

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 6, 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 262; HB 266; HB 287;  
2/24/97  
Executive Action: HB 185; HB 214; HB 225  
HB 241 TABLED

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

#### HEARING ON HB 262

**Sponsor:** REP. JOE BARNETT, HD 32, BELGRADE.

**Proponents:** Keith Colbo, MT Independent Bankers  
John Cadby, MT Bankers Assoc.  
Tom Ellis, Norwest Bank-Helena  
Don Hutchinson, MT Dept. of Commerce

**Opponents:** None

Opening Statement by Sponsor:

REP. JOE BARNETT, HD 32, BELGRADE. REP. BARNETT gave his opening and handed in his written testimony (EXHIBIT 1).

Proponents' Testimony:

Keith Colbo, MT Independent Bankers. I will be speaking to the bill and follow the handout (EXHIBIT 2) that was prepared by the Montana Bankers Assoc. rather than the MIB. This gives you the sense of the spirit of compromise. The process started with our executive committee and ended up just prior to the session with approximately 35 bankers going through each and every word of this bill. It has been well looked at and reviewed by the financial industry. There are some concerns but the majority from all sides support this bill. He then speaks to each section of the handout.

John Cadby, MT Bankers Assoc. It is delightful to stand before you and say that this bill will end a 60 year old controversy. What is driving the statewide branching issue is the fact that banks have steadily lost market shares to other depository institutions like S & L's and credit unions. Many folks have entered into the financial services provider business. Banks are driven to secure their own future and be viable and competitive. Branching has not been the demise of small town banks. Montana still has about 100 banks and 200 branches. This bill gives the banks in Montana the opportunity to compete, grow and survive.

Tom Ellis, President, Norwest Bank-Helena. I am here representing all 34 Norwest banks across Montana. We opposed the opt-out legislation in 1995. This time with the compromise, we did agree with the other members of that committee that this legislation would be in the best interest of the financial services community in general. In the interest of compromise we can wait till 2001 to take advantage of interstate branching. It could help us to become more competitive. We would rather continue to acquire banks as we have done before. Thank you for your support.

Don Hutchinson, Banking Commissioner, Department of Commerce. We have worked closely with both organizations in the compromise as being the primary regulator and are convinced that we can live with this legislation and are happy to see it happen.

Opponents' Testimony: NoneQuestions From Committee Members and Responses:

SEN. STEVE BENEDICT asked what brought Norwest around in the compromise. Mr. Ellis said that they knew it was necessary to compromise and many independent banks came to the realization that in order to be competitive they too may need to branch. We wanted branching 10-15 years ago; now it is not so important. We

would rather do it through acquisitions. There has been a lot of industry change.

**SEN. BENEDICT** asked **Mr. Cadby** his opinion on what the future would hold for the industry especially with this bill. **Mr. Cadby** felt that the bill was good and interstate banking can still be achieved through other means. Congress is considering allowing mergers of insurance companies with banks with security firms and create a financial holding company rather than bank holding companies. They will probably merge the charters of savings banks with commercial banks and terminate the savings bank charter as a separate entity. Federally, they are going to have to decide what powers are going to be granted to the commercial banks or are they going to restrict them down. This will be the debate in Congress.

**SEN. BENEDICT** asked if the federal government is taking over the banking business in Montana. **Mr. Cadby** said no. State charter banks are in good shape and the laws are firmly in place. Technology is rapidly changing the entire spectrum of banking. A person can cross geographic boundaries readily with his home computer. The Federal Reserve is concerned that Microsoft will take over the payment system, thereby putting them out of the picture of controlling the money supply. It is a volatile situation. The community banks have carved out their niche and are serving their main street customers very well. Their only threat are credit unions and the farm credit system.

Several questions were asked that were of a similar nature and the answers were of a similar nature.

**SEN. EMERSON** asked if they were happy with the compromise. **Mr. Colbo** said that they were pleased with the outcome. They felt they had gained some in the opt-out portion and could become competitive in the next four years. To allow branching statewide rather than the restrictive branching that had been in place, was necessary so that others could become more competitive.

**SEN. JOHN HERTEL** asked what services would be eliminated from some branches of banks. **Mr. Colbo** said that grocery store branches would not have security deposit boxes, security and trust facilities, loan facilities, etc. There has even been talk of a mobile bank branch to facilitate rural areas or even suburban areas.

