MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 18, 1999 at 8:00 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 446, 2/12/1999
SB 452, 2/12/1999
SB 453, 2/12/1999
SB 430, 2/12/1999
SB 470, 2/15/1999
SB 490, 2/16/1999
Executive Action: SB 470; SB 430
SB 409; SB 419; SB 459

{Tape : 1; Side : A; Approx. Time Counter : 0}
Sponsor: **SEN. MIKE TAYLOR, SD 37, PROCTOR**

Proponents: **Mark Staples, MT Taverns Assoc.**
Paul Cartwright, Citizen

Tom Heisler, President, MT Taverns Assoc.

Opponents: **None**

Informational Testimony: **Neil Peterson, Department of Revenue**

Opening Statement by Sponsor:

SEN. MIKE TAYLOR, SD 37, PROCTOR. This bill requires the applicants for this license to send in only 20% of their money because the fees of $5,000, $10,000 and $20,000 are very steep, especially for small businesses. Because of the reorganization of the Department of Revenue (DOR), the return of the licenses should not take a long period of time. If after four months, the Department hasn't been able to process that license through no fault of the applicant, the DOR will start paying interest on that money, as per the amendments in **EXHIBIT(bus40a01).** In other words, it will be an example to the next legislature how efficient the new $40 million customer service center will be in the DOR. The bill also lowers the food requirements from 75% to 65% because the 75% in reality was a "turn your head the other way" situation and wasn't feasible. It also removes the burden from the DOR to have to audit unless it's blatant. These licenses were created for those who wanted to have a glass of wine or a beer and good food or service, but not gambling. The bill doesn't cover the larger markets but the amendment **EXHIBIT(bus40a02)** says if the area happens to be full that isn't included in the 20,000 people or less, they will get one more license. **EXHIBIT(bus40a03)** shows a listing of the quotas and numbers of licenses left in certain areas.

There is a part of the bill which says you have to wait a year if you sell a license to buy a cabaret license because these licenses are quite a bit cheaper than the gambling licenses.

{Tape : 1; Side : A; Approx. Time Counter : 7.3}

Proponents' Testimony:

Mark Staples, Montana Tavern Association. The cabaret license availability is structured so the numbers available will increase as the population increases; therefore, with the adjusting to the 80%, the "plus 1" feature added to the increases, they should have enough licenses. One of the things we were afraid of was those with beer and wines would be solicited by casino businesses to sell their licenses and it is happening. The original intent was there would be a one-year wait. If you sell the current license you have, it means you really don't need a license; so you ought to wait a year before you get a cabaret. We support **SB 446** and his amendments and I think we've gone far enough this session to fine-tune it.

Paul Cartwright, Private Citizen. I support **SEN. TAYLOR'S** bill. For the most part, last session's legislation worked but there were a few areas that didn't, i.e. areas where the markets were booming and the quota is low. I think we'll continue to see pressure in the high-growth areas, even with the amendment. One step at a time, I will continue to accept what this is; however, I think you will be looking at these high-growth areas next session again. A lot of the bill deals with how the DOR is going to streamline and process these applications. On the whole, I support the bill though I wish the cost issue had been addressed a little more. The one difference between these and the quota licenses is this cost is paid to the state and can't be recouped while the cost of the other licenses are partly to the state and the rest to the private market which can be resold; it isn't clear which one costs more in the long run. On the whole, though, I think we're making progress.

Tom Heisler, Montana Tavern Association. We support this bill but I would like to speak to the portion which is the year waiting period. In Great Falls we have a problem with pizza places selling their licenses on the open market. We have cabaret licenses available in Great Falls but we also have about eight to ten pizza places that have had these beer and wine licenses for many years and pay very little. They sell their licenses to casino developers and everyone in Great Falls is opposed to this. What's going to happen in Great Falls is they'll end up with eight to ten more casinos and all the cabaret licenses that were meant for businesses that needed them in conjunction with their food, will not be available. We support this bill.

{Tape : 1; Side : A; Approx. Time Counter : 17.5}

Opponents' Testimony: None.

Informational Testimony:

Neil Peterson, Department of Revenue (DOR). I'd like to distribute copies of **EXHIBIT(bus40a04).** This time line is required in statute any time the Department gets an application for a liquor license. Once we receive a completed application, we send a request to the Department of Justice to do an investigation. They are required to complete it in 90 days. Then there's a 30-day period where we continue to review the application. We publish receipt of the application and at the end of that published period, when we get the report from the Department of Justice, we turn it around in five days. Statutatorily, the whole process takes about 95 days. Our amendment **(EXHIBIT 1)** deals with the requirement we pay interest if we don't take action within four months after completed application is made. It also deals with issue of a protest. If we receive one, both sides have to file pre-hearing information. There will be a post-hearing and then a decision on the issue which could be appealed to the director. This could subsequently be appealed to District Court. The rest of the amendments are self-explanatory.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY commented if the Department's amendments went through, the Department would not pay interest. **Neil Peterson** said that wasn't correct because the applicant had 60 days to make the application complete and once it was complete, even if there was additional information required by the Department of Justice and no action was taken in four months, they would pay interest. The only time the Department wouldn't pay interest would be if a person would protest that particular issuance or transfer of the license at that location. The Department couldn't control that.

