SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 4.1.05
BILL NO. HB 411

TESTIMONY IN SUPPORT OF HOUSE BILL 411

~~House Human Services Committee~~
~~01/31/05~~
04/01/05
SENATE STATE ADMINISTRATION

Presented by:
ROGER A. HAGAN
Officer and Enlisted Associations of the Montana National Guard

Madam Chair, members of the committee, for the record my name is Roger A. Hagan. I represent the more than 3,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of House Bill 411. I would like to thank Representative Wells for sponsoring this very important legislation. Our Associations join with several veteran service organizations and military membership organizations in urging your support of this bill.

I would like to give you a brief background of the events that led us to bring this bill to you today. Then, I will attempt to ally any concerns that have been or may be raised by those who are skeptical of this legislation. Finally, you will hear from other proponents who have a broad range of experience and knowledge concerning our Veterans' Nursing Homes.

Two years ago, during the 58th Legislative Session, the Department of Public Health and Human Services identified in their budget that the cigarette tax earmarked for the state veterans' nursing homes was not generating enough revenue to fully fund the operation and maintenance of those homes. Since a cigarette tax increase was sure to be a part of the 58th Legislature's revenue picture, our organizations worked with the House and Senate Taxation Committees to insure adequate funding of our nursing homes. Gratefully, I can report to you that new language, inserted during the final hours of last session, in Title 16, MCA, Section 16-11-119(1)(a) insured that funding for the operations and maintenance of our veterans' nursing homes was secure for many years to come. As you may suspect, this language change was the result of the efforts of many veterans and military organizations - the very same groups you will hear from today.

In early May of last year, we became aware of statutory language in Initiative 149 (the tobacco tax increase proposal) that modified Title 10, MCA, Section 10-2-417, making the use of the cigarette tax earmarked for veterans' nursing homes vulnerable to use for other programs. Specifically, those other programs were the health and Medicaid initiatives outlined in I-149 and subsequently codified in Title 53, MCA, Section 53-6-1201. Because the initiative language was already reviewed by the Attorney General and approved by the Secretary of State, it could not be changed in the Initiative.

In July, the Department of Montana Veterans of Foreign Wars and the American Legion of Montana led the way in filing a lawsuit challenging the language of I-149. While the veteran and military organizations opposed the initiative because of the faulty statutory language, none of the organizations took a position on the merits of the proposed tobacco

tax increase - neither for nor against. The lawsuit, among other things, expressed our concern that, with the language added to Section 10-2-417, the funding of our veterans' nursing homes was in jeopardy.

In the order, issued by District Court Judge Dorothy McCarter, the judge agreed with the plaintiffs "that this wording potentially creates uncertainty regarding future funding of the veterans' homes" (page 6, line 19-20). Again on page 7, line 5, the judge states; "Similarly, the proposed amendment to Section 10-2-417(2) gives the legislature the discretion to appropriate the funds in the veterans' homes account for the exclusive use of the health and Medicaid initiatives, thereby leaving the veterans' homes unfunded."

Finally, Judge McCarter writes on page 12, line 7; "The problem could have been avoided by simply changing the language of Section 10-2-417 to read "16-11-119(1)(a)" instead of "16-11-119", rather than adding language to both subsections; Section 10-2-417 is located in the portion of the code dealing with veterans' affairs, and inserting references to health and medicaid programs here is incongruous and confusing."

House Bill 411 does just what Judge McCarter suggested. It removes the language added to Section 10-2-417 by the initiative and reinforces that that section addresses only funding for veterans' nursing homes by adding the words <u>for veterans' homes</u> in subsection (1) and by adding <u>(1)(a)</u> in subsection (2).

You may hear from some that removing this language from Title 10 (Military Affairs), Chapter 2 (Veterans), Part 4 (Montana Veterans' Homes), will disable the ability to spend money from the Health and Medicaid Initiatives Account established in Section 53-6-1201. This is not the case. Tobacco taxes for the Health and Medicaid Initiatives are directed from two different sections of Title 16. The "cigarette tax" is directed to 53-6-1201 by section 16-11-119(1)(c) and the "tax on tobacco products other than cigarettes" is directed to 53-6-1201 by section 16-11-206. Once the taxes are placed in the Special Revenue Fund identified in 53-6-1201, then subsection 53-6-1201(3) provides for the usage of these funds. The language in Section 10-2-417 should only enable the usage of the Special Revenue Fund for operation and maintenance of veterans' nursing homes.

As you can see by the number of co-sponsors on this bill, it enjoys both House and Senate support and bi-partisan support as well. By passage of this simple bill, our veterans can rest assured the citizens of Montana will always have nursing homes for their use. We thank you for your consideration of this very important legislation.