

MINUTES

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

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 20, 2003 at 9 A.M., in Room 102 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 385, 2/13/2003; SB 341,
2/6/2003; SB 360, 2/8/2003

Executive Action:

{Tape: 1; Side: A}

HEARING ON SB 385

Sponsor: **SENATOR JEFF MANGAN, SD 23, GREAT FALLS AND BLACK EAGLE**

Proponents: **Jim Kaitschuck, Great Falls Development Authority; Ronda Carpenter, Cascade County Commission and Great Falls Area Chamber of Commerce; Aidan Myhre, Montana Chamber of Commerce; Gary Anderson, Richland County Economic Development Association**

Opponents: None

Informational Witnesses:

Andy Poole, Department of Commerce; Dave Gibson, Governor's Office

Opening Statement by Sponsor:

SENATOR JEFF MANGAN, SD 23, GREAT FALLS AND BLACK EAGLE, said this is a bill that creates a venture capital fund. He told the committee what was happening in Great Falls, which created the Great Falls Development Authority. He stated they have to be proactive as a business community. Tools are needed to assist the development authority when they go out to attract businesses to their area. This bill is one of the tools necessary to do that.

Proponents' Testimony:

Jim Kaitschuck, Great Falls Development Authority, provided written testimony and a chart to present his information on the bill, **EXHIBIT (bus38a01)** and **EXHIBIT (bus38a02)**.

Rhonda Carpenter, Cascade County Commission and Great Falls Area Chamber of Commerce, explained that for years the government tried to handle low income housing by just building it themselves. It was a miserable failure. Then they decided to just loan and give people money and have them handle it, but that turned out to be a failure, too, because more was being paid for loans. In the mid-80's, they developed what they called the Low Income Housing Tax Credit Program. Basically, it does the same thing this legislation wants to do. She went on to discuss venture capital and tax credits.

Aidan Myhre, Montana Chamber of Commerce, supported the bill.

Gary Anderson, Richland County Economic Development Association, thought it a good idea to provide some investment tax credits when providing venture capital funds in Montana for small businesses.

Opponents' Testimony:

None

Informational Witness Testimony:

Andy Poole, Department of Commerce, offered his assistance and information to the committee.

Dave Gibson, Governor's Office, discussed the people and companies with whom he has spoken on this issue and gave the committee some pertinent facts to consider.

{Tape: 1; Side: B}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE commented that everyone agrees venture capital is a key to the whole process. He said the Department of Commerce will detail the whole thing to death and that he notice the bill gave rule making authority to that department. **SEN. SPRAGUE** asked **Mr. Kaitschuck** if he was aware that Montana has a Foreign Capital Depository, which he did not. He asked **Mr. Kaitschuck** if he is concerned that this money that would be coming in here like what happened to this Foreign Capital Depository Act, which would encourage people to deposit these assets in the U.S., it is ruled to death to the point where we even have a provision in there that will check out these people. They were saying that you don't have a provision for investigating these investors and where that money came from and where that money, ill-gotten gains or any of those kinds of thing was a concern to him. **Mr. Kaitschuck** answered not that much.

SEN. SHERM ANDERSON questioned **SEN. MANGAN** on Sub-section 4 of Section 1 where it defines business talk has to derive 70 percent of their money from outside the state. Why would it be limited to strictly out-of-state entities rather than someone that is already in the state and wants to start up a new company? **SEN. MANGAN** answered that when you read that definition on primary sector jobs, it doesn't mean business coming from outside, it means businesses that derive their funds from outside of Montana, such as a retail store in this state with headquarters outside the state. He said they are looking at attracting business that

build their company headquarters here, and their revenue comes from outside the state. He was talking about Montana businesses and businesses make their money from a variety of sources, but most businesses make their primary sector businesses from many sources from around the country. That is what they want to attract here. **SEN. ANDERSON** followed up so he could understand. He wanted to know if this would preclude a business from starting up in Montana that sold whatever to the people in Montana. **SEN. MANGAN** pointed out that we have a small population. Most businesses that want to grow and make money don't want to limit themselves. They are going to make money. They want to try and reach out to the state where the money is and where the population is and bring those dollars back into their company.

SEN. DON RYAN directed his question to **Mr. Kaitschuck** asking if he could tell him why this bill was developed in a way to give it tax credit when we don't have a lot of revenue to give away and how this state can benefit from passing this legislation that would basically decrease the amount of money the state has available. **Mr. Kaitschuck** replied it is an investment in the economy of Montana. Other states have made much more sizeable investments in their economy in an attempt to grow it. A fairly accepted principle is that you have to spend money to make money. He also said if we don't set the groundwork for this now, when the economy is better and we have the money to invest, we won't have the vehicle to do it.

