

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 22, 1999 at 9:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)  
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 210, 1/14/1999  
SB 82, 1/18/1999  
Executive Action: None

***{Tape : 1; Side : A; Approx. Time Counter : 0}***

**HEARING ON SB 210**

**Sponsor:** SENATOR JOHN "J. D." LYNCH, SD 19, BUTTE

**Proponents:** Hal Aasen, Northern Rocky Chapter, American Society of Home Inspectors

**Wes Mullaney, Big Sky Inspection, Butte**  
**Chris Dorsi, Altimus Consultancy, Helena**

**Opponents: A. Farrell Rose, Chairman, Board of Real Estate**  
**Appraisers**

**Opening Statement by Sponsor:**

**SENATOR JOHN "J. D." LYNCH, SD 19, BUTTE.** A good friend and I were visiting about home inspections. There seemed to be some deficiencies in our present law. Home inspections are really a safety issue. People should be able to know what they are buying. Home inspectors only tell the people what looks to be wrong with the home. **SB 210** addresses the issue of standardizing the method of home inspection. I will turn it over now to the proponents.

**Proponents' Testimony:**

**Hal Aasen, Northern Rocky Chapter, American Society of Home Inspectors.** Mr. Aasen gave his testimony **EXHIBIT (bus17a01)**. He also handed out "The Standards of Practice and Code of Ethics" by The American Society of Home Inspectors, Inc. (ASHI) **EXHIBIT (bus17a02)**.

**Wes Mullaney, Big Sky Inspection, Butte.** I am the friend of the **SENATOR** who asked for this bill. I have been doing inspections in Butte for the past eight years. Using and following these standards have been a good practice for me. The guidelines are good and it is easy to follow them. I urge your support.

**Chris Dorsi, Altimus Consultancy, Helena.** I stand in favor of this bill for the reason of simplification. I spend 6-8 months a year traveling throughout Montana to provide continuing education for realtors, appraisers and surveyors, etc. I currently have a certified class about home inspections specifically and have taught approximately 1,500 people here in the state. The number one thing that comes up in these continuing educational classes is the standardization in this industry. Both home owners and realtors alike are concerned about having a service that is uncontrolled. Currently in the state of Montana, anyone here in this room could provide continuing educational services or home inspection services without any kind of certification. With the amount of money that is involved in these kinds of transactions, it is a bit unnerving to have a home inspector walk in who is not providing a service that you cannot identify and define. That is why this bill is important. It will provide some kind of guidelines however voluntary they may be. It will help people involved with real estate transactions to recognize what they are

going to receive and what they won't receive. It should help raise the standard for these kinds of services. I stand in favor of **SB 210**.

**Opponents' Testimony:**

**A. Farrell Rose, Chairman, Board of Real Estate Appraisers.** He gave his testimony **EXHIBIT (bus17a03)**.

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**Questions from Committee Members and Responses:**

**SENATOR BEA MCCARTHY** asked **Mr. Aasen** to tell who hires and pays the home inspectors. **Mr. Aasen** said generally the prospective buyer of the property. This is after a buy-sell agreement has been signed. And it is often contingent upon a satisfactory home inspection. The inspection takes 2-3 hours. The client is usually with the inspector. A visual inspection is done of the structural condition of the house. The entire house is inspected. A written report is usually given. **SEN. MCCARTHY** then asked if the fee is based upon a percentage of the sale. **Mr. Aasen** said that some inspectors base it upon the cost of the house, others have just a flat fee.

**SENATOR DALE BERRY** asked **Mr. Aasen** if the home inspectors are licensed or under any state board. **Mr. Aasen** replied that no they are not. The ASHI members in the state are held to the standard of practice and code of ethics outlined by ASHI. He believes that these standards are the highest in the nation. A member must pass a number of written exams and perform a minimum of 250 fee inspections, etc. A member must also have 20 continuing education credits a year. **SEN. BERRY** asked that in using these ASHI standards, would this become part of the statute and hold these inspectors accountable and would they be certified by the state in order to enforce this law. **Mr. Aasen** replied that this would not happen under this bill. He would like to see state certification though.

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**SENATOR VICKI COCCHIARELLA** asked **Mr. Aasen** on page 1, line 26 what "the testing of user controls" means. **Mr. Aasen** said that user controls of the systems would be those controls that the home owner would normally use: the thermostats for heating systems, the water faucets, appliances, etc. The inspectors are not plumbers, electricians, etc. and the inspection is not an in-depth inspection. **SEN. COCCHIARELLA** then stated that home

inspections must not include radon testing. **Mr. Aasen** said that radon testing in most markets is not part of the home inspections.

