

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on January 23, 2003 at 9:01 A.M., in Room 422 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Sherm Anderson (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Kelly Gebhardt (R)  
Sen. Ken (Kim) Hansen (D)  
Sen. Sam Kitzenberg (R)  
Sen. Glenn Roush (D)  
Sen. Don Ryan (D)  
Sen. Carolyn Squires (D)

**Members Excused:** Sen. Bob Keenan (R)  
Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Sherrie HandeL, Committee Secretary  
Eddy McClure, Legislative Branch

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

**Committee Business Summary:**

Hearing & Date Posted: SB 188, 1/10/2003; SB 131,  
12/30/2002  
Executive Action: SB 188

**{Tape: 1; Side: A}**

HEARING ON SB 188

Sponsor: SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA

Proponents: Jerry Driscoll, AFL/CIO; Margaret Morgan, Montana Association of Master Electricians; Carl Schweitzer, Associated Plumbing and Heating Contractors; Bob Pavlovich, International Brotherhood of Electrical Workers #233

Opponents: None

Opening Statement by Sponsor:

**SEN. VICKI COCCHIARELLA** shared three things that SB 188 is not. It's not a bill about using prevailing wages. It's not a fight between independent contractor electricians and plumbers and union electricians and plumbers. It's not about setting rates. It is about using a different way of correcting data. It comes from a correction that was made in the last session and attempts to make it clearer about prevailing rates are set. **SEN. COCCHIARELLA** went on to explain the descriptions found on page three of the bill.

Proponents' Testimony:

**Jerry Driscoll, AFL/CIO**, stated that on page three, line 18, it says the data process should only be from contractors who are registered under Title 399. In it, it says electrical and plumbing do not have to comply with this law. When they did data collection last time, they sent out questionnaires to all people registered under "399." They received back very little data on what plumbers and electricians were paying their people.

**Margaret Morgan, Montana Association of Master Electricians**, said this is an important cleanup bill. Her organization wants to be included in the prevailing wage survey and knows this was an error last session.

**Carl Schweitzer, Associated Plumbing and Heating Contractors of Montana**, felt it was a simple mistake when the plumbers and electricians were overlooked. He thought the bill was needed to rectify the mistake and his organization fully supported SB 188.

**Bob Pavlovich, IBEW #233**, rose in support of the bill.

**Informational Witness Testimony:**

**Kevin Braun, Department of Labor and Industry,** said he was available for questions.

**Opponents' Testimony: None**

**Questions from Committee Members and Responses: None**

**Closing by Sponsor:**

**SEN. COCCHIARELLA** thanked everyone who helped change the language of the bill and urged a **DO PASS** recommendation.

**EXECUTIVE ACTION ON SB 188**

**SEN. MIKE SPRAGUE** moved **DO PASS** on SB 188. The motion passed unanimously.

**HEARING ON SB 131**

**Sponsor: SENATOR GREG BARKUS, SD 39, KALISPELL**

**Proponents: David Gibson, Governor's Office of Economic Opportunity; Dick King, Missoula Area Economic Development Corporation; Evan Bennett, Butte Economic Developers Association; Andy Poole, Department of Commerce; Robin Hampton, employee business consultant and coach; Webb Brown, Montana Chamber of Commerce; Carl Schweitzer, Kalispell**

**Opponents: None**

**Opening Statement by Sponsor:**

**SEN. GREG BARKUS** said he was bring forth a good bill that would get more money in the mainstream, cities and towns throughout Montana as well as increase business development, create jobs and help economic growth. It would put more tools in the hands of local economic developers, organizations that work hard to retain and grow the number of jobs in our community. He said one big problem in Montana is the offset of capital. We don't have the money centers like Boise and Denver that create pools of venture capital, which gives opportunity to young startup businesses for capital in the early stage of development. Seventy-five percent of Montana businesses have ten employees or less, and small

