

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 8, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: Betty Bruski (D)

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE BILL 244

Presentation and Opening Statement by Sponsor:

Senator Greg Jergeson, sponsor of the bill, stated that this bill is offered and requested by the state auditor's committee. During his discussion of the sunrise process they had a lot of dealings with the department of commerce, and how the professional occupational licensing board was operating. One of their concerns was what happens when a board passes a rule that causes them to do additional things, and whether or not the department of commerce has the legs to handle it. This bill will provide a system whereby the board would engage in a new program where the expansion would approach the department and whether or not there is budget to do it.

Proponents' Testimony:

Jim Kembel, administrator of the public safety division of the department of commerce, spoke in favor of the bill (See Exhibit 1).

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Senator Jergeson closed.

EXECUTIVE ACTION ON SENATE BILL 244

Motion:

Senator Hager moved that SB 244 do pass.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

SB 244 passed by unanimous vote.

HEARING ON SENATE BILL 248

Presentation and Opening Statement by Sponsor:

Senator H.W. "Swede" Hammond, sponsor of the bill, stated that this bill is an act amending the laws relating to securities regulation; increasing the number of offerees under the limited offering exemption; revising exemption procedures; providing for the regulation of limited offering exemptions; and amending section 30-10-105 MCA. This bill would expand the offerees to 20 at the present time it is 10.

Proponents' Testimony:

Jack Manning, attorney in Great Falls with dorsey and whitney, spoke in favor of the bill (See Exhibit 2, 2A, 2B).

Robert Wayman, representing the Montana inventor's association and himself, spoke in favor of the bill. He stated that SB 248 is one small step towards opening up equity markets in Montana. SB 248 can help do economic development without spending government tax money to do it.

Steve Huntington, managing general partner of an organization called mountain west ventures, spoke in favor of the bill. He stated that mountain west was formed in early last year to try to put together a private venture capital fund. They found their efforts in doing that relatively unsuccessful, so they structured themselves into an organization that will try to help connect people that are trying to start up new businesses or expand their businesses in Montana with investors who may be interested in placing some of their funds at risk. The legislation is SB 248 just makes that easier in a way that can be done responsibly and can protect the people.

Robyn Young, deputy commissioner of securities, spoke in favor of the bill (See Exhibit 3).

Opponents' Testimony:

None

Questions From Committee Members:

Senator Kennedy stated that he would like to open a recreational business, a batting cage. How does this apply.

Robyn Young stated if you are a newly formed corporation or a limited partnership and you are doing it with less than 10 initial investors, you would not have to file anything with the office.

Senator Thayer if the auditor's office agrees with the amended language that was offered by Mr. Manning.

Robyn Young replied yes.

Senator Thayer asked if the language of the top of page five, lines one through nine. Sub C which states "may be rule or order as to any security or transaction or any type of security or transaction" if we are changing the law to allow to go from ten offers to twenty five, if this language even necessary.

Robyn Young stated that it gives their office a lot more flexibility to take care of special circumstances.

Senator Thayer asked about page 4, lines 18-21 they have to apply in writing and get approval, so it gives the auditor's department the ability to insure that everything is alright, but in the next section it gives them the right to withdraw after the fact. That seems that it is contradictory to what you are trying to attempt here.

Robyn Young replied that page 4, lines 18-21 specify the approval process, but don't specifically grant the commissioner the authority to deny. The section on page 5 lines 4-9 give the commissioner the ability to either adopt rules that would specify that, the rules would be one way that they would give further verification of how that would apply for the exemption. That is the section that would actually grant the commissioner the ability to deny the use of the exemption in certain cases.

Senator Williams asked Robyn Young to expand a little on page five lines six and seven-increase or decrease the number of permissible offerees.

Robyn Young replied for instance if someone had a business

proposal where they thought they had potentially thirty offerors that they wanted to contact they could request permission to waive the limit of 25.

Senator Hager asked if he was trying to start a business and shopping for a bank loan, is that under this at all.

Robyn Young replied no.

Senator Lynch asked how do you contact an offeror if you don't know who is interested in his stuff.

Robyn Young replied that you need to use services of people who have contacts.

Senator Lynch stated that you want the discretion to bounce from about twenty five to thirty, but you never can envision it going above 30 offers. Why don't they just put it at 30.

Robyn Young responded that what they are trying to do is establish a continuum, so that in the statute they have flexibility through this limited offer to match it to whatever they have in the rules that are adopted under transactions.