SEN. SAM KITZENBERG expressed his frustration on how business is done in this legislature. He said several similar bills are being heard in two committees and it doesn't make sense. His question to **Mr. Kaitschuck** was if his plan was adopted, where would the new money come from, what capital venture company, or was he just establishing a plan and hoping someone will bring some money in. **Mr. Kaitschuck** found venture capitalists follow the money. Because of this the program, the venture capitalists would be there.

SEN. VICKI COCCHIARELLA commented that it is a revenue risk. We won't collect on that which we never had anyone. **SEN. MANGAN** agreed.

{Tape: 2; Side: A}

SEN. SPRAGUE again emphasized that he does not want to go through another two years of rule making.

SEN. COCCHIARELLA asked **Mr. Gibson** why, when she knew how hard he worked, is it that the Governor's office or the Department of Commerce didn't bring up the bill that includes the changes

discussed. He apologized and explained that several things had transpired. He took the responsibility for not having the amendments ready. **Mr. Gibson** then promised to support the bill and that it's just a matter of timing.

CHAIRMAN DALE MAHLUM requested that the sponsor work with **Mr. Gibson** to see what could be done to make this a bill that would be good for the people of Montana and the small business in Montana. He asked him to work with the people in the House should the bill pass. He also wanted some collaboration done with **SEN. KITZENBERG'S** bill. **Mr. Gibson** agreed and asked **Mr. Poole** to drop off the amendments so **Mr. Gibson** could work on them today. He continued on to say this bill puts money back in the General Fund and it is a good concept. There is some incentive for them to take a look to make sure that they get the right professional management. He didn't want the state running the venture fund.

Closing by Sponsor:

SEN. MANGAN said that whatever we do, let's get it out and onto the Senate floor to give Montana another tool for local development folks and the Office of Economic Development.

HEARING ON SB 341

Sponsor: SENATOR DUANE GRIMES, SD 20, JEFFERSON, BROADWATER, AND LEWIS & CLARK COUNTIES

Proponents: Roger McGlenn, Independent Insurance Association of Montana; Brenda Elias, State Auditor's Office

Opponents: Mona Jamison, The Doctors Company; Dwight Easton, Farmers Insurance; Frank Cote, Attorneys Liabilities Protection Society

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, JEFFERSON, BROADWATER, AND LEWIS & CLARK COUNTIES, stated this bill buys more time for people who find themselves without insurance because of renewal issues. It creates a major problem when insurance companies leave people with only 30 days notice. In many cases, new insurers require volumes of information, records and other things that cannot be quickly obtained. Because of the nature of issues that are affecting our insurers, we need to provide a little bit more latitude with regard to our constituents who find themselves in a

tough spot in having to make some quick changes. The bill increases the time required for the insurer to provide notice to a policy holder of the cancellation or non-renewal from 30 days to 60 days. **SEN. GRIMES** also discussed another matter toward the end of the bill regarding insurers who insure physicians and said the change would be from 60 days to 120 days. He reserved the right to close.

{Tape: 2; Side: B}

Proponents' Testimony:

Roger McGlenn, Independent Insurance Agents Association of Montana, offered written testimony, **EXHIBIT (bus38a03)**.

Brenda Elias, State Auditors Office, stood in support of the bill because it is good for Montana insurance consumers. It would provide additional time for consumers to shop around and investigate the cancellations for non-renewal. Additionally, it would give agents additional time to work with their clients to find replacement policies.

Opponents' Testimony:

Mona Jamison, The Doctors Company, which is an insurer of physicians out of California. They provide substantial business insurance for physicians and surgeons in Montana. They are one of the few companies still insuring doctors in Montana. She provided suggested amendments for the committee's review, **EXHIBIT (bus38a04)**.

Dwight Easton, Farmers Insurance, said he hated to stand up against what appears to be a good consumer-oriented bill. He started his discussion in support of the property and casualty market. Farmers Insurance is able to write their insurance within the present 30-day time period, and he wondered if there is really a problem in the industry. As far as a problem in the hard market where insurers are pulling out, he would be very amenable to some type of amendment that speaks to that specific issue.

Frank Cote, Attorneys Liabilities Protection Society, stated their concern with this bill is that it creates some great difficulty for insurers. When you look at Sections 1 through 5, it changes the 30 days to 60 days for cancellation or non-renewal. He offered to compromise at 45 days.

Questions from Committee Members and Responses:

SEN. CAROLYN SQUIRES shared a situation involving a friend who was cancelled by several insurers. She asked **Mr. McGlenn** if this legislation would have helped her.

{Tape: 3; Side: A}

Mr. McGlenn believed that was correct.

SEN. SHERM ANDERSON asked **SEN. GRIMES** if this bill covered the commercial and private sector, which it did.

