there would be some additional amendments. Are these amendments ready? SEN. CRIPPEN said no, but he had discussed it with the proponents and they will be in contact with Mr. Campbell.

SEN. JOHN HERTEL asked that since there are federal laws on the book, why do we need this bill? SEN. CRIPPEN said the reason that this bill is needed is to avoid lawsuits for those who are not knowledgeable of the ADA law and to help the disabled who need this exterior access.

Closing by Sponsor:

SEN. CRIPPEN closed. This is an important bill. As a business owner, they want people to come in and spend money but there is more to it than that. Our citizens should not be denied access to any building or business.

{Tape: 1; Side B; Tape Count 10:15 AM; COMMENTS: A 12 MINUTE BREAK WAS TAKEN}

HEARING ON SB 312

Sponsor: SENATOR WILLIAM GLASER, SD 8, HUNTLEY.

Proponents: Linda Adams, AT&T  
Mark Staples, MCI

Opponents: Mike Strand, MT Independent Telecommunications  
System  
Barbara Ranf, US West

Joan Mandeville, MT Telephone Association  
Jay Preston, Ronan Telephone Co.  
Chuck Evilsizer, Telecommunications Attorney

Opening Statement by Sponsor:

SENATOR BILL GLASER, SD 8, HUNTLEY. Today I bring you Senate Bill 312, a bill directing the Public Service Commission to implement a state universal service fund to complement the federal universal service fund being developed by the Federal Communications Commission. Two weeks ago, you heard three other bills affecting Montana's telecommunications future: Senate Bill 89, the consensus bill resulting from the Governor's Blue Ribbon Task Force comprised of industry representatives, regulators, and consumers; Senate Bill 243 on wholesale pricing of telecommunications services; and, Senate Bill 242, the rural telephone companies' approach to a universal service fund. Senate Bill 312 provides you with another approach to telecommunications reform for you to consider. Let me take just a minute to place this bill into context. Just a little over a year ago, after more than a decade of debate, Congress adopted the Telecommunications Act of 1996. Among other things, this federal legislation requires the FCC and the states to ensure affordable local service and access to advanced telecommunications services in a way that enhances -- rather than distorts -- competition for local telephone service. In doing so, Congress recognized we need to replace the historic approach to keeping the costs of basic local telephone services low -- an approach based on hidden subsidies. Under this historic approach business customers pay more than the real cost of service so residential customers can pay less, long distance customers pay more than the real cost of service so local phone rates can stay lower, users of vertical services like call waiting or call forwarding pay more than the real cost of service, again to subsidize the basic rates. Congress found this historic approach based on hidden subsidies to be fundamentally flawed and unworkable in the competitive environment envisioned by the new law. But Congress also recognized that low-income consumers and consumers in high-cost areas like rural Montana would need narrowly focused subsidies in order to keep rates for basic local phone service affordable. To achieve this goal, Congress beefed up the existing federal universal service fund. The federal fund will grow from \$750 million in 1996 to an estimated \$8 billion once the new fund is set up -- much of it available to high cost rural states like Montana. Congress also said the states could establish their own universal service funds to supplement -- not to duplicate or contradict -- the federal fund so long as the state funds are consistent with the principle of competitive neutrality, and so long as they meet the requirements of the new law that all subsidies be explicit, equitable and nondiscriminatory. But it is clear Congress intends that the primary source of the subsidy for the high cost providers come from the federal fund, not from a state fund. And that's the rub, because under the timetable set up in the new law, we are

not going to know the size or the structure of the federal universal service fund -- and as a result we are not going to know whether or not we will even need to have a state fund, let alone what it ought to look like -- until May 8th, a date by which, hopefully, all of us will have returned to our families. That is the purpose of Senate Bill 312 -- to give the PSC the authority to implement a state universal fund to complement the federal fund once we know what the federal fund looks like. Senate Bill 312 spells out several broad principles the state fund must meet in order to comply with the federal law, but it leaves the details of the state fund to the people who have the expertise and the staff to make this fund dovetail with the federal fund once it is in place. That is also the fundamental difference between Senate Bill 312 and the universal service fund bill you heard earlier -- Senate Bill 242. The proponents of SB 242 are asking you to decide in great detail what the state fund ought to look like before you know what the underlying federal fund will be. In my mind, it is a little like a contractor building you a new house and asking you pick the wallpaper for the living room before you have even seen the floor plans. Mr Chairman, members of the Committee, there are several proponents here to speak to the technical aspects of the issue, and several opponents as well. I ask you to give them your attention to this important issue, and I reserve the right to close.