SEN. MCCARTHY commented the Department gave itself an extra 60 days, making the total time six months. **Neil Peterson** said this particular change in the bill applied only to paying interest once the application was complete.

SEN. MCCARTHY said she was thinking about applications dating from the day they were received at the Department. **Mr. Peterson** said many times the Department had to write for additional information needed on the application. They couldn't control how fast they turned it around. If they turned it around quickly, then the Department would turn it around quickly.

SEN. MCCARTHY referred to Page 7 of **SB 446** and asked if an additional license fee would require any additional investigation. **Neil Peterson** said he didn't think it would.

SEN. MCCARTHY asked if this, with the increase in fees because of increase in seating capacity, was being done on the honor system. The answer was that, for the most part, it was.

{Tape : 1; Side : A; Approx. Time Counter : 26}

SEN. JOHN HERTEL referred to Line 7 in the title and asked if the fee was being increased. **Neil Peterson** said currently the application had to include the entire fee. The bill changed it so they would have to submit only 20% of the fee at application time.

SEN. HERTEL asked if CI-75 would be involved and was told it wouldn't.

Closing by Sponsor:

SEN. MIKE TAYLOR. If the bill passes, it won't be applicable until October 1. There will be time for people to switch to the cabaret or beer and wine licenses. I, too, am concerned about the pizza places trying to build more casinos because we have plenty of those. I believe **SB 446** is a good change and positive direction for all people involved.

{Tape : 1; Side : A; Approx. Time Counter : 29}

HEARING ON SB 453

Sponsor: **SEN. TOM BECK, SD 28, DEER LODGE**

Proponents: **Mark Staples, MT Taverns Assoc.**
Ralph Ferraro, Bozeman
Bob Fletcher, Bozeman
Mike Hope, Bozeman

Opponents: **None**

Informational Testimony: **Neil Peterson, Department of Revenue**

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, DEER LODGE. This bill deals with resort retail liquor licenses that are distributed by the state to resort areas. We want to ensure the definition of a resort area; we want to make sure this isn't a miniature golf course, etc. We've asked the definition include a resort area must have at least 100 accommodation units for the first liquor license and then each 50 additional units would make them eligible for another liquor license.

Proponents' Testimony:

Mark Staples, Montana Tavern Association (MTA). When Big Sky Resort was built there were no retail all-beverage licenses, so they came to the legislature and MTA worked with them so they came up with the statute **EXHIBIT(bus40a05).** The short form of the statute is once you get a resort designation, you can put as many alcohol and gambling licenses on that acreage as you can stick on there. What happened was people were saying they had the acreage and the cash. The rules said you had to have 50 rooms, etc. That led to people saying they had a truck stop with a little motel on 50 acres and they'd throw up a water slide or miniature golf course and have as many alcohol and gambling licenses on this spot as it can hold. This has been fought in the courts but we shouldn't have to fight every one of these there. We need to return to the intent and purpose of the original law; therefore, the bill clarified and defined the language. We assume a resort will be built within a quota area and then either buy licenses on the open market or apply for cabaret licenses. This bill does not apply to those resort areas already in place. I hope you'll support **SB 453** because the statute already exists; however, it's being abused.

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

Ralph Ferraro, Tavern Owner, Bozeman. I support this bill because the Bozeman area is considered a resort area; however, the developers came in within a mile-and-a-half of downtown Bozeman and bought a 100-acre farm and got the resort designation with the sole intent of expanding gambling and selling liquor licenses to promote the resort. This is within a five-mile radius of the city limits and will throw the quota system off because of all the restaurants and bars he can bring in.

Bob Fletcher, Tavern Owner and Rancher, Bozeman. The proposed site referred to by **Mr. Ferraro** is between my two businesses and is on the edge of the city limits. It's disturbing that this sham could come across as a resort because it isn't. I'm also representing folks in West Yellowstone who couldn't be here because of the weather. The resort that was built there, right on the edge of the city limits next to Yellowstone Park, is upsetting to them also. I support this bill.

Mike Hope, Restaurant Owner, Bozeman. I share the same concern as everybody else; however, another concern I have is I'm a property owner in Bozeman and I own a restaurant. If someone builds a resort outside of town, and if there is a restaurant there, the cost of entry will be cheaper. That possibly devalues the income I can receive off my property in Bozeman. I'm opposed to the bill because I believe the cost of entry should be a level playing field for everybody.

Opponents' Testimony: None.

Informational Testimony:

Neil Peterson, Department of Revenue. We would like to offer an amendment **EXHIBIT(bus40a06)** because it would make the language clearer.

