MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE,** on February 19, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 510, SJ 13, 3/17/1999; SB 513, 3/18/1999
Executive Action: SB 471, SB 510, SJ 13, SB 513

HEARING ON SB 510

Sponsor: **SEN. EVE FRANKLIN, SD 21, GREAT FALLS**

Proponents: **Eugene Fenderson, Montana Joint Heavy and Highway Committee**
Don Judge, Montana AFL-CIO

Opponents: **Chris Gallus, Attoney, Montana Chamber of Commerce**
Barbara Raf, U.S. West

Geoffrey Feiss, General Manager, Montana Telecommunications Association

Don Allen, Western Environmental Trade Association
Cary Hegreberg, Montana Wood Products Association

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 5 - 26}

SEN. EVE FRANKLIN, SD 21, GREAT FALLS, said **SB 510** states a corporation cannot use the value of your stock to lobby and be involved in political action without your specific written permission. In Section 2, the bill requires a corporation to send a form each year in which that authorization is made. Then the stockholder can have access to a civil action if the corporation violates their agreement to not lobby in your behalf or the corporation's behalf without the permission to use your funds to do that.

Proponents' Testimony:

Eugene Fenderson, Montana Joint Heavy and Highway Committee, said the Committee I represent is a group of five unions made up of workers in heavy construction, highway construction, and some public employees. A companion bill to this, **HB 521,** is over in the House. A number of years ago there were two cases that went to the Supreme Court concerning union dues of workers. One was for private employers and one was for public employers. The decision said if a member or person paid service fees to a union and did not want their service amounts used for political action, they would receive more dues. There was a savings for them if they objected to any lobbying or political action the union did with their dues. Each year a union has to account for the membership in writing, through Certified Auditors, informing their members of how much the decrease in dues will be. Unions also notify new and potential members, or those that may opt out and become service members, the amount they can save that year per month because they do not believe in our political action. In my operation, Montana District Council of Labors, I have over 2,000 members. I also buy and sell stock. Along with the responsibilities of being head of my union, I am also the Secretary Treasurer of a one hundred million dollar pension fund. The United States Department of Labor tells us, as a pension trustee, we must address this money in three avenues; government or corporate bonds, real estate, or equity stocks. We have to do this with Fortune Five Hundred companies. I do not like what corporations do concerning political action or education. Union members have the option of opting out. Some will say that it is

legal because I have the choice to buy stock. On a personal level, I should be able to buy any stock I want without having to pay for corporate political education funds and lobbying. On a professional level, we are required to buy Fortune Five Hundred stock and there are not companies in the Fortune Five Hundred that do not lobby or give political money.

Don Judge, Montana AFL-CIO, said he is in support of this bill. The labor movement is getting tired of being picked on by legislation. A piece of legislation, **HB 521**, which is in the Business and Labor Committee, would require unions to obtain annual individual written authorization to use any portion of dues money for any political or legislative purpose which includes participating in the ballot initiative process: those initiatives that protect the livelihoods and the well being of our members and their families. That legislation, as it has been amended by its sponsor, targets unions. It leaves management organizations, business organizations, trade associations, and others out of the mix. If it is good for unions then it should be good for these other entities as well. If I, as a union member, like many other union members, have interest in stocks and those stocks are being used against our purpose, against us in the ballot process, the political process, and the legislative process, then we should have the right to withdraw our support with those activities in which we disagree. We are asking for the same privilege that others would like to impose on us and what Federal law, in court decisions, has imposed on us; the right to withhold the use of our money. We think this is a good piece of legislation. This legislation will have some difficulty in terms of administration but currently we have to go through that administration with the labor movement. Corporations have unlimited resources and can afford to put the mechanism together to allow stockholders to choose.

Opponents' Testimony:

Chris Gallus, Attoney, Montana Chamber of Commerce, stated we rise in opposition to **SB 510**. This bill unduly restricts corporate officers and directors in performing their fiduciary duties to shareholders. Directors and officers have a duty to protect the shareholder interest in value. Many factors, including political activity, ballot issues, and lobbying, can influence the value of that shareholder interest in a company or perhaps the very livelihood of a corporation. If directors and officers are restricted in their ability, the shareholders suffer along with the corporation. In most instances the shareholders are people like you and I. There is money in pension funds and individual investments. People invest to make money and provide for their future. Dissident shareholders that disagree with a

corporation or what the officers and directors are doing on specific issues or matters generally relating to the philosophy of the corporation, have many existing options available to them. They can raise the issue with other shareholders and it can be presented for a vote. They can take their money and invest it in a corporation more to their liking and more in-line with their own interests and philosophies. We should not restrict directors and officers, which could cost all shareholders money and could jeopardize everyone's investment. This bill has numerous Constitutional deficiencies including its restrictions on interstate commerce and its restrictions on free speech. It has practical difficulties as well. Many times corporations involve themselves in political speech, not just to protect the interest of the corporation but to support our communities. In some cases it may cost more to get approval than the corporation planned to spend in the first place. In those instances, the contribution will probably not be given because it is too difficult. When you unduly restrict corporations you affect the ability to generate revenues; it hurts the corporation and it's officers and directors, it hurts shareholders, it hurts the people we employ, and it hurts the communities in which we locate and operate. It has been alluded to that this is an answer to **HB 521**. We did not support that piece of legislation. We urge you to defeat this bill.

Barbara Raf, U.S. West, said we are a publicly traded corporation. Therefore, this bill effects us. There are some concerns in how far-reaching this is. If we look at this bill's definition of "political activity" it includes regulation, federal elections, and rules. This goes far beyond lobbying activities in the state legislature. It would restrict our abilities to work with the Public Service Commission and some of the other rule making efforts that go on, which may start in the legislative process but go far beyond that. One of the biggest difficulties in this is the practical perspective of being a publicly held company and having our stockholders located throughout the world. It is not practical to require those stockholders receive a annual single mailing to tell us if we can spend money on activities in the state of Montana. We have an annual shareholders' meeting where shareholders come and voice their opinions. We look at this single mailing as being another unfunded mandate, which the shareholders will not pay for but our telephone customers will. The annual provisions of **HB 521** apply to public and private corporations as well as unions. We urge you to oppose this bill.