{Tape: 1; Side: B; Approx. Time Count: 10:22 AM; Comments: N/A.}

Proponents' Testimony:

**Linda Adams, AT&T.** I will make my presentation and hand in my written testimony (EXHIBIT 9).

**Mark Staples, MCI.** We are co-drafters and strong supporters of this bill. We need to proceed steadily but also cautiously in this field of telecommunications. We believe SB 312 is the vehicle which has the requisite caution but still provides framework with which to proceed. We need this caution so that we don't need to return in a year or two and redo a badly constructed bill. The bottom line is you won't know what you need in the state fund until you know what is in the federal fund. Some things you could end up with if you go into too much detail and are too specific, are costs later prove to be unnecessary, and more basic services entail and demanded than are economically feasible. The detailed outline of SB 242 as opposed to the more general framework of SB 312 would be like an agency adopting and promulgating rules before the Legislature passed the statute that those rules are intended to effectuate. If our rules and regulations do not dovetail with the federal laws, they will control and preempt us.

{Tape: 1; Side: B; Approx. Time Count: 10:37 AM; Comments: N/A.}

Opponents' Testimony:

**Mike Strand, MT Independent Telecommunications Systems.** I first would like to hand out a letter from Project Telephone Company (EXHIBIT 10); it is a small rural company. They were surprised that the sponsor had not contacted them concerning this bill and they are neighbors of **SEN. GLASER**. I will present my testimony and hand in a written copy of it (EXHIBIT 11).

**Barbara Ranf, U S West Communications.** I will present my testimony and hand in a written copy of it (EXHIBIT 12).

{Tape: 2; Side: B; Approx. Time Count: 10:53 AM; Comments: MISSED ONE SENTENCE OF MS. RANF'S TESTIMONY..}

**Joan Mandeville, MT Telephone Association.** I will present my testimony and hand in a written copy of it (EXHIBIT 13).

**Jay Wilson Preston, President, Ronan Telephone Company.** I will present my testimony and hand in a written copy of it (EXHIBIT 14).

**Chuck Evilsizer, Attorney, representing Hot Springs Telephone Co.** I agree with **Mr. Preston** and with most of the comments from the other opponents of SB 312. A state universal service fund is premature and may be totally unnecessary. The PSC and Legislature should await the outcome of federal proceedings (EXHIBIT 15).

{Tape: 2; Side: B; Approx. Time Count: 11:14 AM; Comments: N/A.}

Questions From Committee Members and Responses:

**SEN. STEVE BENEDICT** asked if the opponents and proponents are planning to get together and try to come to some consensus? **Ms. Mandeville** stated that discussions have already been held and I don't believe that we will agree on three of the basic points.

**SEN. BENEDICT** then asked AT&T the same question. **Ms. Adams** replied that she held the same view and that consensus was not probable.

**SEN. CASEY EMERSON** asked which opponents felt that both SB 242 and SB 312 were not good bills. With a show of hands, **Mr. Preston** and **Mr. Evilsizer** were the two opponents that wanted both bills defeated.

**SEN. BEA MCCARTHY** asked about the three parts of the bill that the two opposing sides could not agree upon and wanted those clarified. **Ms. Mandeville** said that one was for the fund to be established with sufficient support; second, as we restructure there is a mandated requirement that long distance companies pass through rate decreases; and third, that whatever we come up with does not include the language that it ties all of us into the

federal fund because we believe that generally eliminates the state fund.

**SEN. MCCARTHY** stated that **Ms. Mandeville** showed support for **SEN. HERTEL'S** bill (SB 242). Are there parts of this bill you feel are compatible with that bill? **Ms. Mandeville** replied that as AT&T mentioned, the statements of intent are similar and then that is about it.

**SEN. BENEDICT** asked on page 3, line 18 it states "every telecommunications carrier that offers. . . .shall contribute," and the next line states "the commission may require". Could you address this inconsistency please. **Ms. Mandeville** said that is one of the problems we have with this bill. That inconsistency worries us because on the one hand it gives the Commission the authority to say that all carriers have to contribute to the fund but it also lets them decide that some carriers wouldn't contribute to the fund.