**SENATOR MIKE SPRAGUE** asked **Mr. Aasen** if Montana home inspection businesses are operated on a part-time basis or full time. Also, what would be the liability for misinformation. **Mr. Aasen** said there are some part-time inspectors not advertised in the yellow pages. Some home inspectors carry a large liability. ASHI requires continuing education. His inspectors make their clients aware at the beginning of the inspection that it is a visual inspection and outline the limits of the inspection. Actually, their liability is only on what they can see. If they cannot see it, then they don't feel they are responsible for the unseeable. **SEN. SPRAGUE** asked about termite inspection. **Mr. Aasen** said that if they could not see any evidence then it would not be their responsibility. It is still a "buyer beware" system.

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**SEN. MCCARTHY** asked **Mr. Rose** what he would suggest to make the bill a better bill. **Mr. Rose** said there were no words as to how the investigation would be handled and financed. He didn't know if it would be handled through the Department of Commerce. If appraisers can lose their license for not following the standard procedures, then it would behoove these people to have this in their bill so they can control who does home inspections. He has not proposed any amendments to the bill.

**SEN. SPRAGUE** wanted to know how the fees were arrived at say for a \$100,000 home. **Mr. Aasen** said that normally a flat fee average throughout the state would be between \$230-\$300. Some are charging a base fee of \$210 and for every \$1000 over the \$100,000 of the purchase price might be \$1 per thousand. Some may inspect and charge so much per square feet.

**SENATOR JOHN HERTEL** asked **Annie Bartos, Department of Commerce**, if there was an entity for home inspectors in their department. **Ms. Bartos** said there are no divisions within the department that regulate home inspectors. **SEN. HERTEL** asked if the counties or cities have any control over this. **Ms. Bartos** said that she was not aware of any county or city authority regulating home inspectors. She felt that if there was any question over the legal aspect of a home inspection it would be taken up between the client and the home inspector.

**SEN. COCCHIARELLA** asked **Ms. Bartos** if her department receives any complaints about home inspections. **Ms. Bartos** said that she had

reviewed the bill with the Consumer Affairs staff and at the present time, they have not received any complaints.

**Closing by Sponsor:**

**SEN. LYNCH** closed. I appreciate your consideration of this bill. I feel that people should have some assurance or uniformity of inspections. There are people trying to do the right job and they would like to see some standardization of home inspections. It is a consumer protection bill.

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**HEARING ON SB 82**

**Sponsor: SENATOR STEVE DOHERTY, SD 24, GREAT FALLS**

**Proponents:** Steve Bullock, Department of Justice  
John Kuglin, MT Bureau Chief, Associated Press  
Mike Voeller, Lee Newspapers of Montana  
Dennis Casey, Executive Director, Gaming Industry  
Assoc. of MT  
Jim Fall, MT Newspaper Assoc.  
Riley Johnson, MT Broadcasters Assoc.  
Frank Cote, Deputy Insurance Commissioner, State  
Auditor's Office  
Susan Witte, Blue Cross/Blue Shield  
Greg Van Horssen, State Farm Insurance

**Opponents: None**

**Opening Statement by Sponsor:**

**SENATOR STEVE DOHERTY, SD 24, GREAT FALLS.** Today, I bring you **SB 82** which is a bill that has been developed by the Department of Justice in cooperation with a number of other departments. It attempts to deal with the issue of privacy in government records and the openness of government records and the disclosure of same. In the last few years, we have seen some fairly important litigation dealing with public records in this state. In the last year alone, we have seen two Supreme Court decisions, the Great Falls Tribune Co. vs. Day and Montana Environmental Information Center vs. Cooney that dealt with secret government documents. We have in Article II, Section 9 of the Montana Constitution a very clear constitutional imperative that says "when the demands of individual privacy clearly exceed the merits of public disclosure" that is the only time when government documents are to be kept confidential or secret or not disclosed

to the public. That is a very high standard. The Montana Supreme Court in these decisions has said you need to meet that standard and when you don't meet the standard of the State of Montana, not only will we strike the law down but we are paying out attorneys fees because we keep losing. We keep losing those decisions because of the constitutional imperative.

One of the things that the Attorney General's Office did was to make a through and broad review of Montana statutes, some of which were enacted prior to 1972. Others that have not been looked at under the light of the constitutional imperative of opening up government documents to the public and ask where is the potential problem? Let us clean it up as best we can and we will probably be back in other sessions in the future as we discover other sections of Montana law that do not meet the constitutional test. There are people here from the Department of Justice and other departments. There are some amendments that will be brought forward. The intent of this legislation is to go through the statutes and clean them up and bring them into compliance with the constitutional imperative.

A couple of sections that merit mention are: the procedure for polling legislators will now be public; the Department of Justice gambling licensing; and there is much information that is trade secret information and we don't want to meddle with that.

There is other information, though, that is clearly public information: administrative hearings that were conducted by the State Auditor when the State Auditor is acting as a Securities Commissioner is another section of the bill; notice the failure to comply with state law when setting insurance rates. There are vehicle registration records.