businesses are critical to the state's economy. **SEN. BARKUS** stated SB 188 has two primary key provisions. First, it allows the Montana Board of Investments the opportunity to purchase seasoned loans. They are not initial outlay loans, but they are loans to businesses that have not yet proven themselves successful and will stay in the revolving loan fund. When the Board of Investments buys the loan, the revolving loan fund would be partially recapitalized and that money can go back into make additional loans for additional business development. This legislation would simply infuse more capital into our communities and allows these business and development corporations to focus on what they do best, which is making loans to businesses that have a difficult time getting capital. The second provision allows the Board of Investments to loan to qualified revolving loans funds part of their matched money, which the development corporations can use to access federal loan programs. For example, the Department of Agriculture currently has a re-lending program that offers 30-year loans at one percent, which has been proven effective use of federal leverage. He explained the bill is asking for a maximum of \$5M and with a match of three-to-one with federal funds, the state would receive about \$15M in additional federal funding. Add the \$5M and you have \$20M to match with local bank loans, it has the potential of leveraging the \$5M into \$40M for development in our state. He said this legislation is about job creation and the smart use of investment that will provide millions of dollars of capital to Montana businesses without any new bank, government program or bureaucracy. In closing, **SEN. BARKUS** explained his proposed amendments to the bill, **EXHIBIT (bus14a01)**.

**Proponents' Testimony:**

**David Gibson, Governor's Office of Economic Opportunity**, gave the committee members some context on why this legislation was important. He explained the methods of raising capital in Montana and compared it to larger, metropolitan areas. He discussed the problems of venture capital in such a densely populated state.

**{Tape: 1; Side: B}**

**Mr. Gibson** stated four possible solutions to the problem. First, take a whole bunch of money out of the state general fund. If you did it right, it could be a good deal, but no one is suggesting it as a real solution. Next, you have to build and facilitate the networks of angel investors that can lend to small, start-up businesses. He said we are doing a lot of things to promote private sector growth of investors trying to get "C" stage capital fund loans. The third thing you do to get better

access to capital estate is get the IRF to turn over their portfolios more often. They have \$40M sitting out there that is loaned out. Fourth, you help the IRF leverage with very good, proven federal programs that do the same thing. He reiterated that this is all about small businesses. It's about local communities supporting their local economies. He urged the committee's support of the bill.

**Dick King, Missoula Area Economic Development Corporation**, stated he had been involved in three transactions using secondary markets with IRF laws--two in Havre and one in Missoula. He said his organization's mission is not to be a bank. It is not to collect payments from the borrower. The mission of an economic development organization is to obtain capital through an IRF, the source being grant money from a state or federal agency such as the Economic Development Administration or the State Development Block Grant Program or loan money from the Department of Agriculture's Intermediary Lending Program. They then make loans and revolve as they collect payments, because they can only make new loans as they collect payments. Their continuing mission is to find a way to get deals done, not to sit and collect payments. That's why they have used the secondary market, and their source is the Community Reinvestment Fund in Minneapolis. They're a non-profit organization and a very high-quality organization. They sold six loans in one package with the outstanding balance of those loans being approximately \$610K and they received \$520K from CRF. **Mr. King** went on to explain how the process works. He said that, as a partner with the Board of Investments, it promotes higher professionalism and standards in the revolving loan fund industry in Montana, so they support the bill.

**Evan Barrett, Butte Local Government Corporation and Montana Economic Developers Association**, shared that his group is involved in economic development across the state. He said this bill makes good sense for the revolving fund. They started about six years ago and now have two or three other matching programs. They have brought in about \$8M and have been able to leverage it to loan out to the community. He explained the leverage chart, **EXHIBIT (bus14a02)**, during the rest of his testimony.