**SEN. BENEDICT** further stated that in the first sentence we put it in law that we are giving a direction to the PSC that everyone has to pay into the fund and then we contradict ourselves in the next sentence. Could someone on the proponent's side make comment on this. **Ms. Adams** responded that she could not address the issue because the point was raised with us earlier. The reason it says intrastate is because the federal program is supposed to burden interstate and the Montana universal service fund is supposed to be funded from intrastate revenues. Our concern is that everyone who provides intrastate services contribute into the fund and everyone who is serving eligible customers is able to draw from the fund. I am not sure it says that but we would be willing to work on amendments. Our view is that new entrants who are not regulated, who are not even know yet all contribute and that whoever has the customer that is in a high cost area is eligible to receive support.

**SEN BENEDICT** summarized that what he was hearing is that everyone agrees that if this bill does go forward in some form, the "may" would be changed to "shall". **Ms. Adams** said that she could not answer now because their attorney had drafted this and would have to check with the attorney.

**SEN. JOHN HERTEL** stated that everyone knows that there are many unknowns and listening to your testimony, **Mr. Staples**, I thought you felt that it was probably best that Montana do nothing at this time. Was that your opinion? **Mr. Staples** replied that was not his position and it is not MCI's position. There might be shortfalls and Montana might get caught in the vacuum, but I feel that these parties could come together. We are going to have to trust the Public Service Commission to implement some or most of these things. If guidance is needed, those things are negotiable. But I don't feel that the Legislature should wait.

{Tape: 2; Side: B; Approx. Time Count: 11:29; Comments: N/A.}



Closing by Sponsor:

**SEN. GLASER** closed. We served Project Telephone Company with a line by US West. We gave US West five miles of fiberoptic right-of-way. If I am ever approached again by Project Telephone Company, then everyone is going to get my personal opinion of how I feel about this company.

Please allow me a few more minutes in closing, and let me begin by addressing a couple of the arguments the opponents are making against this bill. The opponents are implicitly saying we can't trust the PSC with an issue this big and this important. I'll respond in two ways. First, we already do trust the PSC all the time. The PSC has the staff and the expertise to handle these kinds of issues. There is nothing about this particular ratemaking case to make it unique. Second, if the Legislature decides it wants to keep a hand in this instance, we have ways to do that -- either through some kind of legislative oversight, or by attaching a sunset provision to whatever legislation we ultimately pass -- so we can revisit the issue in 1999 when we will know what the federal fund looks like. The opponents talk about concerns of escalating rates for basic phone service that would result from the passage of this bill. Again let me respond in two ways. First, local residential phone rates are going up with or without action in this committee. U.S. West's own analysis shows their local rates for residential service in the larger communities will increase from \$17.69 to \$27.44 a month -- or nearly \$120 a year -- possibly by as early as September of this year. Second, AT&T's studies show that if real forward-looking costs are used, and if the current hidden subsidies are phased out at the same time the universal fund is phased in -- two very big "if's" addressed in this bill but not in SB 242 -- then existing local rates may very well be enough to cover the rates required by the federal law without any "rate shock". There is no question in my mind that competition in the local market will ultimately result in lower cost and better service for all the consumers in Montana, even those in the most rural part of our state. There is also no question in my mind that the transition to competition will require a delicate balancing act. As I see it, this Committee -- and ultimately this Legislature -- must answer two fundamental questions: First, does the need to put in place some kind of a state universal service fund now outweigh the risks of acting prematurely not knowing the final shape of the federal fund? And second, if we do decide we need to put a fund in place, does this Committee want to develop the expertise to try to do in the next six weeks what **SENATOR BECK** and the Joint Board failed to do in six months, or do we want to authorize the PSC to develop the fund, perhaps subject to some kind of oversight? Mr Chairman, I stand ready to assist you in whatever way I can to help you answer those questions. I firmly believe that if we can just get the proponents and opponents of this bill to sit down together, they can find common ground that will benefit all the people of Montana. And with that Mr Chairman, I close.

ADJOURNMENT

Adjournment: 11:40 A.M.

  
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SEN. JOHN R. HERTEL, Chairman

  
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MARY GAY WELLS, Secretary

JH/MGW