Geoffrey Feiss, General Manager, Montana Telecommunications Association (MTA), said we represent public and private telephone companies across the state, commercial as well as cooperative.

The publically traded members of MTA have asked me to testify against this bill for most of the reasons that have already been stated. I am not a lawyer but there seems to be some mixing and matching between political activity and political action committees. Political activity of a company is very broadly defined in here. It can be far-reaching, including regulatory activity and that would be self defeating. The fiduciary responsibility of a company for its value and survival spills into the political environment and that is part of the fiduciary responsibility of the Board of Directors. We oppose the bill.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 44}

Don Allen, Western Environmental Trade Association, said some have referred to the reach of this legislation. It will go beyond legislation but into the legislation, regulation, rule, or ballot measure. This restricts people's freedom to participate in the process, to have free speech, and to be able to represent their people. For that reason we ask that you table this bill.

Cary Hegreberg, Montana Wood Products Association, said about four of our companies are publically traded corporations. The rest are family held companies largely owned and managed by people who live in Montana. Of those four corporations that are publically traded, they have shareholders all over the United States and all over the world. We think this is an unworkable concept that would not apply. It is a question of whether the legislature and the people of Montana think it is appropriate for companies operating in this state representing their interest politically, as with CI-125. I urge you to table this bill.

Questions from Committee Members and Responses:

SEN. TESTER asked for some examples on restrictions of interstate commerce that this legislation would cause. **Mr. Gallus** explained that the bill indicates those authorized to do business in the state of Montana. The intent of the legislation regarding this issue is unclear. **SEN. TESTER** said **Mr. Gallus** stated in testimony this bill caused restrictions to free speech. If this would restrict free speech, why wouldn't it apply to the labor part of it as well. **Mr. Gallus** said he does not know. There might be some legal arguments they can make. I can speak from the corporate perspective. Corporations have a recognized right of free speech in Montana and across the nation. This bill applies the speech issue in a different way. My understanding of is CI-125 is a Check Protection Act for employees.

SEN. WILSON said on its face this is a lousy idea but in companion to **HB 521** it is a great idea. Did your organization testify on **HB 521**? **Mr. Gallus** stated they did not.

SEN. WILSON asked the same question to **Mr. Hegreberg**. **Mr. Hegreberg** explained, I have not read **HB 521**. We did not testify or take any position on the bill.

SEN. WELLS said, to **Mr. Judge,** you stated you did not like the corporation to use your stock income against you. Corporations are in business to make an income for stockholders and they provide jobs and incomes for their employees. Therefore, how are they going to use the stock income against you. **Mr. Judge** replied the businesses are trying to make money and when we have workers working for those corporations, we would hope they would be making money as well. We have examples of large corporations in this country that have used the profits of the corporation to the detriment of their own work force when they support issues that take money out of worker's pockets, like the Right to Work or sales tax, then it is being used against the best interest of those workers. **SEN. WELLS** asked, regarding the issue of Right to Work, if **Mr. Judge** had seen the study regarding the municipalities of the United States, half of which were in Right to Work states and the other half not in Right to Work states. This study shows that in the first sense Right to Work states have higher salaries, but if you look a few steps further, it shows that the amount of money the worker gets after his taxes and cost of living are paid is actually less. **Mr. Judge** said, that he has not seen that study but has heard rumors of that study. I can produce studies that show just the opposite.

SEN. HARGROVE said there have been many pieces of legislation addressing this issue, including CI-125, which has been declared Unconstitutional. How even is the playing field between union and corporate contributions? **Mr. Gallus** replied now that CI-125 has been declared unconstitutional, we are back to a place where everyone can speak. When everyone can speak and everyone can listen, I think we are in an ideal situation politically to discuss issues before us. That is the very foundation of free speech and political free speech in particular, upon which we have based our constitutions. I see it as unrestricted to many of the political issues with lobbying and ballot issues. I think we are all better off for that.

SEN. HARGROVE He asked the same question of **Mr. Judge.** I understand that **HB 521** is currently on the table in the House, correct? **Mr. Judge** stated it is currently on the table. There has been three attempts to remove the bill from the table and we don't know if it will be on the list of forty bills that do not

have to meet the transmittal deadline. Regarding the field in terms of being level, it has never been a level playing field. In spite of the fact that people look at unions and call us "big labor", we are out spent eleven to one in the political process and probably one hundred to one in the ballot initiative process. In terms of this legislation, labor already has to go through federal hoops for any worker who does not want to participate in the political process using a portion of their dues. This bill would provide some balance by saying if I don't want the income of my stocks used against me, I have the right to say no. It does not prohibit free speech, it just allows me to say no.

SEN. COLE said, on the last page it talks about "political activity". How would you perceive that paragraph? **Mr. Fenderson** stated lobbying in this building is considered political activity. If I lobby up here, there are people who can voice their opinion against me and we have to give them cheaper dues. Corporate people should be required to do the same. Education, which is "soft money", is also political action. Just about anything that has to do with government is lobbying, including trying to persuade government, or individuals of government, or people who influence government.

SEN. COLE asked **Mr. Allen** the same question. **Mr. Allen** said this bill effects any activity that is carried out by all the people listed. It is very far-reaching and complete in its prohibition in terms of the corporations it addresses.

SEN. WELLS addressed the election of any candidate for public office. We currently have restrictions against corporations contributing towards elections. Do you think this portion should be in the bill given the many restrictions we already have? **SEN. FRANKLIN** said, I would like to address that in my close.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 44 - 51}

SEN. FRANKLIN stated this piece of legislation is asking us to look at things some of us may think are too broad-reaching or not clarified well enough, but my reason for sponsoring the bill is similar to those of the people who asked me to sponsor the bill. This is a companion bill to **HB 521**, which is the additional Paycheck Protection Act. This is a provocative piece of legislation. It is offered in a way to tighten the clamps on what is the argument of corporate activity and one's influence as a private investor on a corporation's lobbying efforts and what is your ability and responsibility as an individual, not only in the free market but as an employee when you benefit from trade

association and labor groups lobbying, to the larger community. I admit there is a lack of clarity in this bill. We heard **Mr. Gallus** comment on the process jeopardizing everyone's investment, if we had to send out a permission slip out to everyone. Are we jeopardizing everyone's investment in a stable workforce that has a common good? This is not a prohibition, it is a free speech right as it asks for permission. I will, given the circumstances, ask the committee to keep this bill on the table. I understand the reality of this. There are some questions that are unclear, but what is the individual's responsibility within the larger picture? If the Paycheck Protection Act is a real and present issue, then I feel I need to heighten the argument in the other part of the market.