SEN. NORM GEBHARDT wanted to know if lengthening out the time would reduce or increase premiums. **Mr. McGlenn** replied that he didn't know.

CHAIRMAN DALE MAHLUM then asked **Mr. McGlenn** if he had seen the proposed amendments. He was familiar with them but had not actually seen them. He did not oppose the intent of the amendment if it was to strike the words "physicians and surgeons" from that entire section.

Closing by Sponsor:

In closing, **SEN. GRIMES** pointed out what he thought was a discrepancy that he would allow the committee to deal with. On one hand, he said, we are saying there is not a large problem in this area and things are pretty stable. On the other hand, another additional 30 days would prevent them from getting much needed information for underwriters. On the 120 day issue, he could see where that could be more of a problem. You are talking about backing it up a little ways, but he asked the committee to remember this is an area where you are affecting a much larger group, because when you are talking about the capability of a hospital finding another insurer, you're not just affecting that hospital, you are affecting a whole community indirectly.

HEARING ON SB 360

Sponsor: SENATOR FRED THOMAS. SD 61, BITTERROOT VALLEY

Proponents: Jerry Driscoll, AFL/CIO; Webb Brown, Montana Chamber of Commerce; Jacqueline Lenmark, American Insurance Association and American Council of Independent Insurers; Roger McGlenn, Independent Insurance Agents Association of Montana; Riley

**Johnson, National Federation of Independent
Businessmen and Billings Chamber of Commerce;
SENATOR VICKI COCCHIARELLA, SD 19, Missoula; Carl
Schweitzer, Bozeman/Kalispell Chamber of Commerce;
Byron Roberts, Montana Building Association; Nancy
Butler, Montana State Fund**

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 61, BITTERROOT VALLEY, brought this bill forward and said it is extremely serious and significant. It has to do with our State Fund mutual insurance. The premiums collected by the State Fund provide pay for injured workers and to operate the State Fund. The purpose of the language in the statutory address is that it requires the State Fund to install that language into policy holders contracts. It is a very legal contract between the two parties, the insurance company and the consumer buying it. He said the essence of the bill was that those premiums collected cannot be encumbered by the legislature. During the last three legislative sessions, special sessions included, there were at least six different attempts by the legislature to take control of the State Fund policy holder assets. The surplus is intended to insure that the State Fund will be able to fulfill its obligations to policy holders and injured employees. The fund is not excess monies; it is not unneeded funds. It should be viewed as reserves for contingent liability, and workers compensation differs virtually from all other goods and services in that premiums are set before the severity duration and the cost of claims can be known. If the premium was set today, no one knows what would happen over the next 12 months. Actuaries are trying to protect the future based on the past when the rates are set. He indicated it is not the duty of the legislature to determine what the surplus should be. He pointed out that taking the surplus is paramount to trying to transfer the responsibility of solving Montana's fiscal problems to the backs of the Montana State Fund policy holders, and the state budget resolution is not the duty of those policy holders. **SEN. THOMAS** shared that in 1993, the State Fund finished the year with a \$25M deficit. Today their reserves are maybe \$350M contingent liability fund and if you have pure surplus dollars, it is at \$158M. In the 1994-2000 time frame, their overall rates dropped 38 percent. That calculates to a \$240M reduction in rates to rate payers. They were able to send out \$28M in dividends since 1999. Consumer satisfaction in claim handling went up significantly. He stated it is just a darned good thing what happened to this fund, because it is headed in absolutely the right direction. He thought the legislature had to pass this

bill so that this contract could remain solid between premium payers and the insurance companies of the State Fund.

Proponents' Testimony:

Jerry Driscoll, AFL/CIO, pointed out that surplus is just an insurance word and the surplus needs to be protected so no one can get it. It is the employers' premium dollars. No taxes have been paid into it. When the new fund was started, the old fund gave it \$12M to start out. That would be about \$100M in business or more, and we also put in another insurance commissioner. The insurance commissioner notified everyone that she had the power to shut the fund down, so it changed from the insurance commissioner to what they are now simply because they couldn't shut down. During another session, we took \$20M of the general fund and invested it in the new fund to stop a rate increase. As the sponsor said, the surplus is really contingent liability. It is his hope now that we have \$550M book value going into investments as of October 31st. They had about \$350M in what they call reserves and \$158M in surplus, really contingent liability. The roll for most insurance companies is to have 50 percent of that in surplus accounting. But, if you do take their money, any legislature takes their money, the same thing will happen that happened in the past. The employers don't want a rate increase, so they cut benefits, and that is what happened over the years. If you take this money, you will have a benefit reduction. Now, over the years, they have reduced premiums by 38 percent. They reduced benefits by 50 percent, so that is what happens. He didn't think the legislature should take any of the dollars. His hope for next session was that they have \$700M to spend, so then they whine about rate increases. We have plenty of money.