**Andy Poole, Department of Commerce**, voiced strong support from his department. They understand the importance of this issue and how critical it is that businesses around Montana have access to capital. He spoke of several programs previously mentioned by **Mr. Gibson** and **Mr. King** and stated all of those issues come into play to make this a truly successful venture. **Mr. Poole** closed by saying the bill does not require the Board of Investments to purchase any loans nor does it require the Board of Investments to lend money to any revolving loan fund. They will go through

their normal credit practices when they make a decision about what loans to purchase and to whom they will loan money. He expressed confidence that the Board of Investments would not be purchasing investments that would not be prudent.

**{Tape: 2; Side: A}**

**Robyn Hampton, self-employed business consultant and business coach**, stated she spends about half of her time as a consulting expert to revolving loan funds in the area of accessing capital. Two and a half years ago, she was with the Department of Commerce and worked on a study where they gathered information from all of the revolving loan companies in the state. The study found that Montana has done an excellent job of getting money through several programs. She urged the committee's support of the bill.

**Webb Brown, Montana Chamber of Commerce**, stood in support of the bill.

**Carl Schweitzer, Kalispell Chamber of Commerce**, suggested that this bill presents a win-win situation and is a prudent investment. He expressed his thoughts that the Board of Investments has a good track record and this bill is a good development tool.

**Alicia Bradshaw, Gallatin Development Corporation on behalf of the Montana Economic Development Association**, said she was present to support the bill. In the two years **Ms. Bradshaw** has been involved as Executive Director, her organization has been actively using revolving loan funds. They have switched their focus, which is primarily private business supported. Most of their funds and activity go to the expansion of existing businesses. They have been able to take their revolving loan fund and help companies that range from bio-tech and technology to manufacturing to value-added agriculture and retail. These funds are what they utilize to help the local businesses and keep them in their community. She mentioned that early-stage companies don't have access to funds. Her organization is very cognizant of not competing with banks. This is a tool for companies that are not in a position to be bankable. There are some companies that don't have access to angel capital and her organization has had to go back a second time to help them. She urged support of the bill.

**David Smith, Bozeman Chamber of Commerce**, explained how his area is growing and the business counseling done by members of their community for potential businesses. He felt this is an excellent program.

**Opponents' Testimony:** None

**Informational Witnesses:**

**John Guthmiller, USDA Rural Development Agency,** offered information on one of the programs they offer for economic development, which is the intermediary lending program. They loan money at one percent interest for a 30-year period to local development corporations to bolster their revolving loan fund. Currently, they have nine development corporations in Montana that have intermediary lending programs to the tune of about \$11M outstanding. There were approximately 4,450 jobs created or saved due to creating that type of loan capital. In order to apply for an intermediary re-lending programs, there is no requirement for matching funds; however, if they don't have matching funds, businesses probably won't get their application funded. He went on to explain the loan application and funding process.

**Tim Ryan, State Director of U.S. Rural Development,** talked about the Business and Industry Loan Guarantee Program. There are a lot of small banks in Montana that have limited access to capital. With that the loan guarantee program, those banks can use secondary markets.

**Questions from Committee Members and Responses:**

**SEN. SAM KITZENBERG** asked **Carroll South, Executive Director of the Board of Investments,** where he stands on the bill. **Mr. South** replied that when this bill was heard in the House last session, the Board of Investments supported it. The reason was they had been under pressure from the legislature and administration to get more of the Coal Tax Trust money loaned in the state of Montana. He said they took that input to heart and currently have over \$200M of the Coal Tax Trust invested in over 500 Montana businesses. They think it is another way to get the Coal Tax Trust money out to the local level to businesses that may be falling through the cracks and do so in a prudent fashion. Their programs do not permit them to loan directly to borrowers. They depend totally on the banks in Montana and take the loans to them. If the banks don't take the loan to the Board of Investments, they don't do the deal. With this bill, they are taking the money down to a lower level yet, to those organizations in the various communities who know the businesses. He thinks it will bring more business through the door and ultimately create more jobs. In response to **SEN. KITZENBERG'S** question as to the downside, **Mr. South** answered he doesn't think there is a downside.