HEARING ON SB 513

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

Proponents: **Greg Vanhorsen, State Farm Insurance Company**
Jon Metropolos, Farmers' Insurance Group
Jacqueline Renmark, American Insurance Association

Opponents: **Frank Cote, Deputy Insurance Commissioner**
Al Smith, Montana Trial Lawyers' Association
Don Judge, Montana State AFL-CIO
Chet Kinsey

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, HAMILTON, said, this bill encourages insurance companies and other individuals that are regulated under the insurance code to conduct voluntary internal audits. Insurance companies are asking for a protection of those internal voluntary audits to protect documents that might be created from that process.

Proponents' Testimony:

Greg Vanhorsen, State Farm Insurance Company, stated we support this bill and asked **SEN. BERRY** to bring this bill on behalf of State Farm and hopefully other members of the industry. This bill is not an attempt to allow a legal avenue through which an insurance company "can play hide the ball". Insurance is one of the most highly regulated businesses in this state and I believe one of the most highly regulated business in the country.

{Tape : 1; Side : B; Approx. Time Counter : 51 - 62}

Insurers need to regularly review their internal policy and programs to ensure the various arms of the company are complying with applicable federal and state statutes, rules, and orders. The regular compliance reviews these companies conduct are called self-audits. These self-audits are often very detailed in their discussion of compliance issues. They are often very self-critical in their tenor. Self-audits could be problematic if they were released for general circulation because of their critical tenor. I am talking about voluntary self-audits as opposed to court ordered or statutorily required self-audits. I am supporting this legislation because it would provide some additional protections for voluntary internal self-audits. Companies are reluctant to conduct candid effective self-evaluations because the information is readily available through the discovery process in litigation or in administrative proceedings. This bill recognizes that documents created during a voluntary self-audit enjoy a limited privilege. This privilege will provide limited protection of confidentiality to documents created during a voluntary internal compliance audit. The bill creates a privilege and then provides for exceptions to that privilege, hopefully to address or prevent any mischief that could occur or might be perceived by this type of legislation.

The bill is fairly complex and I would like to briefly go through some of the substantive sections of the bill and I would like to begin with New Section 3 which establishes definitions. Subsection 1 establishes which matters can be viewed as insurance compliance audits. This applies to voluntary internal reviews that are not expressly required by a state or federal law. Subsection 2 of that New Section defines which documents are considered for the privilege. It is important for the committee members to understand that the privilege applies only to documents which are prepared as a result of or in connection with a voluntary insurance compliance audit.

Section 4 defines the privilege and then creates exceptions to the privilege. Subsection 1 of Section 4 provides that a self evaluation audit document is not admissible as evidence in any legal action or administrative proceeding except as provided in New Subsection 6. Line 25 clearly establishes the documents created as a result of a claim involving personal injury or Worker's Comp. claims are not protected by this privilege. In other words, this bill is not before you as an attempt to circumvent or stall this process as we know as claims handling or claims adjustment. When the documents involve personal injury or Worker's Comp. issues there is no privilege. Subsection 2 on Line 30 provides that persons preforming or directing the performance of compliance audits may not be examined as to the audit or the audit documents except as provided in Subsection 6. Subsection 3 provides that the privilege does not apply to any of

the following matters, including documents required or information developed, maintained, or reported as required by law, rule, or order. Thus if the law requires a creation of a document or if the Administrative Officer or the Commissioner orders the creation of documents, the privilege does not apply. The privilege does not apply to information generated by the observations or the monitoring of an agency. The regulator can continue to monitor or observe companies and no privilege attaches. Nor does it apply to information obtained to a source independent of the self-audit.

New Section 5, Subsection 1, provides that an insurance company may voluntarily submit a self-audit document to the Commissioner as a confidential document without waiving the privilege. It provides the Commissioner with the authority to conduct examinations and to examine other papers or persons provided in law, that do not apply to a self-audit, which is voluntarily submitted.

New Section 6 establishes when the privilege does not apply and does not apply when it is waived by a company. It does not apply when a judge or hearing examiner, in a civil or administrative proceeding, finds the privilege is asserted for a fraudulent reason or the material is not subject to the privilege for whatever reason. Even if the material is subject to the privilege it will be disclosed when evidence shows noncompliance and the company's failure to do something about the noncompliance within a reasonable time frame. Subsection 3 also provides a procedure as it relates to criminal proceedings.

New Section 7 addresses the disclosure proceedings. There must be a request for disclosure. There must be an opportunity to assert the privilege in the form of a petition for an in camera review of either the judge or the hearing examiner. If no petition is filed, the privilege is waived. The court must schedule a hearing within 45 days to address the privilege issue and whether the documents should be disclosed. New Section 7 also establishes that the company asserting the privilege has the burden of proving the applicability of privilege.

Those are the basics of the bill. We feel that this bill will allow companies to conduct internal self-critical compliance audits with a heightened degree of comfort that these documents will remain confidential. We believe it encourages companies to undertake these compliance audits voluntarily and we ask for your support.

Jon Metropolos, Farmers' Insurance Group, said, I rise in strong support of this bill. I want to emphasize two things. First, the legally required audits will not be effected by this

privilege. We will not keep regulators in the dark. Secondly, since this does apply only to voluntary audits, it will have the very important effect of allowing insurance companies to be self-critical when evaluating how they render service to Montana citizens. This should help the insurance companies and the Insurance Commissioner make sure the service is rendered well and legally. I think it is fair to compare this proposal to the system used for doctors within hospitals for peer review. Their peer review can be discovered but only after they go through many hoops. Peer reviews are very difficult to obtain in litigation. This proposal doesn't make it as difficult to acquire. If insurance companies cannot be very critical, because whatever they say about themselves will go into discovery and be used against them, then they won't be very critical and it will be difficult to improve their operations. I want to emphasize this is a good way to run a business. If the Commissioner's office and insurance companies have a working relationship to try and render insurance products to the citizens of Montana well, then they should be able to agree on a bill like this, if not these precise words. I don't think that is going to happen and I think it's unfortunate. It concerns me because I think insurance companies are the "villain of the day" in this session. Insurance companies must pass all these costs to their policy holders, many of whom are Montanans. I ask you to think very carefully about things like this that are a good idea for policy holders and insurance companies.

