

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - SPECIAL SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on December 15, 1993,
at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Sonny Hanson, Vice Chairman (R), Rep. Bob
Bachini (D), Rep. Bruce Simon (R)

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 90
Executive Action: HB 90

HEARING ON HB 90

Opening Statement by Sponsor:

REP. FLOYD "BOB" GERVAIS, House District 9, said HB 90 is a
bidding preference bill for minority business enterprises. He
said the changes in the bill are underlined, but the bill can be
changed with an amendment if the bill needs to include Afro-

American, Hispanics, or Asian-American with Indian preference. He said Indians have federal preference and Montana has a preference hiring bill for services. HB 90 only addresses Montana made products.

Proponents' Testimony:

Dustin Magee, Blackfeet Writing Instrument Corporation, informed the committee that the corporation started as a tribally funded business, but now they are a privately owned Native American employee owned corporation. He attended a buyers' conference and found there wasn't a minority preference in Montana. He said with seven reservations in the state that Montana should take on the responsibility to enrich the employment, success, and the financial stability of these companies. His testimony seeks essential support from the state by encouraging and assisting the Native Americans of Montana in businesses that reside on the reservations. He felt the state should take on the concept of diversification and acknowledge the existence of the Native American minority entrepreneurs for the services they provide and the products they offer. He said HB 90 will help eliminate the burden of public support, unemployment, and produce higher living standards and living conditions. **Mr. Magee** said the price alone should not cover the state's buying decision, but quality should be of importance. The origin of the products and their components should be a major importance, and the actual beneficiary of trade and money should be the most important factors. He said that Montana does not support the existing minority population on the seven Indian reservations, and said he was speaking on behalf of his beliefs, his company's future, and for the benefit of all the seven reservations and their commercial industry.

Opponents' Testimony:

James Tutwiler, Chamber of Commerce, said the Chamber of Commerce opposes HB 90 based on principle. The bidding preference laws in Montana are set up so if there is a problem with a resident or non-resident bidder for goods and services and the non-resident state has bidding preference laws, then Montana is allowed to comply with the preference laws. He said if the issue extend to the origin of product, then the preference goes to the products that are made in Montana. He said the preference law doesn't discriminate or discern between any certain business in Montana. He felt HB 90 will change the bidding preference drastically as the rules now exist. He said this bill states that any minority business would receive preference against all other bidders other than in-state. He re-emphasized that HB 90 will not give preference on base of origin or made in Montana products. HB 90 will change the rules to a "like" competition between "like" businesses in the state based solely on their ethnic origin and will damage the free market system. This will set precedent that will also do damage to many other Montana businesses. He urged the committee to give HB 90 a do not pass recommendation.

Marvin Eicholtz, Administrator of purchasing, Department of Administration (DOA), said the DOA is basically against any preference. The National Association of State Purchasing Officials throughout the country essentially oppose all preference laws. His job is to save the state money and reduce expenditures; HB 90 will increase expenditures and increase bureaucracy. He distributed a chart that shows if this preference law were to pass, preference laws would become three dimensional. He reads the bill to give a 11% preference. If the bidding is against a non-resident bidder who offers goods which are not Montana made, then the bid against an out-of-state vendor will not get preference. He said the bill does not address what happens against a non-resident bidder with Montana made products, nor what happens against a resident bidder with Montana made products, and he felt these issues need to be addressed if the bill is to be passed. He addressed reciprocity if an out-of-state firm doing business in Montana who has preference will be recognized by Montana and vice versa with Montanans doing business out-of-state. He said if Mr. Magee's company which is located on the east coast is a low bidder, they will have to add the preference of 11% onto their bid and probably wouldn't receive the bid because it would be too high. He urged the committee not to pass HB 90.

Brad Griffin, Montana Retailers Association (MRA), said MRA opposes HB 90 based on principle. HB 90 will take Montana businesses and divide them into two groups: those that are non-rationally owned and those that are rationally owned. He said women are not included in the minority status in the bill. He stated that, for all those reasons, the MRA opposes HB 90.

Questions From Committee Members and Responses:

REP. LARSON asked **REP. GERVAIS** if Montana has special status for minorities like the federal government. **REP. GERVAIS** said no, but this bill is only for the reservations in the state to receive preference in Montana for Montana made products.

REP. COCCHIARELLA asked **Dustin Magee** if this bill will give an Indian business the advantage on pricing if they are tribally supported. **Mr. Magee** said it would depend on the type of market being served.

CHAIRMAN BENEDICT asked **Mr. Magee** if it is fair to speculate that tribally supported businesses that are currently in competition with other Montana businesses and receive the 8% preference plus the tribal support will basically drive out other Montana businesses trying to compete with the tribal entity. **Mr. Magee** said his main reason for supporting HB 90 is to ask the state of Montana to understand the existence of minority companies. He said when the term "minority" is placed on a company no matter what type of minority they are, this will move that disadvantaged company towards economic growth and employment in that area, and hopefully a better standard of living.