Questions from Committee Members and Responses:

SEN. DALE BERRY asked if the 100 units could be housing units, rather than hotel/motel. **Mark Staples** said he thought they would because true housing areas would not allow casinos, etc. -- they would police themselves.

Closing by Sponsor:

SEN. TOM BECK. The State of Montana put liquor licenses on a quota basis and they vary in value from one community to another. Any time legislation allows that to tweak, the liquor licenses are devalued. People have establishments for which they paid good money so we have to be very careful of how these liquor licenses are issued. This bill tightens up the resort law and makes it a better director for the Department of Revenue. I support the amendment and I would ask the Committee's support of **SB 453.**

{Tape : 1; Side : B; Approx. Time Counter : 6.1}

HEARING ON SB 452

Sponsor: **SEN. DALE BERRY, SD 30, HAMILTON**

Proponents: **Kati Kintli, MT Taverns Assoc.**

Opponents: **None**

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON. This bill is a business bill because it clarifies the status on licenses that are sold on contracts. Many entities took part in drafting the bill. In the past, a large number of liquor licenses were sold on a contract for sale of some type; there's been some confusion as to the ownership status of that seller. It also covers the situation of a default because some things could change in the status of the seller. If there's a default, at the time the previous seller takes possession because of the default, they have seven days to notify the Department and then they can reapply to take possession and operate that facility, or they have 180 days to sell it.

Proponents' Testimony:

Kati Kintli, Montana Taverns Association. I support **SB 452.** I worked with **SEN. BERRY** and the Department of Revenue in the drafting of this bill. Basically, this bill clarifies the status of a person who sells his license and carries the contract on that license because those licenses are expensive. Often, when a person sells a liquor license, real property is sold along with it and many times the bank will not lend the full purchase price; therefore, the seller agrees to carry a contract on that purchase. In doing so, the seller becomes a secured party. The seller no longer wants to retain ownership, but wants out. A person is allowed to have only one all-beverage license in Montana so if the person is carrying the contract, he or she would not be able to secure another license somewhere else. Under current Department rule, if they sell their license and carry a contract they're required to be able to still be qualified to own the license they just sold; therefore, they may not move out of state, nor may they obtain an interest in another beverage license. It seems unfair because in other circumstances, if they sell the license and are carrying the paper, they want to ensure the security interest on the debt is paid. This bill clarifies the position of the secured party. The only interest they have in the license is entitlement to receive the payment of the debt. If the buyer happens to default, there's a mechanism in the bill to allow the secured party to take the license back and apply for a temporary operating authority and operate the license. If they're not qualified, they have to request non-use status and then they have 180 days to transfer that license to a qualified purchaser. The bill also allows the Department of Revenue to extend that 180-day period for good cause. If a person sells the license and moves out-of-state, the Department of Revenue has said a residency has to be maintained here; however, in many cases people move out-of-state and don't want to return and **SB 452** addresses those situations that they just want to secure the payment obligated by the debtor. I support this bill.

{Tape : 1; Side : B; Approx. Time Counter : 11.7}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE said it seemed to him if there was a default, 180 days might not be adequate; also, what was to prevent mischief in the purchase of these licenses. **Kati Kintli** said a default was not when the seller gave the buyer notice that the payment was 60 days overdue; rather, it was all was said and done, payment had not been made either through escrow or assignment of the liquor license back. The escrow agent would be directed, upon default, to give the secured party the license back. At that point, the secured party has seven days to notify the Department of Revenue of that default and to request non-use status (so the license can be sold) or temporary operating authority, which would entail application and supporting documents.

SEN. SPRAGUE asked if they would be in first mortgage position or would it be up to the agreement with the bank, etc. **Ms. Kintli** said it would be up to the particular circumstances of the contract. Generally, the bank would say it wanted to be first.

SEN. SPRAGUE commented if the bank was in first mortgage position and the contract holder in second mortgage position, what would happen if the bank became the licensee. **Kati Kintli** said current statute allowed for secured parties (specifically banks) which were unqualified to own a liquor license had 180 days. There never had been a statute to cover someone who moved out of the state but the bill addressed that. She also said Page 1, Line 26, of the bill addressed his question of mischief: if you're a secured party, all that's in it for you is the payment of your debt plus interest.

SEN. JOHN HERTEL asked what the old statutes were and why this legislation was needed. **Ms. Kintli** said the Tavern Association objected to the Department rule requiring that person to retain their qualification-owned license in Montana. She thought there were some people who were abusing their position as a secured party because the law was so vague.