{Tape : 1; Side : B; Approx. Time Counter : 62 - 78}

Jacqueline Renmark, American Insurance Association, said the American Insurance Association is a trade association comprising about three hundred and fifty property and casualty companies. We support this legislation. I urge you to give this bill a Do Pass recommendation. It is balanced and limited in scope. I think it will encourage a result that is beneficial to all Montanans.

Opponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, stated I have been Deputy Insurance Commissioner for four legislative sessions, including this one, and without question I believe this bill to be the single most dangerous to the consumer from the standpoint of insurance regulation.

New Section 2, says the legislature finds the protection of insurance consumers is enhanced by insurance companies' voluntary compliance. I agree with that and there is nothing in the law to prevent an insurance company from having a voluntary compliance.

In fact, it is a mandatory compliance. Subsection Two provides the public will benefit from incentives to identify and remedy insurance compliance issues. The public already benefits if there are regulatory problems and our office or any regulatory office has the ability to correct those problems. There are penalties in the law for those people who do not comply. Subsection 3 says it is a limited expansion and will not inhibit the exercise of the regulatory authority. That is untrue. If you look at New Section4 on Page 2, it says that self-evaluative audit is not admissible as evidence in any legal action in any civil, criminal, or administrative proceeding. By its very statement, that dramatically inhibits the ability of the regulator to do his or her job. Under Section 3, "insurance compliance audit" means a voluntary internal evaluation, but it does not include those that are expressly required by state of federal law. We do audits of insurance companies but I am unaware of any state or federal law that requires a voluntary internal audit, so while that looks good on paper it is really a "bunch of fluff". If you look at the definition of insurance compliance self-evaluation audit document, under Subsection 2 of Section 3, it is so broad I am not sure what it includes. It may include, but is not limited to, field notes and goes on for three or four more sentences.

Section 4 says an officer or employee involved with the insurance compliance audit may not be examined in civil, criminal, or administrative proceeding, except as provided in Section 6. I find it hard to believe if there were a reason for the regulatory agency to go so far as to have an administrative proceeding, you could not have an officer or employee of an insurance company or someone who did this self-audit as a witness or a person you needed to obtain facts from without going through Section 6 is unbelievable. Section 4, Subsection 3, says, "the privilege allowed under this section does not apply to any of the following". Here we are talking mostly about documents, not people, so it makes it very difficult for the Insurance Commissioner in many cases to interview and investigate people in the company who have performed a deed that is not in compliance with the law.

Under New Section 5 the bill talks about submission to the Commissioner. The insurance company can submit their self-compliance audit to the Commissioner and if they do so, the provisions set forth in 33-1-408 do not apply. Under 33-1-408 the Insurance Commissioner can do a market conduct exam. In a market conduct exam we can compel officers and employees of the company to answer the questions that we put to them. If this bill passes, I don't think we can do that anymore. As regulators, I don't see how we can help the public if we can't compel the officers and employees of the company to answer

routine questions when we are doing market conduct exams. It goes on to say a commissioner cannot compel the company to disclose, involuntarily, any insurance compliance self-evaluative audit document, if there is any additional information that is part of the self-compliance audit, put together but not a part of the actual report delivered to the Insurance Commissioner. We cannot obtain that information in the market conduct exam because those laws are no longer applicable. That information is not available to us and I am not sure that we could ever gain that information if the report was given voluntarily.

In Section 6, they can express and waive their rights. In Section 6, Subsection 2, "a court may, after an in camera review, require disclosure of material for which the privilege..." We are not talking about required disclosure of speaking with the employees or the officers. It just says the "material", anything hardbound or disk. We have to go to the court and tie up the court's time and energy to deal with an issue that the court should not have to deal with. It goes on to say the, "court has to determine one of the following things happened", that the company is "asserting the privilege for a fraudulent purpose", that the "material not subject to the privilege", or "even if it is subject to the privilege, the material shows evidence of noncompliance with state or federal statutes, rules, and orders". Then it goes on to say, "and the company failed to undertake reasonable corrective action or eliminate the noncompliance within a reasonable time". What is "reasonable corrective action" and "reasonable time"? I don't know how anybody determines those kinds of things. Some new language is added that says, "the material contains evidence relevant to the commission of a criminal offense and all of the following factors are present: the commissioner, county attorney, or attorney general has a compelling need for the information; the information is not otherwise available; the commissioner, county attorney, or attorney general is unable to obtain the substantial equivalent of the information by any means without incurring unreasonable cost and delay". If I, as a regulator, have to bear the burden of those three issues, its going to expand the process, delay the process, and make it more difficult for the consumer to be made whole.

Section 7 reads, "Within 30 days..." they can make a "written request for disclosure" and upon forty days after receiving the request for disclosure the Board must rule on it. On Page Five, "any compelled disclosure may not be considered a public document or considered to be a waiver of the privilege". I don't understand how you can compel it to be disclosed and then say it is still not a public document.

We heard **Mr. Metropolis** talk about the peer review done by physicians. This is not a peer review. I don't think it is even applicable. He also addressed the cost to the policy holders. I think there is going to be as great or a greater cost to the policy holder if you pass this bill because your going to have insurance companies in litigation with everybody from insurance departments to whomever to find out if this is disclosable information and we are going to be tying up the courts unnecessarily.

I am convinced that everyone on this committee, in one form or another, has been effected by a hail storm. If a large hail storm comes through an area, a particular insurance company that has a lot of losses in the area decides to send in their catastrophic team to adjust the claims. Their catastrophic team works among themselves to keep these losses down. They decide to do things that may not be in compliance with the law but will allow us to pay less claims. They go out and make a concerted effort to not make full offers on losses on these claims. The insurance department starts getting a number of complaints on these issues so we decide to begin the investigatory process and the insurance company sees this. The insurance company can immediately begin and complete a self-evaluation audit and give that audit to the insurance commissioner and I don't think we have the authority to continue our investigation anymore, without going through Subsection 6 and Subsection 7 which is the 30 day and 45 day thing. If a hail storm happens in June or July, it normally takes awhile for a carrier to get their people out there to adjust the claims. By the time people realize there is a problem, it is August or September and they start contacting us and we begin this process. By the time it all happens, it's the middle of winter and these people have roofs that have been leaking and are destroying property and there is nothing we can do because there is not that exclusion for personal injury or worker's comp. Insurance companies may not be trying to delay the claims process but they could. That causes us tremendous concerns.