REP. TUSS asked Gary Addington if there will be reciprocity if a minority group in Montana is not recognized as a minority in another state? Mr. Addington said other states that have reciprocity have to show preference and be recognized the same way Montana recognizes reciprocity. REP. TUSS asked if an out-of-state contractor had preference priority, Montana recognizes preference without having this law in place. Mr. Addington said Montana does recognize the laws for an out-of-state contractor if their state has a minority preference, but minority contractors in Montana are not recognized in their own state. Mr. Addington said if other states do not have minority preference laws and Montana does, those states will have to abide by Montana law.

REP. LARSON asked Mr. Addington if the minority preference will interfere with the NAFTA agreement. Mr. Addington said if there are any preference laws on either side of the border that would be a detriment to the trade agreement, they would be set aside. REP. LARSON asked if Canada had minority preference laws and if they recognize minority tribal preference laws from the states. Mr. Addington said no.

Closing by Sponsor:

REP. GERVAIS closed stating HB 90 is only for Montana made products and the state should support Indian businesses and their products. He urged the committee for a do pass recommendation.

EXECUTIVE ACTION ON HB 90

Motion: REP. ELLIS MOVED HB 90 DO NOT PASS.

Discussion: REP. ELLIS spoke to his motion stating it will do more harm than good for Dustin Magee's company. He said that any state with reciprocity will penalize Mr. Magee's bid by the amount that is charged through Montana. REP. ELLIS said he supports NAFTA and GATT because it will give a level playing field and will do away with this preference anyway.

CHAIRMAN BENEDICT informed the committee that he had spoken with Mr. MaGee and they felt the bill could be cleaned up with amendments.

Vote: HB 90 DO NOT PASS. A straw vote was taken to determine if the committee members wanted to discuss the bill further and add amendments before a table or do not pass motion. Motion failed 9 - 9.

Motion: REP. DOWELL MOVED HB 90 DO PASS.

Discussion: CHAIRMAN BENEDICT MOVED TO ADOPT AMENDMENTS ON PAGE 3, LINE 20, TAKING OUT "MORE THAN 8%" AND STRIKING "NOT" ON PAGE 3, LINE 22. He said this will give preference to Native American companies that whatever a Montana company bids they will give i.e., a one-half percent over, and these minority companies will

not have to live up to the 8%. He said this will leave the reciprocity laws as is without having to add a certain percentage onto each state.

Vote: Voice vote was taken. Motion carried unanimously.

Motion: REP. COCCHIARELLA offered an amendment to insert "not receiving tribal subsidies" in the definition.

Motion/Vote: REP. BRANDEWIE MOVED TO ADOPT THE AMENDMENT. Motion carried unanimously.

Motion/Vote: CHAIRMAN BENEDICT MOVED THE CONCEPTUAL AMENDMENTS THAT WILL NOT ISOLATE TRIBALLY SUPPORTED BUSINESS AND ARE NOT INVOLVED WITH THIS LEGISLATION. The amendments will give preference to Native Americans whose bid is better than the 3% and are not currently supported by tribal governments. Motion carried unanimously. EXHIBIT 2

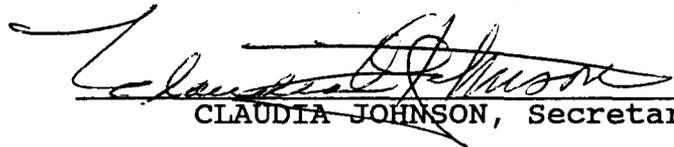
Motion/Vote: REP. BRANDEWIE MOVED HB 90 DO PASS AS AMENDED. Voice vote was taken. Motion carried 16 - 2 with REPS. BARNETT AND WAGNER voting no.

ADJOURNMENT

Adjournment: 10:30 a.m.



STEVE BENEDICT, Chairman



CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE 12-15-93

NAME	PRESENT	ABSENT	EXCUSED
REP. STEVE BENEDICT, CHAIRMAN	✓		
REP. SONNY HANSON, VICE CHAIRMAN			✓
REP. BOB BACHINI			✓
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. TIM DOWELL	✓		
REP. ALVIN ELLIS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. JACK HERRON	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON			✓
REP. CARLEY TUSS	✓		
REP. DOUG WAGNER	✓		



DATE _____
HB _____

HOUSE STANDING COMMITTEE REPORT

December 15, 1993

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Economic Development** report that **House Bill 90** (first reading copy -- white) do pass as amended.

Signed: Steve Benedict
Steve Benedict, Chair

And, that such amendments read:

1. Page 1, line 20.
Following: "business"
Insert: "that is not supported by or receiving a subsidy from a tribal government and"
2. Page 1, line 25 through page 2, line 1.
Following: "Americans" on line 25
Strike: remainder of line 25 through "Americans" on line 1
3. Page 3, line 20.
Strike: "more than 8%"
4. Page 3, line 22.
Strike: "not"