Closing by Sponsor:

SEN. DALE BERRY. This bill clarifies this and gives the business owners a better opportunity to see their business. This is one business where it is difficult to get institutional financing. I urge your support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 18.1}

HEARING ON SB 490

Sponsor: **SEN. WILLIAM "BILL" GLASER, SD 8, HUNTLEY**

Proponents: **Carl Schweitzer, American Subcontractors Assoc. of Montana**
Don Iverson, National Electric Contractors Assoc.
Zack Pallister, President, American Subcontractors Assoc. of Montana
Janet Cook, ABC Electric
Jim Wolfe, Polar Electric, Helena

Opponents: **Tom O'Connell, Administrator, Architecture & Engineering Division**
Cecilia Vaniman, Montana State University

Opening Statement by Sponsor:

SEN. WILLIAM "BILL" GLASER, SD 8, HUNTLEY. This bill deals with the relationship between contractors and subcontractors relating to payment. I know a lot about contracting because I did it for 35 years. Poor pay from poor contractors puts them at a disadvantage against good pay from good contractors. This bill improves the cash flow of the subcontractors and general contractors and rewards the good contractors.

Proponents' Testimony:

Carl Schweitzer, American Subcontractors Association of Montana. **Section 1** of the bill deals with the title. **Sections 2 and 3** define the terms used in the bill. **Section 4** says in order to get paid, the work in the contract has to be done. **Section 5** deals with prompt payment; i.e. puts a time frame within which an owner has to pay a general contractor, which is 15 days after receipt by the owner or owner's representative. **Subsection 2** says the contractor shall pay the subcontractor within 3 working days after receiving payment from the owner. **Section 6** deals with consequences of not paying within the time frame. An interest penalty applies to both the owner paying the general contractor and the general paying the sub. **Section 7** says if there's any kind of civil action, the parties who win can be awarded arbitration or attorney fees. **Section 8** says remedies are not exclusive. **Section 9** limits this to commercial construction -- residential construction of 4 units or less does not apply. The reason for the bill is the biggest problem for construction these days is the time frame to get paid. You do the work and the law requires you to pay your employees on a weekly basis and if you don't pay your suppliers in a timely fashion, you lose your discounts, credit, etc. The time frame just keeps growing and growing and we decided it was time to do something about it.

Dennis Iverson, National Electric Contractors Association. We consider this bill fair and simple. We strongly support it and hope you will give it favorable consideration.

{Tape : 1; Side : B; Approx. Time Counter : 29.7}

Zach Pallister, American Subcontractors Association of Montana. The payment scenario has gotten so far out of line that it's difficult to maintain a decent cash flow. I've talked to other contractors and subcontractors in other states and they don't have the problems we do here in Montana; in fact, when I tell the woes of a subcontractor, they see no reason for taking an average of 37 days for a public entity to turn money to a general contractor. What that means to a subcontractor is our agreement with the generals is they have another 7-10 days to pay us, so it takes about 44-47 days. Our discounts from suppliers are typically taken on the 10th of the month and the only way we can get them is to borrow money. I pay my employees weekly. I can't wait 47 days to pay either them or my suppliers. The fact that **SB 490** would give us interest on the money is significant because it wouldn't be so tough on the cash flow. When I'm doing a huge job, if I don't get paid on time it could ruin me. I urge you to promote small business in Montana by supporting this bill.

Janet Cook, ABC Erectors, Billings. We're a small business funded by SBA (Small Business Assistance) funding. In October we billed $40,000 for a job completed but didn't receive payment until the second week in December, which was after I made an issue of it with the State. Then the November payment came promptly. I had to make an issue of it because we were being re-evaluated by the SBA and much of it was related to cash flow. If we hadn't had our funding from SBA, we probably would have closed. I'm urging you to support this bill.

Jim Wolfe, Polar Electric, Helena. I would like to voice my support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 38.4}

Opponents' Testimony:

Tom O'Connell, Administrator of Architecture & Engineering Division. He read his written testimony **EXHIBIT(bus40a07)**.

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

Cecilia Vaniman, Montana State University. My office is responsible for managing the construction at MSU, Montana State University. At the present time we have approximately 130 projects under contract with general contractors. I've reviewed files pertaining payments to general contractors over the past nine years. Most of the time, for large projects, we hire outside architects and engineers and it takes them time to review a pay request because they have to review, inspect, etc. Our records show it takes about seven days to turn around a pay request. This is a responsibility to ensure the work is there and also to the taxpayers of Montana to ensure that what was billed is rightfully owed. We have numerous calls from subcontractors and I can tell you that in every complaint we've had in the past nine years, the general contractor has been paid. We aren't involved in the relationship between the general and the subcontractor but I know some of the generals do hold money on their subcontractors. I don't believe we can turn these pay requests around and do the job we're supposed to do within 15 days.

The other complaint we have is the project close-out. Often the general contractors bill us at what they consider completion, yet the job isn't complete. Money is then withheld from the general contractor for specific reasons when the job cannot be completed, and I know then the generals hold money out on their subcontractors. My concern again is the 15-day mandate that payments go to the contractor. We need the time to fulfill our responsibility on these contracts.