Senator Gage asked why they say offeror rather than investor.

Robyn Young replied that under the securities law there are significant differences in that. You limited to investors it would allow unlimited offerors. As long as they only accepted funds from 25 people.

Senator Gage stated that maybe they should put a dollar limit on this as well.

Senator Lynch stated that he understands it as he can't put it in the newspaper, but he can contact one person so there is no limit on how much you can get from one person.

Robyn Young replied that not limiting the number of offerors would not give them the ability to stop a public offer.

Closing by Sponsor:

Senator Hammond closed by saying that changing the wording from corporations to organizations is a real good idea, and there are a whole lot of little people out there that are making use of this, and they are coming into situations that are making it very difficult for them. They don't like to get into the situations where they have to find a security counsel and they have to disclose a lot of things that they would like to keep to themselves.

HEARING ON SENATE BILL 258

Presentation and Opening Statement by Sponsor:

Senator Tom Beck, sponsor of the bill, stated that last session he carried several bills in the same form as this. It allows to put security liens against boats, snowmobiles, etc. What they are doing in this bill is simply allows the department of motor vehicles to register liens against off highway vehicles. There is a fee that will be involved in this.

Proponents' Testimony:

Peter Funk, assistant attorney general, spoke in favor of the bill. He stated his department issue titles and essentially registrations for not only motor vehicles but also snowmobiles, boats, and off highway vehicles. That has occurred in a step by step fashion over the years. The 1989 legislature created the process for issuing titles for off highway vehicles. The bill that was put forward last time to title those off highway vehicles did not include lien filing provisions in the titling statutes. Senator Beck did sponsor an exactly similar bill last session to insert lien filing provisions in the snowmobile and boat titles and now they are simply trying to clean up in the off highway vehicle area, because last time they were given the responsibility to title them. We have identical lien filing language in regards to snowmobiles, motor vehicles, and boats. All they have done is simply lift that identical lien filing language and this bill before you reflects its placement in the off highway vehicle section of the code.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Williams asked if the fees were strictly addressing the liens.

Peter Funk replied no, they are addressing the actual issuance of the title itself. There is a lien filing fee which is on page 6 line 19. That is the actual fee which is accessed for the filing of the lien.

Senator Williams asked didn't they have a bill two years ago where they were arguing how that fee was to be split between fish and game on off highway vehicles. Sixty percent went to maintenance on trails, etc. How does that fit in.

Peter Funk replied that he believes that is the tax or the decal fee which is levied on those, and does not involve either of these two fees.

Senator Thayer asked if this covers trailbikes and motorcycles.

Peter Funk replied yes.

Senator Thayer asked if it only applies if they are on public land. Farmers and ranchers use them to drive around their property. Do they have to be licensed on those vehicles then.

Peter Funk replied no. Because of the definition that exists on off highway vehicles, the whole titling and registration process is triggered by those vehicles used on public lands.

Senator Gage asked if there is no title to an off highway vehicle then there is no mechanism to filing a lien with regards

to this bill.

Peter Funk replied that was correct. In that case, the lender is probably left with the regular UCC filing route with the secretary of state or with the local counties if there is no title issued.

Senator Lynch requested a fiscal note.

Closing by Sponsor:

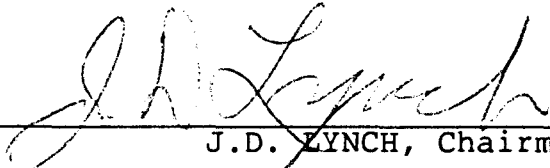
Senator Beck closed.

Discussion:

Senator Lynch stated that they would wait on a fiscal note before they would act on this bill.

ADJOURNMENT

Adjournment At: 11:15



J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 9TH day of FEB, 1991.

Name: ROBERT WAYMAN

Address: 223 BROADWATER
BILLINGS MT 59101

Telephone Number: 259 9748

Representing whom?

MT INVENTOR'S ASSN. + SELF

Appearing on which proposal?

SB 248

Do you: Support? Amend? Oppose?

Comments:

SB 248 IS ONE SMALL STEP TOWARDS OPENING UP
EQUITY MARKETS IN MT. SB248 CAN HELP
DO ECONOMIC DEVELOPMENT W/O SPENDING
GOVERNMENT TAX MONEY TO DO IT.

TESTIMONY

February 8, 1990
Senate Business and Industry Committee
Senate Bill 248
Robyn J. Young, Deputy Commissioner of Securities

My name is Robyn Young. I am the Deputy Commissioner of Securities. I am here representing the State Auditor and Montana Securities Department in support of Senate Bill 248.