-END-

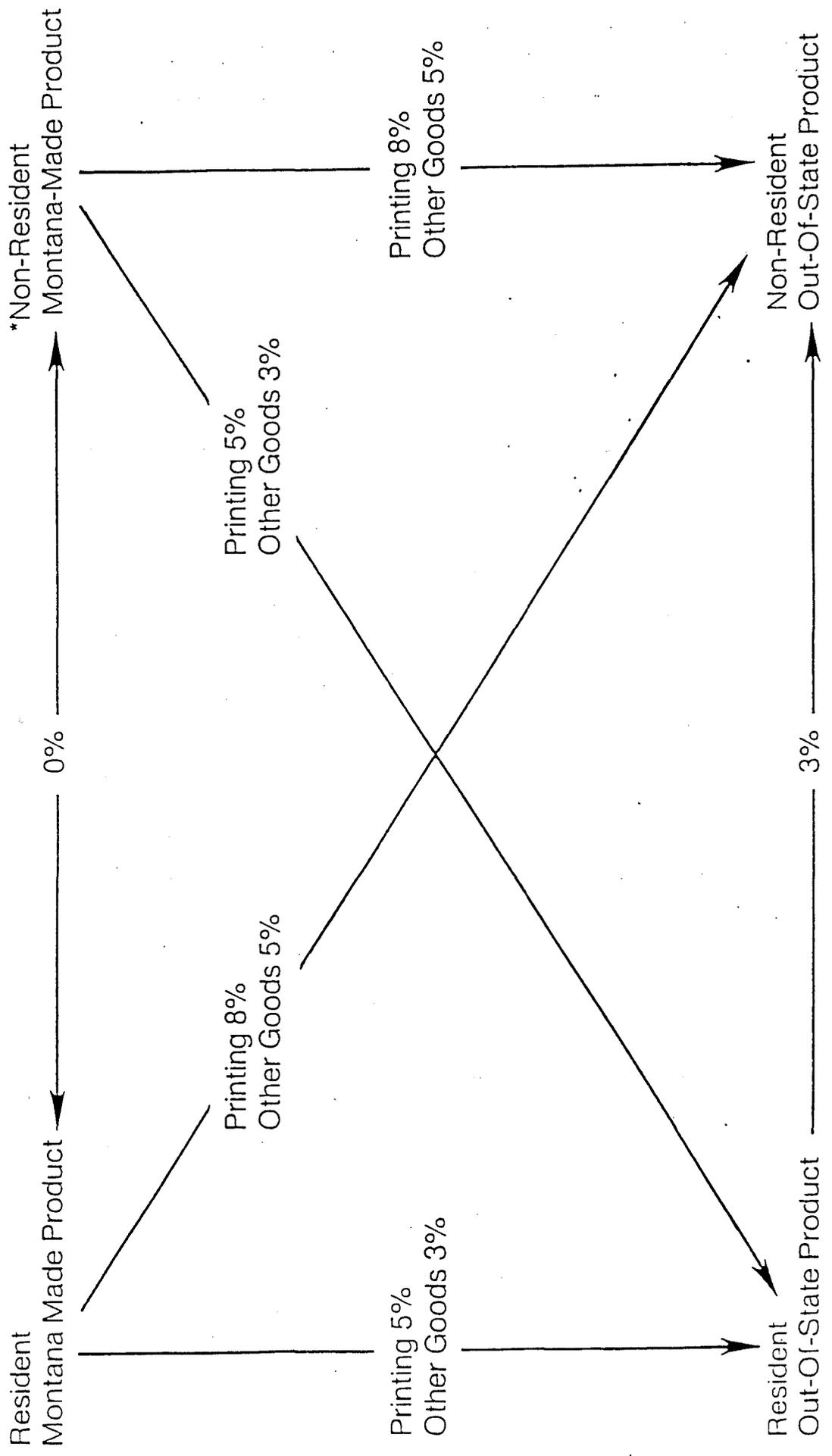
Committee Vote:
Yes 16, No 2

151049SC.Hcr

SB
12-15-93
10:15

Montana Bidding Preference Chart

EXHIBIT 1
 DATE 12-15-93
 HB 90
 BUSINESS + ECONOMIC DEV.



* A non-resident bidder bidding a Montana made product is considered a "resident" for bidding purposes. 18-1-103 MCA.

Amendments to House Bill No. 90
First Reading Copy

For the Committee on Business

Prepared by Greg Petesch
December 15, 1993

1. Page 1, line 20.
Following: "business"
Insert: "that is not supported by or receiving a subsidy from a tribal government and"
2. Page 1, line 25 through page 2, line 1.
Following: "Americans" on line 25
Strike: remainder of line 25 through "Americans" on line 1
3. Page 3, line 20.
Strike: "more than 8%"
4. Page 3, line 22.
Strike: "not"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business

COMMITTEE

BILL NO.

HB 90

DATE

12-15-93

SPONSOR(S)

Ferwas

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
REP BOB FERWAS	H.S. #9	HB 90		✓
DUSTIN MAGEE	Blackfeet Writing Instruments	BM 90		✓
Jeditt Carlson	Blackfeet Writing Instruments	BM 90		✓
GARY ADDINGTON	Poor. Tax. Affairs Office	HB 90		✓
MARO EICHOLTZ	DOA		✓	
Jim Tutwiler	MT Chamber	HB 90	✓	
Brad Griffin	MT Retail		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.