<u>Questions from Committee Members and Responses</u>:

SEN. BEA MCCARTHY said they heard another contracting bill earlier and they said payment was withheld because an instructional manual was not completed and wondered if that was sufficient reason to withhold payment. **Cecilia Vaniman** said they considered the Operational and Maintenance Manuals (OMM) and drawings for building to be very important. If the people who run the physical plant don't have the manuals they need and if they haven't received the training (usually a requirement of the contract documents), it's impossible for them to maintain the building. There is often a violator warranty on a mechanical piece of equipment and they need to follow the manufacturer's written instructions. It is often difficult to get this information from the general contractor and that's the reason for the retainage.

SEN. MCCARTHY asked if the entire retainage, or just a percentage was held. **Ms. Vaniman** said at MSU they held what they thought would cost them to duplicate that information, which could range from $5,000 to $20,000.

SEN. MIKE SPRAGUE asked what was a fair amount of time. **Tom O'Connell** said current statute gave them 30 days from receipt of a properly filled-out invoice. If it wasn't paid within that time frame, there was a per-day percentage penalty. He said they couldn't process within the 15-day time period, but he could live within the 30 days. He said if it were possible to process them faster, they would do that.

SEN. SPRAGUE said there was obviously a problem and wondered if a compromise of 18 or 20 days or whatever would work. **Mr. O'Connell** said he believed the problem was the State was the only one who had the time frame defined, but there were other contracting agencies being addressed and those agencies had no time frames. He suggested those entities be brought in under the requirements the State had to follow. It would be a huge step in the right direction. A good thing about the bill was general contractors had to pay the subcontractors within three days. Currently there was no requirement for that. Many of his phone calls were based on subcontractors who hadn't been paid by the generals. Again, he said he couldn't speed up the process any faster because he didn't have resources to validate the claims.

SEN. SPRAGUE asked the same question of **Zack Pallister** who said the language of the bill was a fair compromise. To cut the payment scenario in half wasn't unreasonable. He said there was no reason an architect or engineer had to have seven days to review a job. He suggested there be a payment application processing day on a monthly basis. Everybody, engineers, architects, state entities, contractors, etc., involved could be at that meeting. It should be possible to take care of that process in one day. Then all that would be left would be to cut the check. Why should that process take 30 days?

{Tape : 2; Side : A; Approx. Time Counter : 8.1}

SEN. SPRAGUE asked about the issue of county & city and **Mr. Pallister** said it would be the same thing.

SEN. DALE BERRY said he had heard from constituents who said the governmental contractors and subcontractors built into their bids a higher amount because of the deferred payment process. He wondered if this delayed payment schedule was indeed costing them more money. **Zach Pallister** said it was but he didn't know any contractors who could afford to put extra money into their bids because it was too competitive. Also, contractors had to watch the cash flow because a person couldn't count on being paid on time. He felt 90% of the general contractors were good contractors who deserved to be paid on time also.

SEN. BERRY asked why residential people were excluded. **Mr. Pallister** thought the smaller residentials required a different kind of payment. They got 50% of the money up front.

SEN. SPRAGUE asked for clarification of the cities and towns aspects of the bill. **Tom O'Connell** said currently Title 17 provisions required state agencies to pay within 30 days. The bill also pulled in cities, towns, school districts and the private sector, not to the existing statute but to a reduced time frame. He thought it would be more reasonable to pull them into the provisions of Title 17, rather than trying to compress them. He felt much of the testimony referred to contracts not under the control of the State.

SEN. MCCARTHY commented if the proposed definition was put into 17-8-42, it would be accomplished. **Mr. O'Connell** said it would and that's what they were trying to do but they ran out of time.

SEN. JOHN HERTEL asked if the bill was based on ideas from other states which weren't having these problems. **Carl Schweitzer** said they were; in fact, he started copying the bill the Utah Legislature was considering. Also, he had a book which deal with prompt payment legislation and it seemed most states had such legislation.

SEN. HERTEL asked about the possibility of inserting the proposed definition into 17-8-42. **Bart Campbell** said he would not suggest that because Section 17, Section 8, dealt with state agencies and how they did it. It didn't seem to be the best workable way to take one line and throw in local government entities. His suggestion was to take "state" out of the definition (Section 3, Subsection 3) and put it in another section, like Section 5. **Carl Schweitzer** said one of the problems of excluding "state government" from the bill was the part of the contractor paying the subcontractor within three days would be lost. **Bart Campbell** said he thought it would be possible to go to the one section of the new bill and state that "government entities and state agencies".

{Tape : 2; Side : A; Approx. Time Counter : 18.9}

Closing by Sponsor:

SEN. BILL GLASER. I purposely left the title broad -- it doesn't narrow you down to certain sections of the code but narrows you down to certain concepts. Subcontracting in Montana is mostly a local small business operations; in fact, a lot of general contracting was that way also -- both had cash flow problems while they waited for their money. This bill talks about cash flow, fairness and the ability to hire an attorney to get their money. We want to ensure these people have an opportunity to succeed in their life's dream.