Closing by Sponsor:

**REP. BARNETT** closed. Again, this bill would give us the opportunity to opt-out of the federal act entitled Riegle-Neal set for a specific time-frame. It is important that we take action by July 1997. I am pleased that the two groups have come together and put this bill together. It is a good bill for all concerned. I urge this committee a do pass.

{Tape: 1; Side: A; Approx. Time Count: 9:41 AM; Comments: N/A.}

HEARING ON HB 266

Sponsor: REP. VICKI COCCHIARELLA, HD 64, MISSOULA

Proponents: Duane Steinmetz, citizen  
Terry Hatch, MT Electrical Contractors Assoc.  
Ron Van Dietz, MT Electrical Licensing Board  
Don Chance, MT Building Industry Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD 64, MISSOULA. It is a simple bill that eliminates some duplication of inspection. It allows for more efficiency for the Boards of Electricians and Plumbers as they have already been working together to make sure the people working on the sites are licensed. The fiscal note states that the additional cost is for the fining of people who are not licensed. We are not trying to expand any licensing provisions. They are going to absorb the cost within their current budgets.

Proponents' Testimony:

Duane Steinmetz representing myself. I support this bill. It is a simple cooperation between officials on construction sites. It is going to make the Boards' work a lot easier. All workers are required to carry their licenses on the job site so there should not be much of a problem.

Terry Hatch, MT Electrical Contractors Assoc. We are in support of this bill. When the state inspectors are checking on the building codes they will normally check licenses as they go, but in certified areas that is not happening.

Ron Van Dietz, MT Electrical Licensing Board. We are in support of this bill. A license is required for all who do electrical work. The Board is responsible for guaranteeing the people of Montana that everyone is licensed and can do the work. This is a good bill. In certified areas (areas that the state does not inspect and there are 13 of those areas), 11 do their own inspecting and none at this time are checking for licenses. The exceptions are Great Falls and Butte. No additional cost should be necessary for the state. License compliance should be enforced.

{Tape: 1; Side: B; Approx. Time Count: 9:49 AM; Comments: N/A.}

Don Chance, MT Building Industry Assoc. As this bill was amended by the sponsor in the House we have no difficulty with it and think it is a good idea.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BENEDICT offered an amendment that would state: "who is required to be licensed" so people would not be required to be licensed if they were doing other kinds of work such as just stringing wire in a ditch as a laborer or laying pipe. We don't want to sweep people into being licensed if it is not necessary. REP. COCCHIARELLA responded that such an amendment would be fine.

SEN. HERTEL stated that on the fiscal note it was asking for a half FTE to take care of the extra work load. It seems like the bill would require fewer duties and fewer people in the field. REP. COCCHIARELLA said that the Department would not ask for more money and the cost would be absorbed into their current budget. There may be more reports to be processed and investigated and that is the purpose of the half FTE.

Closing by Sponsor:

REP. COCCHIARELLA closed. It is the intent of this legislation to make it less cumbersome on contractors, make more efficiency in government and not to expand any more licensing.

{Tape: 1; Side: 2; Approx. Time Count: 10:06 AM; Comments: A 10 MINUTE BREAK WAS TAKEN.}

HEARING ON HB 287

Sponsor: REP. WILLIAM WISEMAN, HD 41, GREAT FALLS

Proponents: Beth O'Halloran, State Auditor's Office  
Ward Shanahan, Investment Companies Institute  
Steve Browning, Montana Community Foundation  
Jim Soft, Executive Vice President, Yellowstone  
Boys & Girls Ranch Foundation

Opponents: None

Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, GREAT FALLS. This is a department bill. I have been a stockbroker for 19 years and agreed to carry the bill. We had some health problems in December and I didn't get to see the bill till it was too late to be submitted as a department bill. I don't know a great deal about the ins and outs of this bill and people from the department are here to explain the bill. Thank you.

Proponents' Testimony:

**Beth O'Halloran, Staff Attorney, Securities Department of the State Auditor's Office.** I will give my testimony and hand in a written copy of same (EXHIBIT 3). There are two sets of amendments. The first set (EXHIBIT 4) are amendments that the Investment Companies Institute and the State Auditor's Office have agreed upon. The second set (EXHIBIT 4A) are amendments that address the Philanthropic Protection Act. I would like to submit a newspaper article (EXHIBIT 5) in support of my testimony.