Webb Brown, Montana Chamber of Commerce and also speaking for Bill Stephens of Montana Crew Distributors, said their position is pretty long standing and he hoped to be clear on this issue. He stated the new fund is absolutely the customers' money. It is not public money. Monies are paid by customers, the policy holders, for benefits current and future. Excess is just a term. **Mr. Brown** referred to State Fund board member, Tom Horne, who gave an analogy of the so-called surplus. He said when he goes into the fall with his cattle, he has hay stacked out there. At that point in time, those are excess, but it comes spring, there may not be any excess. There is a reason that they do have what seems to be a surplus or an excess. We need to have that money in there in case it is needed. He closed by saying the new fund money should not be considered public money, should not be transferred out for other purposes, but should remain for the purpose for which they were selected.

{Tape: 3; Side: B}

Jacqueline Lenmark, American Insurance Association and American Council of Independent Insurers, stated the funds that this bill attempts to protect were set aside for public surplus and **SEN. THOMAS** explained correctly that they aren't surplus. She discussed how none of us expected the events of 9/11. An event like that can wipe out any funds that have been set aside that were projected only to cover ordinary losses. She talked about legislatures looking for funds during difficult economic times and taking them when they had been reserved for another purpose. One of the most personally alarming examples she recently became aware of was that New Jersey took funds from one of the guarantee associations to balance their budget. Texas enacted legislation very similar to what is being proposed here in response to an effort to take funds from their workers compensation system, so she stood in very strong support of this bill because the consequences for Montana for an unanticipated transfer of funds could destabilize what we have worked so hard to stabilize. She asked for a DO PASS.

Roger McGlenn, Independent Insurance Agents Association of Montana, stood in strong support of SB 360. Simply stated, somewhere along the lines of what had been heard, we agree that the employers and employees need this assurance included in SB 360 that the premiums will always to the purposes for which they were intended and to continue to improve the confidence and strength of the State Fund. He asked for the committee's support.

Riley Johnson, National Federation of Independent Businessmen and Billings Chamber of Commerce, stood in support of the bill and reminded the committee that workers compensation is very important to small businesses. The liability they would be exposed to without it would be astronomical.

SEN. VICKI COCCHIARELLA, SD 19, MISSOULA, shared that she was a member of the SB 19 study committee. What she wanted to tell the committee was how this applies to the works of the claim in the State Fund or anywhere else in the State of Montana. She explained a hypothetical situation where someone is hurt and, as an adjuster, it appears to her he is going to need three to six weeks of lost time and maybe six months of therapy until he can go to work. The guy goes back to work and the employer either goes out of business or leaves the state of Montana. About three years later, this man is not completely healed. Three years later, the man develops bladder incontinence and sexual dysfunction from his back injury and eventually has surgery. When rates are set, the claim adjust can only look at the

information they have at hand. When things don't look right and you have to take care of them, that is what the surplus is for. She emphasized we don't ever want to go back to having to make that kind of difficult decision to impose tax again to solve a problem in taking care of injured workers.

Carl Schweitzer, Bozeman/Kalispell Chamber of Commerce, said it's too bad you can't make the State Fund like the Coal Trust which needs a three-fourths vote to even think about touching it. His other point was that you are looking at taking money from just one insurance company. It creates an unfair situation if you were to take money from this particular insurance company, because it would drive up rates and make it more difficult for people to get insurance.

Byron Roberts, Montana Building Industry Association, thought previous proponents had covered the issue, but added that the premiums paid for workers compensation should not be subject to raid by the legislature any more than private insured reserves should be subject to raise by the legislature. The State Fund has a fiduciary responsibility to maintain its reserves and has been maintaining good business practices over the past ten years. He offered their strong support of the bill.

Nancy Butler, Montana State Fund, said they would appreciate the committee passing SB 360. She said the policy holders place great confidence in the State Fund and trust that premiums they pay will go to the purposes for which they were intended. She noted that at the end of the first paragraph, the language read "... to the investment agreement with the Board of Investments." The State Fund doesn't have any investment agreement, per se. They have policy statements and they read the grants. She asked that the committee amend the bill so there wouldn't be any confusion down the road.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GLENN ROUSH questioned the sponsor about what had been going on at the State Fund and some plans made last session. **SEN. THOMAS** explained how the checks and balances work at the State Fund. He impressed upon the committee the successes of the new fund and said in the old days, they were weeks behind just in opening mail!

Closing by Sponsor:

SEN. THOMAS thanked the committee for a good hearing.

ADJOURNMENT

Adjournment: 11:27 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus38aad)