{Tape : 1; Side : B; Approx. Time Counter : 78 - 87}

Al Smith, Montana Trial Lawyers' Association, said, I am in opposition to **SB 513**, the Insurance Bad Faith Protection Act. The companies say they need this because they need to make changes, to voluntarily change so they can better serve their consumers. I am unclear why honesty and fair dealing with the consumers is not enough of an incentive to be able to do this. Many companies, including State Farm, have been facing Bad Faith Claims in recent years and judgements with large dollar amounts. That is why this type of bill is here.

He handed out a copy from the internet of a declaration by Amy Girod Zuniga **EXHIBIT(sts41a01).** Amy Zuniga quit her job with State Farm in 1996. She worked in their "Suits Against the Company (SAC) Unit" and later in their "Litigation Unit". I see Page Two, Lines Four through Six, in the bill, becoming units like this. Her declaration is about the North Ridge earthquake that happened in Los Angeles in 1994. California had a state law that required homeowners to get homeowner's insurance. They had to be informed about the availability of earthquake protection for their homeowner's insurance and if they did not want it, they had to affirmatively sign a form saying they did not want it. In Paragraph Three of the declaration, State Farm did not always tell their customers about this option and when the earthquakes struck, the policy holder's names were forged onto the forms that said, "I don't want earthquake insurance". This information was originally kept from the individual plaintiffs involved in this case. It was not until Amy Zuniga, who worked for State Farm, came forward and said she was part of the litigation unit and informed about the facts being withheld.

In New Section 4, Page 2, it talks about the documents, communication data reports, or other information created as a result of a claim involving personal injury or Worker's Compensation. In many of these Insurance Bad Faith cases, the individual's claim file doesn't show that the company practice is to forge the signatures of policy holders. New Section 4 does nothing to protect people who are involved in a Bad Faith claim. They are not going to know by looking at their individual claim that there are hundreds, thousands, tens of thousands of policy holders that are being treated the same way pursuant to a practice of the insurance carrier.

He passed out further affidavit from Amy Zuniga **EXHIBIT(sts41a02).** Page 1, Paragraph 2, explains what her responsibilities were. Those included Bad Faith claims against the company and responding to discovery. He directed attention to Page Three, Paragraphs Fifteen, Sixteen, and Seventeen. I want to point out that the practice of forging policy holder names onto the earthquake exclusion was not something that a couple of agents did. Senior executives in State Farm headquarters in Bloomington, Illinois, were also involved. This is the type of stuff that can be protected by this self-audit. I would like to draw your attention to Paragraph Eighteen. State Farm, like many other insurance companies, has an insurance company that insures their company for errors and omissions. In this particular case, Amy Zuniga was told that they could not tell their insurance company about the forgeries because forgeries are not covered by their policy. This is the type of thing that is hidden by a self-audit. Page Four, Paragraph Nineteen of the exhibit, corresponds with New Section 6 of the

bill. The exhibit explains documents to be provided to people while New Section 6 says provided for the court. Paragraph Nineteen of the affidavit talks about the practice where documents are requested pursuant to a court proceeding. The agents are instructed to withhold documents. There is no protection in this bill to prevent that from happening. State Farm forms different units. The discovery unit's job was to make sure that not quite all of the information would go out to a policy holder, or the policy holder's attorney, when they have a problem.

{Tape : 2; Side : A; Approx. Time Counter : 87 - 99}

I don't see anything in this bill that says if they go through and find that they have treated their customers unfairly, they will make it right. There were many cases with the North Ridge earthquake where people did not receive the full value of the policies they have. State Farm has not gone back to reimburse them because they know it was wrong. New Section 6 of the bill essentially increases litigation. Clients' attorneys are going to try to get these documents, and the documents are going to be there but will be hidden in those special audits. People think if they hire an attorney, everything will be taken care of. In reality, the insurance companies have an abundance of money dedicated just to fighting litigation to break plaintiffs. Companies put them into litigation for so long and make them expend so much money that at some point the plaintiff and the plaintiff's attorney have to quit. He passed out another document from Amy Zuniga **EXHIBIT(sts41a03)**. Page Four of the document is not about the earthquake, it is general discussion about State Farm policies. They have a "Low Damager" policy. It says that low damage, minor impact, and auto accidents were not to be settled. Instead they were to be fully litigated and every effort was to be made to make it financially unfeasible for the insurer to obtain any benefits, regardless of whether liability was clear or not. These are not anomalies, these are things that happen frequently. State Farm does not need a self-audit to know that its wrong to forge policy holder signatures on insurance documents, thereby defrauding them of the benefits that could have been due had they known about this. They do not need to have the protection of this privilege in order to do that.

Page Five of the bill, Lines One and Two, essentially say if this information was compelled by the court to get out, other people who might be harmed by this cannot see the documents. He directed attention to New Section 7, Paragraph 6. We heard Mr. Vanhorsen mention the burden is on the insurer to prove the condition established and the privilege should be give them in this case. It sounds good to say the burden is on the company to start with, but it is a burden to be overcome by the plaintiff

proving otherwise. How is the plaintiff going to prove otherwise if they do not have access to the documents? Montana is the first state to look at this. No other state in the country has adopted it. Bad Faith cases happen in Montana. If you wait to take action on this bill, I have a video tape of a report from a television station in San Francisco, California involving an investigation of State Farm. This bill creates tremendous potential for concealment and is essentially destroying the right to hold accountable those companies that don't follow the rules and treat customers unfairly. It doesn't take any self-audit protection in order to do the right thing by policy holders.