The policy behind securities laws is to foster confidence in the securities market and protect the public from fraudulent securities transactions. Through the disclosures required by the Montana Securities Act, investors are given the information necessary to evaluate legitimate investment opportunities while federal and state regulatory agencies can prevent fraudulent financing. But the costs of registration, attorneys fees, and drafting disclosure documents are high. Small Montana businesses often find such requirements a severe impediment to raising capital to pursue new business ideas.

In response to the need of Montana's small businesses, the Commissioner of Securities has adopted rules to provide exemptions from the registration requirements of the Montana Securities Act. These rules facilitate the formation of capital for Montana businesses. In addition, there is a statutory transactional exemption for "limited offers" that was derived primarily from the Uniform Securities Act. Section 30-10-105(8), MCA, provides an exemption for "any transaction pursuant to an offer made in this state ...to not more than 10 persons... during any period of 12 consecutive months."

The bill before you today was requested by the State Auditor's Office to address the needs of small Montana businesses which raise capital through sources other than banks and financial institutions. We believe there is a gap that needs to be filled to facilitate the availability of capital for our businesses. Senate Bill 248 expands the number of offers allowed under the "limited offer" exemption from 10 to 25 and helps close that gap.

Private attorneys and business owners have complained to the Commissioner of Securities about the problems they have encountered in raising capital for their ventures when they are only allowed 10 offers in 12 months. Their alternatives include filing for one of the other exemptions or registering their

offering with the Securities Department. The two other exemptions provided by the administrative rules allow more than 10 offers, but they involve complicated and costly disclosure requirements and filing fees. In most cases, these exemptions require the services of a trained securities attorney to advise the business of all possible ramifications and requirements of Montana and Federal securities laws and rules.

The Commissioner of Securities is sensitive to the needs of these businesses and has worked with private attorneys and other interested parties in drafting Senate Bill 248 to address their concerns.

Under current law, Section 30-10-105(8), MCA, allows up to 10 offers during 12 months, provided all the buyers are purchasing for investment, and no commissions or indirect compensation is paid for soliciting the buyers. This exemption is self executing. In other words, it does not require the sellers of the security to file any documents or any notification with the Securities Department. This certainly appears to be simple and easy to use, but appearances can be misleading.

There are four problems we have found which relate to the "self executing" nature of the current limited offer exemption. Since the exemption is self executing, we have no advance contact with the ventures that want to use it to raise capital. We have had numerous cases in which a business has used the exemption, never really understanding that they were involved in a "securities transaction." They had no understanding of the liability involved in selling a "security."

The exemption allows only 10 offers, not 10 sales. And an "offer" includes every attempt or offer to dispose of a solicitation of an offer to buy a security or interest in a security for value. The burden of proving that less than 10 offers were made rests upon the person claiming the exemption. These people often have no advance knowledge of the requirement that they keep detailed records of the offers to prove they qualify for the exemption.

The ability to qualify for the exemption is further restricted by the prohibition on commissions or other compensation, including "indirect remuneration." There are many inadvertent violations of this portion of the exemption. The definition of what constitutes "indirect remuneration" requires a careful examination of case law and interpretive opinions. When an officer of a corporation solicits an investment from a purchaser and is paid compensation out of the proceeds of the sale of the company's stock, the transaction could meet the definition of indirect compensation. The officer would therefore be in violation of the law.

In many other cases, officers or promoters of the venture were not aware that they were obligated to disclose relevant and material information prior to accepting the investor's money. They did not understand that the antifraud provisions of the Montana Securities Act apply to the securities transaction even if the transaction is exempt from registration.

Problems develop a year or two later when the business is failing and the investor is looking for a way to get his money back. If a Securities Department investigation finds that the investor wasn't given the required disclosure information before he invested, this failure to disclose may be a violation of the antifraud sections of the Montana Securities Act.

In all of the cases I just described, ignorance of the law is no excuse from the administrative and civil penalties of the Securities Act. The security was sold without being registered or qualifying for an exemption. The investor is entitled to his money back plus interest and reasonable attorneys fees. This is the hard way to learn about the securities laws.

