

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON BUSINESS & INDUSTRY

**Call to Order:** By CHAIRMAN JOHN HERTEL, on March 5, 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: HB 225; HB 241; HB 350;  
2/24/97  
Executive Action: None

#### HEARING ON HB 225

**Sponsor:** REP. SAM KITZENBERG, HD 96, GLASGOW

**Proponents:** Ronna Alexander, MT Petroleum Marketeers

**Opponents:** None

**Opening Statement by Sponsor:**

REP. SAM KITZENBERG, HD 96, GLASGOW. I have before you HB 225. It is a nice bill and allows for installation of aboveground storage tanks in small communities. The important lines are 29 and 30. It states that it would allow aboveground tanks in towns with populations of 1,500 or less if the tanks are installed in conformance with all applicable laws and regulations. There are

beginning to be fewer gas stations in rural Montana. One of the reasons is all the rules and regulations concerning underground tanks. In the last ten years, forty retail gas stations have closed their doors in Montana. The idea behind this bill is that aboveground tanks are less expensive to install. Therefore, it makes it more competitive for someone in a rural situation to have a gas station. It costs 1/3 less to install aboveground tanks than underground tanks.

It is supported by the MT Stockgrowers Assoc. and the Farm Bureau. Asst. Attorney General Beth Baker just told me that the Fire Marshall wouldn't be testifying because he has no problem with this bill. Mike Batista, Justice Dept. also is not testifying because they have no problems with this bill.

**Proponents' Testimony:**

**Ronna Alexander, MT Petroleum Marketeers Assoc.** We are supporting this bill. One of the things we have worked on in the last five years has been fire codes governing aboveground storage tanks. Two years ago a task force was appointed by Attorney General Joe Mazurek to look at the fire codes that were in place. Montana adopts the Uniform Fire Code which is probably the most stringent set of fire codes in the country. He appointed the task force to look at rules that would be more Montana friendly and especially for rural Montana. They looked at farm and ranch tanks and made some adjustments there. They looked at retail locations in rural areas. To define "rural" was a real struggle. "Rural" is, at this time, defined as 1,000 people in unincorporated cities and towns. The industry has always supported the population number of 1,500. The bill allows a station, that has underground tanks that need to come out of the ground by the deadline that is set for 1998, to install aboveground tanks to replace the old tanks at considerable less cost. This would let the station owner stay in business for a lot less.

We have approximately 30 small towns in Montana that are incorporated and right now the rule says you have to be 1½ miles outside the city limits to put aboveground tanks in. When these stations have to upgrade, they will have to move 1½ miles outside city limits in order to keep the station if they want to save money and put aboveground tanks in place. An incorporated town has the authority to disallow this if they see a particular safety danger. This law will take precedence over the rule that is currently written in the fire code.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. CASEY EMERSON** asked if the sponsor knew the reason that this bill is limited to 1,500 people in an unincorporated town. **Ms. Alexander** responded that the opposition would come from the Fire

Marshall's office. They look at the life and safety of the number of people that it might affect. I agree with you that the equipment standards are much different than they were 25 years ago. But they still feel there is a fire danger there and they would oppose large population limits.

**SEN. BEA MCCARTHY** asked if this makes any change in the farm and ranch tanks? **Ms. Alexander** replied that this bill does not.

This is only directed at retail locations in small communities.

**REP. KITZENBERG** said that he has a companion bill, HB 224, that addresses farm and ranch tanks. It is going to the Agriculture Committee. He agrees with **SEN. EMERSON** and hopes that this bill will be a first step.

Closing by Sponsor:

**REP. KITZENBERG** closed.

{Tape: 1; Side: A; Approx. Time Count: 9:14 AM; Comments: N/A.}

HEARING ON HB 241

Sponsor: REP. DEB KOTTEL, HD 45, GREAT FALLS

Proponents: None

Opponents: Keith Colbo, Deaconess-Billings  
Laurie Koutnik, Executive Director, Christian  
Coalition  
Tom Ebzery, St. Vincent-Billings

Information Testimony: Steve Bulloch, Secretary of State Office

Opening Statement by Sponsor:

**REP. DEB KOTTEL, HD 45, GREAT FALLS.** This bill combines both a philosophical issue and a technical issue. We have most of the technical problems ironed out and the philosophical question can only be answered by the committee as to whether the State wants to go in this direction.