Don Judge, Montana State AFL-CIO, said we also rise in opposition to **SB 513.** I want to remind this committee we did have a situation in Helena with a major hail storm, where the major insurer was only attempting to replace partial roofs on the homes until the Auditor's office got involved and forced them to replace the full roofs. I would like to express one concern I have in New Section 4, regarding Worker's Compensation claims. **SEN. BERRY** and **SEN. WILSON** sat on the Senate Labor committee where we heard from an employer and insurers who buried information on more than one hundred people who have died in Libby, Montana as a result of asbestosis and related problems. Another eighty or ninety cases are currently pending in the courts, where information was continually denied those workers and they were continually exposed to toxins in the workplace. In Worker's Compensation we have the possibility of a similar thing happening. That is a unilateral decision by the insurance industry to require workers to go through the hoops in order to get their benefits. This would protect an internal memorandum or decision to do the same, unless it was specific to a claim, not mass of claims. If it is a part of policies, this would protect the insurance industry and that is unfair. Labor just requested an interim audit or review of how Workers' Compensation has been dealing and we are concerned that the work of that review would also be put in jeopardy by this bill. We encourage a Do Not Pass.

Chet Kinsey, said, I am offended by this bill as an insurer. We spend several thousand dollars a year on insurance to protect ourselves in one way or another. I have always had some confidence that if I had trouble, I could go to the Insurance Commissioner and get it corrected. I think this bill is a bold attempt by the insurance industry to tie the hands of the Insurance Commission so that they can no longer do a good job or it becomes too expensive for them to do it.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 99 - 116}

SEN. WELLS said there is a lot of damaging testimony here. The example was used that if you had a hail storm and the company didn't want to cover this they could quickly come up with a self-compliance audit. Have you provided anything in here that shows or would provide a timing so that this would not be possible? If not, would it be possible that we could put it in here? **Mr. Vanhorsen** stated it is unfortunate this has dropped to such a level. The effort is to create an incentive for internal self-evaluation. In response to your question, that language already exists in the bill. It exists on Page Five, on Line Five, which says, "a company asserting the privilege in response to a request for disclosure shall provide to the person seeking disclosure...the date of the self-evaluative audit document; the identity of the entity conducting the audit; the general nature of the activities covered by the insurance compliance audit; and the identification of the portions of the audit document for which the privilege is being asserted". It would be painfully obvious to anybody looking at those documents that they were created at or after the time of the catastrophic loss, therefore the privilege being asserted is a privilege asserted on a fraudulent basis. Under New Section 6 the privilege would not apply. **SEN. WELLS** stated it was indicated to us there was a lot of forgery and falsification of documents. Wouldn't it be possible to have these things predated to make it look legitimate? **Mr. Vanhorsen** replied that anything is possible. I am here to say I don't anticipate that would be done in the submission of these documents for an *in camera* review.

SEN. TESTER said, in my operation we do evaluations of our operation all the time. What would prevent you from doing these kind of evaluations now because, ultimately, an evaluation on your company, whether it brings up good points or bad points, would make your company operate better? Why couldn't this be done as a standard operating procedure? **Mr. Vanhorsen** stated these things are done. However, there is such scrutiny and such a demand for this type of internal, perhaps constructive type of evaluation, as it relates to an insurance company. The reason for bringing this bill is that we want to create the ability to candidly and openly discuss our shortcomings internally to address the real problem instead of trying to sugar coat statements to anticipate they might be a part of litigation down the road. We are not halting discovery, we are simply creating an additional protection in this particular review. **SEN. TESTER** said it seems to me, if you had an internal audit and you had information indicating there was a problem you were working to rectify, that would play to your advantage in a court of law. **Mr. Vanhorsen** explained at times that is correct. It depends on

the facts of a specific case. I am not saying that it wouldn't come to our company's aide, under certain circumstances. There ought to be an opportunity for candid constructive discussions internally as it relates to compliance issues and there should be some comfort concerning protection of those documents.

SEN. TESTER directed attention to Page Five, where it talks about the date and asserting the privilege. What is your applicability of that? **Mr. Cote** said, I am glad you asked that question. **SEN. WELLS** raised a point if they were to forge other documents, why wouldn't they forge this one. The fact of the matter makes you tell the date. It doesn't tell you, for example, that because that date is after the date of the hail storm, now the information is public. It is still privileged information that is in there because of the self-compliance audit. In addition to that, it seems to me if I were an unscrupulous insurance company, I would go out and open self-audits all the time and never do anything. I could just start an audit on claims review or claims review beginning on whatever date in Montana and not do anything with it until you understand you have a problem. There is the ability to scam the system if this bill is passed to the detriment of the consumers.

SEN. HARGROVE asked could a company do an audit under this bill to protect documents? Do you have protection in there to absolutely assure the public you couldn't. **Mr. Metropolis** said, I have listened to **Mr. Cote's** analysis of this bill indicating that companies could open up an audit in order to hide information. I have read the bill numerous times since he gave that analysis and I don't think you could do that. **SEN. HARGROVE** asked what protections are in the bill. **Mr. Metropolis** said, first the Commissioner does have a layer of state statutory powers to conduct their own audit. This does not hide that. It allows the company to talk among itself and to do it very candidly. You don't want them to have self-audits that would help them in court. You want them to be very candid so that they can improve their operation. **SEN. HARGROVE** asked, do you or another company similar to yours do self-audits now. **Mr. Metropolis** said Farmers Insurance Group does and I believe most of the large companies do. **SEN. HARGROVE** asked if there was such a thing as an informal audit. For example, if there is a problem and you go through investigative procedures to see if you have a problem that are not necessarily called an audit? Also, what is a formal definition of an audit? Where would a self-evaluation such as that turn into an audit protected under this bill. **Mr. Metropolis** replied are you trying to find a distinction between an informal and formal audit. **SEN. HARGROVE** stated, yes. **Mr. Metropolis** said, I am sure informal audits happen frequently because whenever you're trying to manage an issue or situation,

that occurs. As far as a definition of a formal audit, I cannot provide that to you. For the purposes of this bill it is defined within the bill, perhaps that could be improved.

SEN. WELLS said, you heard the testimony from **Mr. Smith** regarding the earthquake scenario. Would you respond to some of that and give us a view point of State Farm's analysis of that? **Mr. Vanhorsen** replied, until the opponents began to testify on this particular point involving the California matters I was unaware as to the details, the allegations, or the assertions that would be coming to this committee. Certainly, I intend to look into the information that has been provided today with the respect to the statements of Amy Zuniga. I expect to be able to get back to this committee on the status of that matter, hopefully before this committee chooses to take action on this bill. I apologize for my inability to respond to you.