The last problem is that the exemption is sometimes claimed by out-of-state promoters with less than honest motivations. Some use this exemption to make their first 10 offers into Montana. We have no idea how many firms are using this to drain the capital resources from our state. They have absolutely no obligation to notify our office or obtain approval to use the current "limited offer exemption." We do have jurisdiction over the transactions with Montana residents and we can take action after the fact, if they violated the antifraud sections of the Act by, for example, failing to disclose information relevant to the investment. However, it is often impossible to recover any of the victim's investment from these out-of-state firms. In many cases, we can't even find them to serve them with an administrative order.

How does Senate Bill 248 solve these problems?

It increases the number of offers allowed from 10 to 25. This provides greater freedom for businesses to contact enough investors to raise the capital they need.

It limits the "self executing" portion of the exemption to offers and sales of the securities of a newly organized business. In Montana, many new corporations are formed every year and we needed to provide a "free" exemption to cover the issuance of stock for these newly formed corporations. It is still limited to 10 offers or sales, which means there is no net increase or decrease in the regulatory burden placed on these transactions.

All offerors, other than those involved in the formation of new

corporations, must file a simple request for approval to use the exemption. The filing fee of \$50 is the same that the Securities Department requires for several other exemption requests. The application for the exemption will include a brief description of the security being offered, a brief description of the proposed venture, a listing of the officers and promoters of the venture, and the amount of capital they wish to raise. Applicants will have the option of using a simple application form or submitting their request in the form of a letter containing the information.

The Securities Department will be reviewing these applications primarily to restrict promoters with previous disciplinary records from using the exemption in Montana. The Securities Commissioner will have the authority to deny the use of the exemption if denial is necessary to protect investors and if it is in the public interest. The Securities Department will also keep a record of applications filed so that consumers can call and ask whether the venture they are about to invest in has complied with the law. The Securities Department will also have a more accurate record of the amount of investment capital raised in Montana and the number of out of state firms relying on the exemption.

The proposed law also grants the Commissioner of Securities discretionary authority to approve offerings with more than 25 offers, or offerings which involve indirect compensation. There may be circumstances where a legitimate Montana business wants to qualify for the exemption, but needs to make 27 offers or wants to pay a promoter a modest salary or commission to solicit the funds.

Although many Montana businesses will have to pay the \$50 fee and file the simplified application form, this will safeguard them from inadvertently violating the law. When their application is approved, they will receive brief guidelines from the Montana Securities Department on the Montana Securities Act and the type of information they should disclose to the investors to avoid future liability problems.

In summary, Senate Bill 248 increases the number of allowable offers from 10 to 25 for the "limited offer" exemption, provides a simplified application process that will help prevent inadvertent violations of the Montana Securities Act, and limits the availability of the exemption for use by fraudulent out of state promoters. The State Auditor and the Montana Securities Department urge a "do pass" on Senate Bill 248. I would be happy to answer any questions you may have.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/8/91

BILL NO. SB 248

February 8, 1991

TESTIMONY OF JACK MANNING

- Senate Bill 248 (Amendments to Limited Offering Exemption)
- Senate Business and Industry Committee
- Senator J. D. Lynch, Chairman

1. Introduction

- proponent, with inclusion of two proposed amendments
- partner at Dorsey & Whitney in Great Falls
- specialize in securities matters
- not appearing on behalf of any client or group, but have many interested clients

2. Summarize Bill

- expands existing limited offering exemption from 10 offers to 25 offers
- (exemptions are important because the alternative is registration of securities issuances with the Securities Department, which is costly and time-consuming)
- creates new approval process and filing fee (Securities Department)
- provides approval carve out for issuances, within 90 days of incorporation, involving no more than 10 offers

3. Background

- the existing exemption is the primary State exemption for limited stock issuances, sales and offerings
- it is the only "self-executing" exemption for new issuances of corporate securities (except for special situations like certain offerings to existing securityholders, stock dividends and recapitalizations)
- no specific disclosure requirements (except for the general antifraud provisions) are required for the use of the exemption
- the existing 10 offer limitation is very restrictive
 - the number is small, and
 - it is sometimes hard to know for sure when an offer is deemed to have been made

4. Effect of Bill

- allowing 25 offers will:

- facilitate somewhat larger offerings, without causing the issuer to incur significant legal fees (as is presently the case), and
- alleviate much of the worry about whether the offer limit has been reached