**Ward Shanahan, Attorney, Investment Companies Institute.** We are in agreement with the Department with respect to the amendments that **Ms. O'Halloran** handed out. I would point out for the staff legal advisor that we should have an amendment to page 1, line 12 to put in 3010-206 and 3010-301. I don't believe it is listed in **Ms. O'Halloran's** list of amendments. I had a prepared set of amendments (EXHIBIT 6) that I handed to the **Chairman** and will give the committee copies of that. This one contains all of the amendments that **Ms. O'Halloran** is talking about as well as the ones we disagree on. Hopefully, I will have a memorandum to you shortly that will lay out what those disagreements are. Specifically, in answer to **SEN. BENEDICT'S** comments with respect to loss of state control with respect to the banking bill you heard earlier, we have somewhat the same issue here. Congress comes in with a law which preempts state law in a number of respects. It is to the Department's credit that in the places we disagree these are the places the Department feels that it is losing control over the securities industry. We are hoping to work that out either with an agreement with a concurrent jurisdiction or at least a legal explanation to you so that you will know the reason why we disagree. The Investment Companies Institute represents primarily the mutual fund industry in the U. S. and so has a lot of dollars and securities rolling on this particular kind of thing. With everyone's retirement plan involved in this business these days, this is an important piece of legislation. We will try to make it as understandable as possible. It is not the most readable piece of legislation. We do endorse the bill with the limits we have agreed on and hope that we will get favorable consideration when we come to an agreement with the Department.

**Steve Browning, MT Community Foundation.** I would direct your attention to one part of the bill. On page 23, new section 11, lines 20 and 21, this was stricken in the House committee because of problems that exemption would cause certain charities in Montana. I have asked **Jim Soft** if he would come to testify for the committee because he is knowledgeable on the impacts of the Philanthropy Protection Act. Thank you.

**Jim Soft, Yellowstone Boys & Girls Ranch Foundation.** We are in opposition to the second set of amendments (EXHIBIT 4A) that would reinsert language that was amended out in the House. I

will give my testimony and hand in a written statement (EXHIBIT 7).

{Tape: 1; Side: B; Approx. Time Count: 10:29 AM; Comments: N/A.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked about a discrepancy between two of the testimonies. Ms. O'Halloran replied there are two issues with respect to the amendment that we have offered regarding the Philanthropy Protection Act. First is the state's choice as to when they would like to use their enforcement authority against potentially fraudulent securities. We are concerned about those who would perpetrate affinity fraud which is a type of fraud which manifests itself in targeting offers to persons with an affinity for certain causes or ideals, usually charitable or religious. This is what we are trying to address with the amendment. We don't believe the anti-fraud provisions are enough to enforce the Securities Act of Montana against those who would use the exemption from registration that would be permitted under the Federal Law. A side issue of this is that of local control that the federal government allows the state with respect to preemption of these types of securities registration. I believe it was a factor of recognizing that charities often operate on a mutual level. Secondly, the idea is that Montana needs to maintain regulation of securities offerings at the Montana level if the securities offerings are going to be more regional in nature.

SEN. CASEY then asked Mr. Soft the same question about over regulation and asked if the concern was with the state opting out. Mr. Soft replied that he wasn't sure about over regulation but with all due respect with the state attempting to catch the bad guys, opting out from the Philanthropy Protection Act will cause regulation for all charities of five years and under; and for charities five years and older, a simple change in the law in Montana will put them in the regulatory process where they are going to potentially be encumbered by that very process taking away from the time and energy that it takes to do their good work. Over regulating the good charities is not the way to go. The federal law would preempt Montana from making charity trusts be regulated as a security. It would open the doors for litigation.

SEN. WILLIAM CRISMORE asked Ms. O'Halloran if the whole group has worked together on this bill or are there separate amendments and will they get together now? Ms. O'Halloran said that they had prepared the amendments that the committee has now. These were sent to Mr. Soft yesterday. They had talked to the UN Foundation who also had problems with the original piece of legislation. It was in the spirit of cooperation that we came up with this

compromise amendment. **Ms. O'Halloran** tried to explain something? She said that she thought **Mr. Soft** said that the target of preemption was for specific types of instruments. She reads the federal legislation: preemption of registration of securities for certain types of organizations. She was not sure if there was a problem or not. **SEN. CRISMORE** said that the groups must get together and return with a consensus. He could not follow the different groups and what their problems were.