**SEN. KITZENBERG** talked to **Mr. Guthmiller** about any downside to this bill. **Mr. Guthmiller** said the size of the loans are limited to \$150K to each business, so there are limitations to the loans. The development corporation can match funds in several different ways.

**SEN. SPRAGUE** inquired of **Mr. South** the average return now being received on Coal Trust money. **Mr. South** replied it is fully invested, but in three different areas. The bulk is invested in the Trust Fund Bond Pool, a mutual fund, which is yielding about 6.8 percent. As of last June 30, their commercial loan portfolio yielded 6.88 percent. They have a value-added loan program with just under \$10M loaned out at 2 percent, pursuant to the loan. The science and tech portfolio is yielding nothing. **Mr. South** said the Board of Investments posts their rates every week on their website.

**SEN. COCCHIARELLA** asked **SEN. BARKUS** if he would consider making a more general amendment that adds, "other federal programs," so that if a new one arises in years to come that hasn't been named in the bill, the law would not have to be opened up again. **SEN. BARKUS** thought the amendment is broad in saying it "includes" those programs. **SEN. COCCHIARELLA** wanted to know if there was a specific purpose in naming those programs.

*{Tape: 2; Side: B}*

**SEN. BARKUS** explained that alternate language of "including, but not limited to" would be acceptable.

**SEN. KITZENBERG** requested information from **Mr. South** regarding where the Coal Tax money has been invested and the return on that money including the amount of any losses in the past four years.

Closing by Sponsor:

**SEN. BARKUS** said this bill is good for Montana and its community. It would move business forward in the state. He stated he would appreciate a DO PASS recommendation.

*{Tape: 3; Side: A}*

REOPENING OF SB 140

**CHAIRMAN DALE MAHLUM** reopened SB 140 in order to allow people from out of state involved in direct marketing to testify.

**John Webb, Direct Selling Association**, presented his organization's background. He said his sales forces are independent contractors and his organization represents companies such as Amway, Mary Kay, Avon, Shaklee, and Pampered Chef. He estimated that about 30K direct sellers work and reside in Montana. **Mr. Webb** explained that no one wants to protect pyramid schemes. Legitimate direct selling companies suffer from the stigma brought about by pyramid scheme operators, and his organization works to educate people about the difference between a pyramid scheme and legitimate direct sellers. He shared several cases in other states where this law successfully prosecuted illegal pyramid scheme operators.

**Ann Cruz, Vice President of Corporate and Government Affairs, May Kay, Inc.**, which is a direct selling company and manufacturer of color cosmetics and skin care products sold by independent beauty consultants and sales directors in Montana and throughout the nation. Their company is a member of Direct Selling Association (DSA). Working with DSA, they've worked with agencies and lawmakers throughout the company toward effective consumer protection laws, which draw a bright line between illegal pyramid schemes and legitimate direct selling activities. In 1998 and 1999, DSA and some member companies worked with the state Auditor's office on HB 121, which created the current pyramid scheme law in Montana. She stated this bill is a complete overhaul of the existing statute, particularly Section 9. They feel the new definitions in that section are incorrect and could possibly pull legitimate direct sellers under the definition of an illegal pyramid scheme. They oppose the bill as it is now written.

**Josephine Mills, Avon Products**, discussed the goals of people who are Avon representatives. She spoke about the present definitions in the law and the fact that they draw a clear line of distinction between legal multi-level marketing and illegal pyramid schemes. The language in SB 140 removes some of the existing distinctions in the area of compensation, consideration and in the definition of a pyramid scheme. It would possibly pull in the activities of a very legal Avon representative and could be interpreted to imply that the representatives activities might be illegal. For that reason, her company opposes the bill.