{Tape : 2; Side : A; Approx. Time Counter : 24.6}

HEARING ON SB 470

Sponsor: **SEN. DOROTHY ECK, SD 15, BOZEMAN**

Proponents: **Kirk A. Astroth, Chairman, MT Children's Trust**

Opponents: **None**

Opening Statement by Sponsor:

SEN. DOROTHY ECK, SD 15, BOZEMAN. This bill removes the financial limit on the Endowment for the Children's Trust, which was created in 1985. It doesn't have a state appropriation, which means it operates on money from divorces and check-offs on income tax. The Trust's seven committee members are volunteer and have a real concern for children. Effective programs for children are community-based, involve volunteers and some agencies to work with those volunteers. Basically, the focus of Children's Trust was prevention of child abuse and neglect; they tried to support programs to strengthen the family. Studies show that children who are encouraged to make good connections both inside and outside their family, have a better chance of thriving and are less likely to end up as violent teenagers. This type of program is better than most things the State puts together and can deal with these in a community. When we first thought of putting this bill in, we were thinking of the tobacco settlement and this would be a good place for some of those monies because early childhood programs are the best place to address addictive behavior. The number of programs that can be supported through the Children's Trust is limited because there's not a lot of money available. Having the money in endowment would be helpful. There are possibilities in expanding this program and building a substantial trust, as many states have done.

Proponents' Testimony:

Kirk Astroth, Montana Children's Trust Fund. He read his written testimony **EXHIBIT(bus40a08)** and distributed copies of **EXHIBIT(bus40a09)** and **EXHIBIT(bus40a10).**

Opponents' Testimony: None.

{Tape : 2; Side : A; Approx. Time Counter : 39.1}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if the philanthropic aspects of the 1997 Legislature helped the Trust Fund and **Kirk Astroth** said it didn't help because the Trust Fund didn't have a 501 C3 status.

SEN. SPRAGUE asked if the cap was removed and donations were made, would the divorce fee then be rescinded. **Mr. Astroth** said the Fund only got $3 from the divorce filing fee and if they got a sizeable amount in the Endowment, they might be able to eliminate the money from the income tax.

SEN. DALE BERRY asked how much money was in the Endowment Fund and was told $125.

Closing by Sponsor:

SEN. DOROTHY ECK. I agree it would be helpful if we could get away from the current small ways to fund the Trust and be able to establish a significant Trust.

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

HEARING ON SB 430

Sponsor: **SEN. GLENN ROUSH, SD 43, CUT BANK**

Proponents: **Elaine Mitchell, Accountant, Cut Bank**
Gary Feland, Kipling Energy, Helena
Don Allen, Cenex
Dexter Busby, Montana Refinery Co.
Joe Montalban, Montalban Oil & Gas, Cut Bank
Patrick Montalban, Northern MT Oil & Gas, Cut Bank
Gail Abercrombie, MT Petroleum Assoc.

Opponents: **Don Hoffman, Department of Revenue**

Opening Statement by Sponsor:

SEN. GLENN ROUSH, SD 43, CUT BANK. This bill represents the oil and gas producers across the state of Montana. This act clarifies a fee received by an oil and natural gas producer or operator to administer a royalty payment that doesn't constitute the value of an oil or gas production tax. Since the early 1920's, Montana has had a law which defined the determination of gross value or product in regard to oil and gas. These laws say gross value must be determined by taking the number of barrels of oil or cubic feet of gas sold each month at the average value at the mouth of the well. The purchasers of the crude oil realized the time and cost of record-keeping for royalty owners and issuing checks to each, so in the 1980's so they offered to pay the operator 25 cents per barrel for providing this clerical service. This 25 cents-per-barrel has nothing to do with the market price of a barrel of oil, nor is it a bonus or premium that would increase the market value; rather, it's a clerical charge done for the State of Montana that would provide information for other purposes. Sometime in the early 1990's the Department of Revenue started to include a bookkeeping fee of 25 cents per barrel as part of the value of the product in order to determine production taxes. The reason for the bill is the application in the past years hasn't been applied evenly -- the Department of Revenue has taken it upon itself to apply it but not evenly. The fiscal note says the definition of the fees is extremely vague and that's why we are here to clarify the 25 cents.

Proponents' Testimony:

REP. ROY BROWN, HD 14, Billings. I was in the oil business in the mid-1980's, operating various oil and gas properties in northern Montana. We were the operators so we had lots of royalty and working interest owners. We had a sales contract with CENEX who looked at our long list of royalty owners and operators; they said they'd give us a 100% division order and they'd pay us for all this paperwork, which was 25 cents per barrel. It was a matter of convenience both for the purchaser and us. I have a letter which says this fee is no way part of the value of the oil **EXHIBIT(bus40a11)**. I would appreciate a DO PASS on this bill.