**SEN. BEA MCCARTHY** asked about the first set of amendments from the Department on page 22, number 14, and is this another fraud section that is being amended into the bill? **Ms. O'Halloran** replied that in respect to the section that has been pulled in, the reason it was pulled in was because of some inconsistencies with the Montana Securities Act and the federal legislation regarding investment advisors and federally covered investment advisors and the types of regulation that the SEC has over the advisory contracts. With respect to the general application of 3010-301, that section can be applied to any type of security that is offered in Montana whether or not it is registered in Montana. This is the anti-fraud provisions we wanted and this is existing law. It does cover fraud by affinity offers and this is the section the commissioner would retain for enforcement authority with respect to charitable groups that fall under the federal preemption.

**SEN. MCCARTHY** then asked about the amendments that **Mr. Shanahan** submitted, and has the Department worked through those with him because some are alike and other are not? **Ms. O'Halloran** replied that they had gone through these amendments with **Mr. Shanahan** and determined which ones we agreed with. The ones we agreed upon have been put into the Department's amendments.

**SEN. MCCARTHY** asked **Mr. Shanahan** about number 10 on his amendments, and is the new section which is very lengthy

. . . . .

{Tape: 2; Side: A; Approx. Time Count: 10:46 AM; Comments: ONE SENTENCE LOST.}

**Mr. Shanahan** replied that number 9, 10, 11, 12, 13, 14, 25 and maybe 26 are the ones that we do not agree on. If something has been approved by the Securities Exchange Commission, you can just file with the Montana Securities Department and they will approve it because the SEC has already approved it. That is what notice filing is. Number 10 is the big disagreement. The Investment Companies Institute is in Virginia and we are doing everything by fax which is a bit slow and we are trying to work with the Department to clarify these issues and come to an agreement.

**SEN. DEBBIE SHEA** asked the sponsor how all this is going to play if it heads back to the House? **REP. WISEMAN** expressed his embarrassment over the presentation of this bill. He sympathizes with the committee. Congress changed this law in 1996 and why



Mr. Shanahan and his people can't figure out that the state would do something is amazing to me. I was contacted yesterday and was told that they were going to do something and that is why these amendments were not put into the House committee. There was the problem with the philanthropic issue in the House and I thought that had been taken care of. Now it has popped up again. My recommendation to the committee would be to get all these people to agree and if they can't agree, table the bill.

SEN. EMERSON asked Mr. Soft if we do opt out of the federal law dealing with philanthropies, will the federal government be able to come in and control our dealing with philanthropies here in Montana? Mr. Soft said no.

Closing by Sponsor:

REP. WISEMAN closed. I have fairly well made my closing. And again I apologize for the way this bill has been presented. I hope that you can get all parties to agree. I do think the bill is needed. Thank you for your attention and patience.

{Tape: 2; Side: A; Approx. Time Count: 10:53 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 185

Motion: SEN. WILLIAM CRISMORE MOVED HB 185 BE CONCURRED IN.

Amendment Motion: SEN. CRISMORE MOVED HB 185 BE AMENDED, hb018501.a12.

Discussion: SEN. BEA MCCARTHY wanted to know why the date was being changed. SEN. STEVE BENEDICT felt that there was some question with coordination between four states, that in order to meet some of these securities requirements it was necessary to make the date earlier. There was also the possibility that the spring crops would have the opportunity to be finished.

Vote: The MOTION to AMEND HB 185 CARRIED UNANIMOUSLY: 6-0

Motion/Vote: SEN. CRISMORE MOVED HB 185 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY: 6-0

{Tape: 2; Side: A; Approx. Time Count: 10:58 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 214

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 214 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. 6-0

EXECUTIVE ACTION ON HB 225

Motion/Vote: SEN. STEVE BENEDICT MOVED HB 225 BE CONCURRED IN.  
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 241

Motion: SEN. MCCARTHY MOVED HB 241 BE CONCURRED IN.

Discussion: SEN. MCCARTHY said that she had made some phone calls and asked about their 990's and if they had filed, etc. Apparently, 240 charities would be involved and the ones that were contacted were very confused about this filing and didn't know if they did or not. The committee's prevailing sentiments were that people could find out the information needed without having another piece of legislation.

Motion/Vote: SEN. STEVE BENEDICT MOVED TO TABLE HB 241. THE  
MOTION CARRIED UNANIMOUSLY: 6-0

ADJOURNMENT

Adjournment: 11:02 A.M.

  
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SEN. JOHN R. HERTEL, Chairman

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

JH/MGW