5. Suggested Amendments to Bill

- I suggest two minor amendments to the Bill
- the amendments have been discussed with Robyn Young, and I believe have the support of the Securities Department
- I suggest that subsection 8(b) be amended to apply to any newly formed entity, with its principal offices in Montana. (In lines 1 and 2 of subsection (b), the words "incorporated Montana corporation" should be deleted and the words "formed entity, with its principal offices in Montana," should be inserted in its place; in line 3 of subsection (b), the word "incorporation" should be deleted and replaced with the word "organization")
- I also suggest that subsection (c)(i) be clarified to make it clear that the Securities Department cannot withdraw the exemption after-the-fact. (In line 1 of subsection (c)(i), the word "withdraw" should be deleted and the words "prohibit the use of" should be inserted in its place)

6. Support for Bill

- issuers, potential issuers and securities counsel should welcome the expansion of the exemption
- the requirement of prior approval from the Securities Department will be objected to by some, but I anticipate that the approval process will be relatively simple (perhaps Robyn Young can explain the anticipated process later)

7. One of my partners, Bruce MacKenzie, has asked me to provide the Committee with his written testimony, submitted on behalf of the Securities Industry Association and D. A. Davidson & Co., in support of the Bill with the proposed amendments

8. Questions

5840m

EXHIBIT NO. 2ADATE 2/8/91BILL NO. SB 248

DORSEY & WHITNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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February 7, 1991

BRUCE A. MACKENZIE

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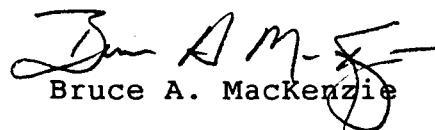
Senator J. D. Lynch
Chairman
Senate Business and Industry Committee
State Capitol
Helena, Montana 59620

Re: Senate Bill 248

Dear Senator Lynch:

On behalf of the Securities Industry Association* and D. A. Davidson & Co., this letter is written in support of Senate Bill 248 with the amendments suggested by Mr. Jack Manning of this office. Senate Bill 248, with the proposed amendments, assists in the formation of capital for newly formed corporations as well as existing corporations that seek to raise capital through limited private offerings. We appreciate the Commissioner's office working with responsible members of the industry in developing this legislation and its support of the suggested amendments which provide needed clarification to the bill.

Sincerely,


Bruce A. MacKenzie

BAM/jn

* The Securities Industry Association is the trade association representing over 500 securities firms headquartered throughout the United States and Canada. Its members include securities organizations of virtually all types -- investment banks, brokers, dealers and mutual fund companies, as well as other firms, functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter market and all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for more than 90% of the securities business being done in North America.

Amendments to Senate Bill 248
Introduced Copy
Amendments Prepared by Jack Manning

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2B
DATE 2/8/91
BILL NO. SB 248

1. Page 4, line 22.

Following: "newly"

Strike: "incorporated Montana corporation"

Insert: "formed entity, with its principal offices in
Montana,"

2. Page 4, line 24.

Following: "of"

Strike: "incorporation"

Insert: "organization"

3. Page 5, line 4.

Following: "(i)"

Strike: "withdraw"

Insert: "prohibit the use of"

TESTIMONY ON SB 244

POL BUREAU
PUBLIC SAFETY DIVISION
DEPARTMENT OF COMMERCE

SB 244 is the result of discussions held during the "Sunrise" process, in the Legislative Audit Committee. The situation addressed during those discussions was how does the Bureau have input into a board's decision to expand their licensing program, under existing legislation, to a point that the Bureau does not have adequate staffing to carry out the additional duties.

The Bureau has experienced a number of instances where boards have created a new programs that over taxed existing staff resources and as a result there was no way to meet all of the work demands. As drafted the bill would require a board considering expansion of their licensing program to obtain input from the Bureau to decide how the additional work could be handled. The end result might require the board to contract additional help to meet the work load demands, if the board has the needed funding and revenue.

Through the process provided by the proposed legislation an opportunity is provided to weigh the benefits and costs of a program expansion, which then can result in a decision to implement or not implement the expansion.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 8 day of February, 1991.

Name: W. James Kumbel

Address: Public Safety Div / DOC

Telephone Number: 444-3934

Representing whom?
DOC

Appearing on which proposal?
SB 244

Do you: Support? Amend? Oppose?

Comments:
Attached

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/8/91 Bill No. SB244 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

HAGER
Motion: Do Pass

ROLL CALL

Business&IndustryCOMMITTEE

DATE 2/8/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski			X
Senator Franklin	✓		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 244 (first reading copy -- white), respectfully report that Senate Bill No. 244 do pass.

Signed: _____


John "J.D." Lynch, Chairman

LB 2/8/91
Amd. Cobrd.

SB 2-8 1:20
Sec. of Senate