Elaine Mitchell, Utterback Accounting, Cut Bank. I am here to ask for your support in passing this bill because I want to save computer jobs in Montana. If we do not accept this 25 cents book keeping fee, this service will be done out-of-state. I'm also here to defend the royalty interest to ensure they aren't over-taxed and underpaid. The statement **EXHIBIT(bus40a12)** doesn't in way deal with the gross market value of a barrel of oil; only with the bookkeeping. **EXHIBIT(bus40a13)** shows the production for one month of a particular property -- it lists the quantity and market value. **EXHIBIT(bus40a14)** and **EXHIBIT(bus40a15)** are letters verifying the 25 cents is for accounting services. I urge you to pass this bill.

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Gary Feland, Kipling Energy. Our reasons for supporting **SB 430** are the same as the others -- we too got caught up in this "two-bit" deal. We purchased an out-of-state company in 1995 who had been paid this 25 cent thing from 1991 to 1994. The company was audited in 1995 and we were nailed for the 25 cent thing; however, when all was said and done, the total came to about $1,700. I agree with previous testifiers, the 25 cents has nothing to do with the price of oil; it's simply a fee for bookkeeping. This tax has been collected illegally because the Department of Revenue won't give a reason to collect the tax. Taxes should be levied fairly among everybody.

Don Allen, CENEX. I want to confirm the handouts by CENEX and ask that you give the bill a DO PASS.

Dexter Busby, Montana Refining Company, Great Falls. I want to reiterate this fee is an administrative fee paid these folks.

Joe Montalban, Montalban Oil & Gas, Inc. We have as many as 35 royalty owners to whom we make statements, copies of production, etc., and this is where we get compensated **EXHIBIT(bus40a16).** Why are they wanting to tax us now, when our business is so low?

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Patrick Montalban, Northern Montana Gas & Oil. We're talking about the small independents of northern Montana, people who are operating wells that produce one to three barrels per day. Royalty owners are the partners in the oil and gas industry and there are hundreds of them in the larger producing units. The price of oil in northern Montana is about $7 per barrel but the lifting cost is about $12 per barrel. We're not making money and we need to watch every penny and that's why we're in front of you as a Committee. The most important thing to remember about this bill is that it's a bookkeeping fee. The Department of Revenue contends it's the price of the barrel; it's not. One of the themes of this Session is how to create jobs and raise the standard of living in Montana; however, the Department of Revenue is creating a disincentive to create jobs by trying to tax the administrative fee. This bill will help to save jobs. We hope for a DO PASS for **SB 430**.

Gail Abercrombie, Montana Petroleum Association. We represent some of the larger producers and the number of royalty owners is an interest in a particular oil or gas field that is inherited in families. They get fragmented more and more because of the age of the field, selling of the property, keeping of the mineral royalties, etc. In other words, the older the field gets, the more royalty owners there will be and the administration gets more and more detailed. This is somewhat unique to the situation in northern Montana.

Opponents' Testimony:

Don Hoffman, Department of Revenue. He read his written testimony **EXHIBIT(bus40a17).**

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Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked what the financial impact would be if this bill were dated July 31, 1997. **Don Hoffman** said the fiscal impact would be difficult to estimate; however, there were several producers who voluntarily paid on the 25 cents and if that were the date, they would probably file for a refund. There could also be others who have paid on the 25 cents that the Department hadn't identified.

SEN. SPRAGUE asked if there was a guess. **Mr. Hoffman** said they could get more information to the Committee by tomorrow and he felt more comfortable with that than trying to guess.

SEN. SPRAGUE said he was trying to establish the consequences by determining the date, should the bill pass. **Don Hoffman** said he didn't know what the magic date was; often the Department of Revenue was aware of a problem after the fact and that was why they were sometimes in arrears. He wasn't sure they could go back in their records to identify at what point in time this began to happen. It seemed that in about 1989, the issue of bonuses in the oil and gas business and the additional amounts being paid over the posted price began to happen. That was because of the way the crude oil was marketed on a national basis seemed to change about that time.

SEN. SPRAGUE asked how far back a company would have to go if they were audited by the Department. **Mr. Hoffman** said current law provided for a five-year statute of limitations, which was what they would do; however, if the Department had done a previous audit on that company, it wouldn't redo what had been done formerly.

SEN. SPRAGUE said if he were the producer and were audited, he would be responsible to come up with five years' worth of records. But what would happen if the Department of Revenue wouldn't have the records to explain what the consequences of this would have been five years ago. **Don Hoffman** said they would have the records because they usually came from the producer. The Department didn't generate the records; therefore, the burden of proof was on the person being audited.

SEN. BEA MCCARTHY asked if her understanding the tax on this 25 cents wasn't collected by the Department until the late 1980's or early 1990's. **Don Hoffman** said he couldn't pinpoint a time when this started because people didn't tend to come to the Department of Revenue when the issue started.

SEN. MCCARTHY asked if there was any new legislation during that period of time that should allow the Department to consider the bookkeeping fee any differently than it had been in the past. **Mr. Hoffman** said no new legislation had been passed which related to gross value.