**Brian Harrison, representing the parent company of Amway and Quick-Star.com**, raised his concerns over the current status of SB 140. He talked about the balance that is necessary between tools to go after illegal pyramid schemes and protection for legitimate direct selling opportunities. His organization feels the language in SB 140 erodes both of those and seeks extra time to work on the bill with the Auditor's office. While they have been

assured it is not the intent of the bill to pull direct selling companies into the illegal side of the definition, he advised the committee that the faintest ink is better than the clearest memories. As administrations and agendas change and as time goes on, he felt it's important to have the protections in statute and not just in spirit. **Mr. Harrison** asked for more time to work on the bill in order to achieve those goals.

**Brenda Elias, State Auditor's Office**, referred to a meeting which they had with the members of DSA on Tuesday. She shared that her department is willing and happy to work with them to find a solution that can accommodate both sides. She went on to explain that the intent of the bill is not to bring companies like Avon, Mary Kay, Tupperware and Amway into the definition of a pyramid promotional scheme. Unfortunately, since 1999 when this legislation was passed, their investigations into illegal pyramid schemes have shown there are loopholes that fraudulent firms are using to disguise themselves and make themselves look like legitimate multi-level marketing firms. The intent of the legislation is to remove those loopholes and make who is legitimate and who is not.

**SEN. MAHLUM**, as the person carrying the bill, said he doesn't like to have controversial bills, but wants to carry bills that are good for the people of the state of Montana. He asked the representatives present to meet with the Auditor's office.

**SEN. SPRAGUE** directed questions to **Brenda Elias** about not allowing the direct selling people to have input into their bill due to the fact that they were some of the initial drafters of the bill in 1999. At the request of **SEN. SPRAGUE, Ms. Cruz** explained how the initial drafting of the bill in 1999 came about. She explained how they put the 1999 bill as a model anti-pyramid scheme bill with definitions that drew a bright line between what are legitimate activities and those that are illegal pyramid schemes.

**SEN. COCCHIARELLA** asked **Mr. Webb** if the language in existing law is the model language. He replied it is a work in progress.

**SEN. COCCHIARELLA** then asked **Ms. Elias** how her changes came into play. **Ms. Elias** explained that attorney generals in other states have some problems with the DSA-modeled language and distributed a letter to the committee, **EXHIBIT (bus14a03)**, from the attorney general's office in Arizona. She stated their concerns are similar to the concerns expressed in that letter.

**{Tape: 3; Side: B}**

**SEN. SPRAGUE** wanted to know if **Ms. Elias'** office had anyone slip through the cracks and get away. She replied that they don't know, but during their investigations of entities against which her department has taken action, those entities have cited the present law and tried to use the loopholes as a way of saying they are legitimate. They do not have a product. Their compensation structure is based on recruitment of people, which is how you make money.

At **SEN. SPRAGUE'S** expressed desire to hear another spin on the subject, **Mr. Webb** commented there is a certain standard and it is supposed to be hard to catch people. He referred to an Attorney General in New Mexico who told **Mr. Webb** that they use their law to prosecute people every day. Typically, they don't go to trial, because the people running illegal pyramid schemes want to settle. He made a point that not knowing who got away does not mean the law doesn't work. It's hard to track these people.

**SEN. COCCHIARELLA** asked **Mr. Webb** if he had seen the letter **Ms. Elias** distributed and which was dated in August, 2000. He had not, but he explained the rigorous guidelines for admission to the Direct Selling Association.

**SEN. MAHLUM** asked **Ms. Elias** if the pyramid scheme detected in Great Falls last summer had anything to do with the drafting of SB 140. She replied it did. It was known as a gifting program. There was an attempt to introduce a product in those gifting programs to make it appear as though the gifting program were a legitimate scheme. It was simply not legal. **SEN. MAHLUM** discussed the importance of getting the people who are bad and protect the honest people of Montana. A meeting will held to allow the Direct Selling Association representatives and the state Auditor's office to sit down and come to a compromise on the language of the bill.

**ADJOURNMENT**

Adjournment: 11:47 A.M.

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SEN. DALE MAHLUM, Chairman

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SHERRIE HANDEL, Secretary

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**EXHIBIT (bus14aad)**