SEN. WELLS stated, I remember your comment as "a bunch of fluff" and on Page 2, Line 1 and 2, you said you did not know of any voluntary compliance audits required by state or federal law. I don't read that sentence that way at all. I read that to say this compliance audit is voluntary, internal, a review, an assessment, or an audit but it is not otherwise expressly required by the state. In other words, it is an audit not required by the state. Is that how you read it? **Mr. Cote** said, I am going to stand by my original statement. You could also read it the way you read it but let me tell you why I believe that reads the way I interpret it to read. It says an "insurance compliance audit means a voluntary internal evaluation, review, assessment, or audit not otherwise expressly required by state or federal law". Voluntary being the key word, it is a voluntary evaluation, voluntary review, or a voluntary audit. I think voluntary applies to all four of those items.

SEN. COLE said there was a comment made that a law such as this has never been enacted in any other state. Is this correct as far as you know? **Mr. Cote** stated, I don't know the answer to that.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 116 - 124}

SEN. BERRY said, I understand the paranoia. I was asked to carry this bill and I hate insurance companies. I think you all hate insurance companies because we pay huge amounts of our money and the only way we get it paid back is if something happens to us. The fact of the matter is we all go down and pay large sums of money for insurance of all kinds and I believe that every one of

you give plenty of insurance companies opportunities to do your business. It is a highly competitive business and I think they are heavily regulated. Some of these paranoias may be justified. I don't perceive this as an intent as the self-audit process to avoid these things. **Mr. Cote's** concerns that these things would be hidden by a self-audit, but I don't think these self-voluntary audits would preclude the Department from auditing the same materials. If that statute does read that by going out and doing an audit of a particular situation, I think the Insurance Commissioner should submit an amendment to this that would preclude that from happening. The things they are wanting or expecting to be identified in the voluntary self-audit should be exposed if something has fraudulently happened. If that has happened, somebody has lit that candle and the Insurance Auditor could come in and address that issue and audit those same books. I don't think, if it was instigated by the Commissioner, that it would be protected if it was their own audit. All of the things we are worried about these people protecting will never show up if we don't have the opportunity to do a voluntary self-audit because these things are not going to be identified in documents or anything else other than what's there. I perceive it as an intention by the insurance industry to better serve the consumer. I want to address **Don Judge's** concern about the situation we heard in Labor. The bill we heard was one of the most of appalling things we have heard in a long time and I would not perceive this as that same intent. I believe this is a good intent and it will be good for consumers because it will identify problems and flaws that are in their system that they can address.

HEARING ON SJR 13

Sponsor: **SEN. STEVE DOHERTY, SD 24, GREAT FALLS**

Proponents: **Verner Bertelsen, Montana Senior Citizens' Association**
Betty Beverly, Administration Coordinator, Montana Senior Citizen Association
Kelley Hubbard, Montana Senior Citizens' Association
Don Judge, Montana State AFL-CIO
Dick Vonberger, State Treasurer of the Democratic Party
Ron de Yong, Montana Farmers' Union
Wendy Young, Working for Equality and Economic Liberation, Montana Human Rights Network, Montana Women's Lobby

Inga Nelson, Montana Education Association, Montana Federation of Teachers

Opponents: None

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, GREAT FALLS, stated this is an important resolution to send a message to the people in Washington D.C. who may be experimenting with Social Security. It is important for a couple of reasons. As I age I am realizing that Social Security is an issue I need to be concerned about. There is a vested self interest here in looking at how Social Security is going to end up in the next twenty to twenty-five years in this country. I think everyone has seen the news reports and heard the discussions about Social Security. The one thing that I have looked at is addressed by Chairman Alan Greenspan, with the Federal Reserve Board, talking about President Clinton's proposal to invest seven hundred billion dollars of the Social Security funds directly in the stock market **EXHIBIT(sts41a04).** I don't think that is a good idea and I think we need to send a message to Congress that we don't want to privatize Social Security money. I think it is one place where privatization is not going to work. It is not a good idea for Social Security funds. When Chairman Greenspan talks about investing, he talks about investing in treasury notes and I think that is a better way to go. I do think it is important for us to send that message in pretty strong terms. This is not something that we as the people in the State of Montana recommend the Federal Government do with that system.

Proponents' Testimony:

Verner Bertelsen, Montana Senior Citizens' Association, read **EXHIBIT(sts41a05).**

{Tape : 2; Side : B; Approx. Time Counter : 124 -147}

He showed a chart from the ARC Magazine, showing the gyrations of the stock market. If people are investing their own funds, some of them are going to take a terrible hit if they hit the bottom of the stock market picture. It is not reasonable to think that the average Montanan is equipped to get into the stock market. I am president of a local chapter of almost eighty senior citizens. I would suspect that most of them would be frightened at the idea that someone was going to invest their Social Security funds in the stock market and that they themselves were asked to invest. He read from the ARC Magazine, "If you take a part of the Social Security funds and invest it in the stock market, the amount we

have in reserve is going to deplete many years earlier". He read another piece, "The clearest winner in investing funds and privatization would be Wall Street. It would get billions of dollars in commissions straight out of people's retirement income. The big losers would be the bulk of the population who would likely end up with less secure and lower returns because some money would be siphoned away by the financial industry". The administrative expenses to manage this stock market fund could shave one or two percent off of the annualized return. Again, you are getting a cost no one seems to think about. I know many of the younger people who have a lot of enthusiasm towards the stock market will press for this privatization. I think we, in the senior citizen's society, are very frightened of that kind of approach. We urge you to bring this to the people of Montana, so we know where our legislators stand on this issue. That is our primary purpose here today. We want to impress upon you that we do not want it privatized and we want to find out what your position is on this.