There is the dissemination of some public criminal justice information; the pooling arrangements and paying producer prices for milk previously has been confidential information which we don't think deserves that degree of protection. We need some clarity on the law and some re-evaluation of statutes that have not been looked at according to the constitution of Montana.

***{Tape : 1; Side : A; Approx. Time Counter : 35.2}***

**Proponents' Testimony:**

**Steve Bullock, Department of Justice.** He submitted his written testimony and a section by section analysis of **SB 82**

**EXHIBIT (bus17a04).** He also handed in amendments

**EXHIBIT (bus17a05).**

*{Tape : 1; Side : B; Approx. Time Counter : 2}*

**John Kuglin, MT Bureau Chief, Associated Press.** He submitted his written testimony **EXHIBIT (bus17a06)**. He then handed in testimony for Ian Marquand **EXHIBIT (bus17a07)**.

**Mike Voeller, Lee Newspapers of Montana.** I am here today to voice our strong support for **SB 82**. More often than not during the last 28 years I have been around here as a lobbyist. My mission has been to try to preserve the public's right to know and to participate in governmental decision making process. We applaud this effort to let even more sun shine on government. We urge a Do Pass.

**Dennis Casey, Executive Director, Gaming Industry Assoc. of Mt.** I am here in support of the bill although I do have a reservation and a suggested amendment which is very important. I refer to Sections 3 and 4 that refer to the gambling laws of the State of Montana. On page 2, lines 27 - 30, "business information specifically identified", it is anticipated that this will be through rule making. The Fiscal Note indicates that there is some money set aside for that. My personal preference would be that this information would be in law rather than rules. But, we are supporting this because we feel this bill will make things more clear for all of us in the industry. In regard to the language which is repeated on the next page, you will note that present law says the Department may not make public or otherwise disclose information obtained in the application or tax recording process. Tax reporting process has been struck and it is not specifically addressed in the amendment in the bill that has been offered. I have talked with the Department of Justice and they have told me they would have no objection to serving in the appropriate places, language that would make it clear that tax reporting processes were confidential. I have spoken with **SEN. DOHERTY** and he agrees with that amendment.

*{Tape : 1; Side : B; Approx. Time Counter : 7.4}*

**Jim Fall, MT Newspaper Assoc.** There are 83 newspapers across the state. We want to add our support to the opening of the doors and the washing of a few windows that provide greater insight into public information here in Montana. We support this bill whole heartedly.

**Riley Johnson, MT Broadcasters Assoc.** We stand in support of this bill and ask for a Do Pass.

**Frank Cote, Deputy Insurance Commissioner.** As you can see, a number of sections that are proposed affect the State Auditor's

Office. We do support the bill with the amendments. We do have one additional amendment that came about as the result of a phone conversation with the National Association of Insurance Commissioners this morning. The one thing we would like to see as an amendment, in addition to the other amendments is on page 7, Subsection 6, is the term "working papers" put back into the bill. These are papers that the investigators and examiners use and put together their own personal working papers. It does not affect the overall intent of the bill and the actual report of the examiners would be a public item.

**Susan Witte, Blue Cross/Blue Shield.** Blue Cross/Blue Shield does support **SB 82** as amended. However, we differ with a number of the amendments that have been presented by the Attorney General's Office. Specifically, we would support amendment number 5 which reinserts "confidential" in terms of a confidential examination report. We support the amendment number 6 which reinserts "holding that examination report for 30 days while both the insurance commissioner's staff and the party that is being examined has time to look at it. The amendments we would submit are in lieu of the amendments number 7, 8, 9, 10, 11 and 12. Our problem is with substituting trade secrets or personal information for what is now in the bill as "proprietary business information". I am not sure if the Trade Secrets Act in Montana does cover what has been classified as "Proprietary business information". So in supporting the previously mentioned amendments, I also offer an amendment that is the third one on our submitted amendments **EXHIBIT (bus17a08)**. It is an amendment to page 7, line 24 and would reinsert "portions of working papers, recorded information; documents, and copies produced by;" and deleting the amendments which substitute trade secrets and personal for proprietary business information.

**Greg Van Horssen, State Farm Insurance.** I am here on behalf of State Farm and also stand for Jacqueline Lenmark, AIA, American Insurance Association who could not be here today. We do support **SB 82** with the amendments as suggested by the Department of Justice and as modified by Blue Cross/Blue Shield this morning. To summarize those suggested modifications there is a concern about the deletion of "proprietary business information" from the statute. I've had discussions with the Department of Justice to the effect that term "trade secrets" or "personal privacy interest" may address this term "proprietary business information" as that term, I understand, hasn't been defined in case statute. Give it a little time to look into that and I may come to that conclusion. I simply raise that concern as previously voiced by Blue Cross/Blue Shield as something I would like to reserve the right to comment on as this process

continues. State Farm Insurance Company and AIA support **SB 82** based on the suggested modifications we heard this morning.