When someone decides to make a contribution to a charity you should ask yourself two questions. How much can I afford? How can I be a smarter, more effective donor? Is my money going to be used wisely? As of 1990, which are the latest figures I could get, there are 1.4 million organizations that have filed under 501(C)(3) exemption--that is charitable organizations in the U.S. In 1960, those organizations collected \$18.6 billion. By 1990, they collected \$389.1 billion. This is an increase of 178%. Our population has also increased but only by 30%. How can we as consumers know which charity is using our money well and what charity uses the majority of our dollar directly to the services.

All nonprofits, in the State of Montana, have to file an annual report. That is current law. All nonprofits that are 501(C)(3), these are charitable organizations that collect fund raising dollars, must file a 990. On the 990 that they are already required to file with the federal government, they have to disclose their operating expenses and how much money they collected from fund raising. What I am asking is that when they file their annual report, they would take Column C and D from the 990 and disclose it on the annual report that they file with the State of Montana. This would be no additional work for them.

Churches are not 501(C)(3). They are exempt from this group. Also, charities that make less than \$25,000 a year in funding raising are exempt from 990's. All we have left are 501(C)(3) organizations. This is a very narrow group.

Why do we do this? Three weeks ago the FAA had been disclosing on the Internet how fast airplanes come in to land and they made a major change in policy. They were going to disclose safety records. It was a change that consumers should have access to information that government has. Government has begun to change. You, the consumer, should decide whether to give to the American Cancer Society or the Cancer Society of America. Government will now let you have the information. You have to do the work, but government has the information. The Secretary of State's Office receive calls from people who ask if a charity is legitimate or not. They then tell the caller that they do have a filed report. With this additional information, they can say they filed an annual report and we can give you the information of how much money they raised and what is their operating expenses.

For-profit corporations have share holders and boards of directors that make sure that the corporation is meeting its goals. Most nonprofits are non-member nonprofits; in which case they have self-perpetuating boards. When two nonprofit companies ask for money such as Cancer Society of America and the American Cancer Society, you can find out that one has 96% administrative costs and only 4% of your dollar goes to any direct services. The other has the more normal 35% administrative cost. How can I tell, simply by looking at the annual report which is filed.

There is a technical issue. This was an oversight in House. The way this bill was written it calls for the most recent information. Many nonprofits are on a fiscal year in which they file their 990, they file their report on a calendar year. I would like to propose an amendment that would simply amend this bill to say that this information filed on the annual report is the information filed on your last 990 which would require no additional reporting.

Proponents' Testimony: None

**Opponents' Testimony:**

**Keith Colbo, Deaconess Billings Clinic and the Deaconess Foundation.** I would like to introduce a letter (**EXHIBIT 1**) from the Executive Director of the United Way of Yellowstone County, Inc. This letter documents the concerns of Deaconess Foundation as well. We did not appear in the House. Our concerns became more apparent over the transmittal break and I appear today to present these concerns on HB 241. The information that is being requested to be filed with the Secretary of State is already available publicly. It exists in law that any citizen can request a copy of a nonprofit federal tax return 990. It must be provided on that request. Included in that report is the organization's expenses. What is not is the percentages that are being requested in HB 241. I would present to you that those percentages can often be misrepresentative of the organization. Their concern in regard to the administration of the provisions of HB 241, with the Secretary of State in charge of this, will be to require additional staffing, etc. In regard to Deaconess, if they had a major campaign, often times the cost of starting up a campaign are reflected in one year. The percentages would not be representative of raised funds versus cost in a one year period. The following year would be equally misrepresentative.

There are a number of nonprofits that have administrative and fund raising expenses covered by income from their endowment. They do not use any of the funds contributed toward their expenses. Again this kind of reporting will be misrepresenting the organizations for comparison purposes. Thank you for your time and I urge a do not pass.

**Laurie Koutnik, Christian Coalition.** I will give my testimony and hand in a written copy of such (**EXHIBIT 2**). Thank you.

**Tom Ebzery, St. Vincent's Hospital and Foundation, Billings.** We oppose the bill and are sorry that we did not attend the hearing in the House. I would point out that this will apply to all nonprofit corporations and will have one extra step to take whether or not they are currently a tax-exempt corporation under federal law. This bill does not touch the under \$25,000 fund raising organizations and this is where a great deal of mischief is done. This is not a bill that is narrow in its scope. We feel that this bill would create a great deal of work for these organizations. We concur with previous testimony and hope that you will not pass this bill out of the committee.