SEN. MCCARTHY asked if the Department began to collect it through rulemaking. **Don Hoffman** said they did it as a course of identifying the issue as they did many times when they weren't aware of the issue.

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Closing by Sponsor:

SEN. GLENN ROUSH. You heard how the 25 cent fee got established and how the fee is strictly an administrative fee. It has nothing to do with the gross price of a barrel of oil or cubic foot of natural gas. Present contracts with the oil and gas state royalty owners can't be paid in excess of market value. There is a lot of work in the industry in keeping records on behalf of the royalty owners and state of Montana. The purpose of the bill is to remind you the 25 cents was established as a business fee. I leave the effective date in the hands of the Committee. I would consider it friendly if they want to amend it in executive action.

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EXECUTIVE ACTION ON SB 470

Motion/Vote: SEN. MCCARTHY moved that SB 470 DO PASS. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 430

Motion/Vote: SEN. MCCARTHY moved that SB 430 DO PASS. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 409

Motion/Vote: SEN. COCCHIARELLA moved that SB 409 BE TAKEN FROM THE TABLE. Motion carried unanimously. 7-0

Discussion: Motion: SEN. COCCHIARELLA moved that SB 409 DO PASS.

Discussion: Motion: SEN. COCCHIARELLA moved that SB 409 BE AMENDED.

Discussion: SEN. COCCHIARELLA explained the amendments **EXHIBIT(bus40a18).** On page 3, the electrical supplier is not talked about and there are several amendments that clarify that under the law now. They will talk about the person who is the distributor. The second amendment is the same. The third amendment changes the kilowatts to "25" from "50". On page 5, line 22, again strike "electricity supplier" and insert "distribution services provider". At the bottom of that page, they talk about how the cost of net metering is to be allocated. On page 6, this clarifies distribution service providers. **SEN. COCCHIARELLA** asked **Gary Willis, Montana Power Co.** to help explain. In that part of the bill, the Public Service Commission will be regulating distributors, the transmission distribution side of the company. The service charge for billing, meter reading, etc. will be paid by this customer generator. The rest of any charges, poles and wires, will be determined by the Commission. **SEN. COCCHIARELLA** said to go to the last page, and said "the local governing body" has been taken out because the Commission is where those decisions should be made. The same goes for number eleven. On the safety issue, the Commission would rule. On page 7, subsection (3) is taken out entirely. Number fourteen talks about applicability. That takes out rural electrical cooperatives.

SEN. MIKE SPRAGUE said that the meter would be spinning backwards and the rate payers would end up paying for this. **Mr. Willis** said that they did need an incentive or they would not sell those machines. The Commission will take care of the cost sharing of the generator. The customer can get to zero and carry that credit for the whole year. At the end of the year, there is no check for any credit. Also, we eliminated the words "supplier" and put in "distribution company". It is on the back of Montana Power Co. as the distribution company and the company is responsible for the things in this bill. The supplier will actually get the extra electricity.

SEN. JOHN HERTEL asked what affects do the amendments have on people who put in generators, windmills, etc. **Mr. Willis** said the amendment that brought the kilowatts down to 25KW will take out some of those existing ones. They just didn't have a payback unless they put in a pretty good sized generator. This is almost a whole new deal with the 25KW limit. If there are some out there at that level, they could have either/or. They could take it into their house. But there are already two meters out there. This could be implemented both ways.

Vote: Motion that SB 409 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. COCCHIARELLA moved that SB 409 DO PASS AS AMENDED. Motion carried unanimously. 7-0

{Tape : 3; Side : A; Approx. Time Counter : 11.6}

EXECUTIVE ACTION ON SB 419

Motion: SEN. MCCARTHY moved that **SB 419 DO PASS.**

Discussion: Motion: SEN. MCCARTHY moved that **SB 419 BE AMENDED.**

Discussion: Bart Campbell explained the amendments **EXHIBIT(bus40a19).** The title has been changed to show that fraternal organizations are not included because they are covered under statute already. On number 2, sections 1 and 2 have been stricken in its entirety and a new section 1 has been inserted which is 23-5-119. There is clarification that these places can lease these liquor licenses. And they can have the gambling activities.

Vote: Motion that SB 419 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 419 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 459

Motion: SEN. ROUSH moved that SB 459 DO PASS.

Discussion: Motion/Vote: SEN. ROUSH moved that SB 459 BE AMENDED EXHIBIT(bus40a20). Motion carried unanimously. 7-0

Discussion: SEN. HERTEL said that this bill would have to go to Finance and Claims Committee. **SEN FRED THOMAS** said that was correct and if the bill were passed out of this committee, it could be sent on to Finance to see if it could be funded. **SEN. HERTEL** said he could send it on to Finance from the floor of the Senate.

Motion/Vote: SEN. ROUSH moved that SB 459 DO PASS AS AMENDED. Motion carried unanimously. 7-0

ADJOURNMENT

Adjournment: 12:00 P.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT(bus40aad)