**Opponents' Testimony:** None.

*{Tape : 1; Side : B; Approx. Time Counter : 12.7}*

**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** said he felt this bill belonged in the Judiciary Committee because when the talk is of judges and judges' ruling, etc., he felt a little inadequate covering all these areas, i.e. it was outside their area.

**SEN. BEA MCCARTHY** said she agreed with **SEN. SPRAGUE**; however, she referred to Page 13, Line 10, and said she didn't know why **Steve Bullock** should have any right to her death certificate. She said the request of any person concerned her and as a member of a family, she took that as a very definite invasion of privacy at a time she didn't want it. **Mr. Bullock** said he understood her concern because he had recently dealt with such an issue; however, when he viewed his family member's death certificate, he also viewed the Constitution and spoke to DPHHS. Whether we always like it or not, case law doesn't continue after a death. One can argue family interest still exists, but given information on the death certificate, that's a difficult argument.

**Closing by Sponsor:**

**SEN. STEVE DOHERTY.** Since 1972, we've had the provisions of the Constitution which clearly demand that citizens be able to get government documents. That's very, very important and is the spirit with which you ought to look at **SB 82**. Once a document goes to the government, it's public information and automatically goes there unless the merits of privacy outweigh the merits of public disclosure. In dealing with this kind of legislation and in dealing with implementing that section of the Constitution, we ought to approach it from that perspective. As to the questions about tax returns or tax processes, we can deal with those. It certainly is not anyone's intent to have a taxpayer's tax return become public information and if this bill is passed, that won't be a concern.

*{Tape: 1; Side: B; Approx. Time Counter: 17.8 - 33.4; Comments: SB 115 was discussed during the above time. **EXHIBIT**(bus17a09) and **EXHIBIT**(bus17a10) were submitted.}*

**EXECUTIVE ACTION ON SB 27 AMENDMENTS**

**Bart Campbell** said he had 12 or 13 proposed amendments, but as yet they weren't entered into his system. However, he felt he could walk the Committee through the four or five that were just clarification. He suggested **SEN. DEBBIE SHEA** be present to assist in the explanation, since she was part of the interim committee.

**CHAIRMAN JOHN HERTEL** said he would like to have the entire Committee present (**SENATORS BERRY AND COCCHIARELLA** were absent at this time) and agreed he would like **SEN. SHEA** to be in attendance also. He suggested getting the technical amendments out of the way.

**Mr. Campbell** said he had one amendment (Amendment #1) sponsored by AT&T and referred to Section 5, Subsection 10, Page 6, Lines 21 & 22, -- following "public service commission" add ", the Federal Communications Commission,". When he drafted this, he assumed that all telephone companies are licensed by the Montana Public Service Commission; however, he found out that wasn't so. This added language was clarifying because it included telephone companies that wouldn't quite fit under it.

**Motion/Vote:** **SEN. MCCARTHY** moved that **AMENDMENT #1 DO PASS.**  
**Motion carried unanimously.**

**Bart Campbell** said even though these amendments were acted upon today, they would not go to the Amendments Coordinator until all were acted upon.

*{Tape : 2; Side : A; Approx. Time Counter : 0}*

**Bart Campbell** referred to Section 5, Subsection 8, Line 18, following "part 2" -- insert "or staff members, licensed or unlicensed of the producer." He said they were looking at the laundry list of people who were exempt from registration. This would be Amendment #10.

**Motion/Vote:** **SEN. MCCARTHY** moved that **AMENDMENT #10 DO PASS.**  
**Motion carried unanimously.**

**Bart Campbell** referred to Page 1, Subsection b, and suggested it be deleted because it was already in place. This would be Amendment #11.

**Motion/Vote:** **SEN. MCCARTHY** moved that **AMENDMENT #11 DO PASS.**  
**Motion carried unanimously.**

**Bart Campbell** referred to Page 3, Subsection 10, Line 5 -- delete "commercial". This would be Amendment #8.

**Motion/Vote:** SEN. MCCARTHY moved that AMENDMENT #8 DO PASS.  
**Motion carried unanimously.**

**Bart Campbell** referred to Page 3, Subsection 10, Line 8 -- following "United States" add "or an agency bureau or department of government of the United States." This would be Amendment #7.

**Motion/Vote:** SEN. MCCARTHY moved that AMENDMENT #7 DO PASS.  
**Motion carried unanimously.**

**Bart Campbell** referred to Page 6, Line 22 -- following "commission" insert "a rural telephone cooperative or its subsidiary or agent." This would be Amendment #15.

**Motion/Vote:** SEN. MCCARTHY moved that AMENDMENT #15 DO PASS.  
**Motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 11:25 A.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

**EXHIBIT (bus17aad)**