**{Tape: 1; Side: A; Approx. Time Count: 9:38 AM; Comments: N/A.}**

**Informational Testimony:**

**Steve Bulloch, Chief Legal Counsel, Secretary of State.** Our office often receives questions about nonprofits. Currently we provide whether or not they are in good standing and who their officers and directors are. As to the actual question of what do

we know about this group, this bill would provide some basic minimal information. As to the additional work this would create, we do not perceive much extra work. We would just be taking the information from the annual report and put it into the computer. A concern was raised as to our role. Would we be the verification or the corporation police. Under current law, we are not. We accept at face value what they send to us in their report. We would not pass judgment on the report.

Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked how many nonprofits are currently in Montana that this bill will affect? **Mr. Bulloch** responded that there would be no way to know. The answer was provided by someone else as 240. **SEN. MCCARTHY** asked how many calls does the Secretary of State's office get? **Mr. Bulloch** said that the calls are not recorded, but at most 2 to 3 a week.

**SEN. CASEY EMERSON** asked the sponsor where did she got the information about the two cancer associations? **REP. KOTTEL** said that she had received some of her information by sitting on boards of some nonprofit organizations. Problems were found when looking at "look-alike" charities. These are intended to confuse the consumer. It was not easy to get a copy of a charity's 990 form. It was a tenacious exercise. **SEN. EMERSON** asked if this information could be used by newspapers against a certain organization? **REP. KOTTEL** responded that they can already do this. They can already get this information.

**SEN. MCCARTHY** stated that many letters of request that she receives already contain information of this kind and asked if the Deaconess does this also? **Mr. Cobol** responded that this is the way Deaconess handles this issue. He also felt that more and more organizations do this. **SEN. MCCARTHY** then asked about the University foundations. **REP. KOTTEL** said that they were at the House committee meeting and had no problem with this bill.

Closing by Sponsor:

**REP. KOTTEL** closed. There are no expansion of duties. Absolutely wrong, the Secretary of State does not go out and gather the data. They just report the information. All nonprofits already file reports. We are not requesting any extra filing or information that is not already required by law.

*{Tape: 1; Side: B; Approx. Time Count: 9:48 AM; Comments: N/A.}*

When a person requests information, sometimes the charity does not understand what they want; the accountants talk about these reports. I would like Montana consumers to be able to go to a consumer-friendly place where they know they can make a simple in-state phone call and receive the information. I ask for your consideration and ask for the two amendments to be put on the bill. Thank you. Senator J. D. Lynch will carry the bill.

{Tape: 1; Side: B; Approx. Time Count: 10:00 AM; Comments: A 12 MINUTE BREAK WAS TAKEN.}

HEARING ON HB 350

Sponsor: REP. HALEY BEAUDRY, HD 35, BUTTE

Proponents: Carroll South, Board of Investments  
Andy Poole, Deputy Director, Dept. of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. HALEY BEAUDRY, HD 35, BUTTE. HB 350 is nicknamed "the son of, the son of MICRON". Montana enacted a bill to attract MICRON to build a plant in Butte. Later the Legislature came back and changed that bill so that it would apply to other companies. It was an economic development bill for everyone. It did some things that were administratively not the best way so this bill is an attempt to fix that. First on page 1, line 23, a sentence was deleted "Loans must be made in \$250,000 increments." The loans are on the basis of \$10,000 per job created. Fifty jobs must be created to qualify. Right now the loan is structured so that it goes \$150,000 or 25 job increments. This bill does away with that and instead of having the steps, it goes in a straight line. It is directly proportional. The second part is on line 26 and 27. The reason for a "within a 4-year time period" is because the communities need the loans up front. This is infrastructure money. They need the loan early in the project. Projects that are going to have 50 or 100 or 200 full time employees, probably take long enough to design and build so that they are not up to full-bore running at full capacity within the originally legislated two year time frame. This gives them time to get the job up and running. In two years, the job may not even be running at all. On the second page of the bill, on lines 9, 10 and 11, there is a reference to a job credit interest rate reduction. Again, it uses the four year period for when you count the jobs that you have created on a full time basis. Other than that I believe it is a housekeeping bill. There is no fiscal impact. It would be good for our communities.

Proponents' Testimony:

Carroll South, Executive Director, Board of Investments. The Board is responsible for investing all state funds, approximately \$6 billion at this point in time. Of that \$6 billion, approximately \$580 million sit in the permanent coal tax trust. The Legislature in 1983 decided that we should use up to 25% of that trust for what was called then "Build Montana Program", now it is called "In-State Investment Program". That is the program in which we threw our participation with the state financial institutions that lend to businesses for economic development

purposes. We have approximately \$85 million outstanding now to Montana businesses. That program requires us to go through lending institutions and we can purchase up to 80% of the loan that the institution makes. If the loan goes sour, we obviously split the bad part also, 80/20. This particular bill that you are looking at today is an amendment to a bill that was passed last session, HB 602. That bill, while still being part of the In-State Investment Program is distinct in several regards. One, it is not subject to the same limitation on 1% of the trust to any one borrower. But perhaps more importantly, it is a direct loan we make to local governments. Banks are not involved. We made our first loan to Silver Bow County during this last biennium, \$2.75 million for the new \$400 million ASiMI (Advanced Silicone Materials, Inc.) plant that is being built there. We found out during that process that there were a few flaws in the bill. The first obstacle we determined was that the two year limit, for not only sizing the loan relative to how much they are going to get based on the number of permanent employees, was not appropriate nor was the two year limit appropriate for the job credit that we were to give this loan. In the In-State Investment Program, we operate as a take out lender. We do not participate in the construction of the new facility, we simply let the financial institution do that and when the business is moving into the facility, we provide the money for the loan. The two year period works fine for that program because generally speaking, within 30 days after making the loan, the jobs are in place.

That does not work well with this program. A classic case is ASiMI. We were very optimistic relative to how soon those jobs would be on line and we sized the loan on the 280 jobs even though there is a possibility that the total 280 jobs will not be on line within the two year period. The four year time period is critical for these kinds of loans. The money is up front but with a large \$400 million project, there is the possibility that there will not be any jobs on line within two years other than construction jobs. We will be using the four year period if this bill is enacted not only to size the loan but we will look at the application from the business and if they are going to have 300 jobs on line within four years we will be able to lend \$3 million. Concerning the \$250,000 increment problem, no one is quite sure why this was in there in the first place. It is contradictory to the \$10,000 per job. In the case of ASiMI, it wasn't a major problem because they were going to create 280 jobs and we were able to lend \$2,750,000. We could have lent another \$50,000 had the \$250,000 increment not been in there.

I would tell you as I told the House committee, there is a fiscal impact in this program. In the legislators' zeal to provide economic development incentives, HB 602 provides a tax credit to any business that comes into the State of Montana and uses this program. For example, in the case of ASiMI, we have a contract with Silver Bow for 20 years in which they charge ASiMI a fee for the infrastructure that we provided the funding for. We get that



fee, but ASiMI will be able to get the entire fee which includes not only the \$2,750,000 principal, but the amortized interest over 20 years. They will be able to get that back as a tax credit against their income tax. Obviously, it follows that they have to be successful and they have to make enough money to pay income tax in the first place. If everything works as it should, ASiMI should get all that money back. It is a real incentive to the local governments to use this program and it is a real incentive to the businesses.

**Andy Poole, Deputy Director, Department of Commerce.** The sponsor and **Mr. South** have covered all the points. We are in favor of HB 350. Thank you.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked if construction jobs are considered temporary jobs? **Mr. South** answered that a permanent job is looked at as forever. Construction jobs are considered temporary even if they run 3 or 4 years. **SEN. MCCARTHY** asked if a retroactive status was needed on this bill. **Mr. South** answered no.

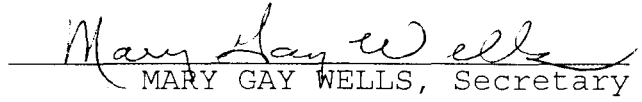
Closing by Sponsor:

**REP. BEAUDRY** closed. This is mostly a technical bill and I would appreciate your help in getting this bill passed. Thank you.

ADJOURNMENT

Adjournment: 10:13 A.M.

  
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SEN. JOHN R. HERTEL, Chairman

  
\_\_\_\_\_  
MARY GAY WELLS, Secretary

JH/MGW