Betty Beverly, Administrative Coordinator, Montana Senior Citizen Association, said, we are a twenty-five year old organization that started for seniors, but our new motto is, it's not about how old you are, it's about your future. This issue is a primary concern about all of our members, regardless of age. We are affiliated with the National Council of Senior Citizens in Washington D.C. and the National Committee to Preserve Social Security and Medicare, who have thousands of members across the United States and here in Montana. In fact, the regional director for the National Committee to Preserve Social Security and Medicare is currently in Montana. This week she spoke to groups in Billings and Bozeman about this issue, the reform of Social Security and the privatization grass roots organization and how people can have a voice and let their congressional delegation know what we feel. We do not want privatization. Reform is in the works for Social Security. We have listened to many debates on what is going to happen with Social Security. At our annual convention that was our top priority. Even though they are national issues, they are also issues that bring many dollars into the state of Montana. At our annual convention in Lewistown three years ago, our distinguished congressman, Representative Pat Williams, told our delegates, "Don't listen to those error mongers, Social Security is not broke and it will not go broke in 2012." That is what they were saying three years ago. Now they are saying that it will go broke in 2032 or 2035. It keeps going up. Do we need reform when we have thirty years? Is it really of dire importance? Wall Street is going to be the ones who benefit from the money that is currently in Montana with our retirees. As I travel across the state and we go to small communities, I listen to the farmers and the ranchers who are now taking full-time and part-time jobs to support themselves. They

are not taking that money and investing it into Wall Street. They are taking their money and investing it into their Social Security benefits that they may have if they lose their farm or ranch. They are also investing in Montana, in their communities where they buy. As I said, we have members of all ages and they are all concerned about what privatization could do. Currently, you are not the only legislators that are looking at this issue. States across the nation are looking at and bringing forth resolutions, such as ours, to see where their states will stand on privatization of Social Security, to send a message to Congress to let them know what we feel. President Clinton has started a discussion of that. He wants this to be resolved at the end of this year. I think its going to take a lot longer. I commend the sponsor of this bill and the many other legislators who have looked at this and our supporting it so we can discuss this in a good way. She handed out **EXHIBIT(sts41a06)**, an article, "Critical of Clinton Plan" from the Los Angeles Times and **EXHIBIT(sts41a07)**, an article,"Case for private Social Security not too strong," from the Washington Post. Our President, Dick Pattison, wrote an article in the Great Falls Tribune on the Britain scandal and Social Security to let us know what could happen **EXHIBIT(sts41a08)**. Social Security brings in a lot money into Montana. In Helena we have three new retirement homes. People from across the state come to live in these retirement complexes. Many retirement homes for seniors are being built across the state. Social Security is big business but it shouldn't be big business for Wall Street. It should be big business for our states.

Kelley Hubbard, said speaking from the perspective of a young person, there is a lot of concern that my generation will pay into Social Security all of our lives and upon retirement, we will find the funds have been exhausted and the system defunct. Investing in the stock market may seem like a good idea for young people but first, most people do not know enough about the stock market to invest it wisely and, second, it puts retirement funds at the mercy of a fluctuating stock market. That is the funds that are left after covering the administrative and the investment cost of brokers. If there were to be a drop in the stock market and some of the retirement funds lost, it would put people in my situation in a very difficult position. New college graduates are starting families and buying homes. They are not making a lot of money. Setting aside money for individual retirement funds, such as IRAs, may not be a priority. Social Security may need some reform to ensure that it works well for my generation, as it has for past generations, but it is a good social program and ensures the security of retirement funds. The key word in Social Security.

Don Judge, Montana State AFL-CIO, handed out **EXHIBIT(sts41a09)**, **EXHIBIT(sts41a10)**, **EXHIBIT(sts41a11)**, **EXHIBIT(sts41a12)**, **EXHIBIT(sts41a13)**, **EXHIBIT(sts41a14)**, **EXHIBIT(sts41a15)**, **EXHIBIT(sts41a16)**, and **EXHIBIT(sts41a17)**. I won't repeat what has been said here. Two-thirds of older Americans receive fifty percent or more of their income from Social Security. It provides for ninety-six percent for those who are disabled. It is a particularly important element for retirement for women. More than half of all women over sixty-five who are widowed, divorced, or never married, on average receive seventy-two percent of their income from Social Security. This is an important issue. It is an issue we care deeply about, as workers still in the workforce and as fathers and mothers of children moving into the workforce. It is a small resolution, it costs no money, you don't have to have a state agency enforce it, and we are not going to put a law in the books. It is simply a message to the Congress and to the President of the United States that we don't want to see it privatized. There are better ways to fix the Social Security system.

Dick Vonberger, State Treasurer of the Democratic Party, said the Democratic Party supports **SJ 13** and we are opposed to privatization. I hope you will support the resolution.

Ron de Yong, Montana Farmers' Union, stated the Farmers' Union is an organization comprised of family farmers that are concerned about agriculture prices and production. They are also concerned with rural social issues. Social Security has been one of the most successful programs in our nation's history. Its stabilizing effect on the economy has been enormous and I would not want to jeopardize the stabilizing effect of privatization. I say that not just as a family farmer, but also as an individual that worked as an investment advisor for a large investment firm for two years. There are some concerns about potential short falls in the future and I am very pleased to see that the Resolution addressed that with recommending that the cap on Social Security taxes be taken off. Most individuals pay Social Security on one hundred percent of their earnings, but if you are wealthy you could be paying Social Security tax on ten percent or less. That would remove that unfairness and address any shortfalls we would have in the future. We urge your support.

Wendy Young, Working for Equality and Economic Liberation (WEEL), said, WEEL is a low-income organization here in Montana. She handed out **EXHIBIT(sts41a18)**. You might question why an organization that is made up primarily of young single mothers would be interested in Social Security, but we understand that low-wage workers are employed in jobs without a guaranteed benefit retirement system. Social Security is the only plan we

have left. We urge you to support this resolution and oppose the privatizing of Social Security.

I am also here for the **Montana Human Rights Network**. They also support this and oppose privatizing of Social Security.

I am representing the **Montana Women's Lobby**. They support this bill and oppose privatization.

Inga Nelson, Montana Education Association, Montana Federation of Teachers, stated we rise in support of **SJ 13**. We strongly believe in the importance of keeping Social Security intact and secure and we oppose any type of privatization.

Questions from Committee Members and Responses:

SEN. WELLS said, I see this resolution as a two part piece of legislation. I see where we are making a statement that we don't want to privatize, but I also see you making a statement to remove the cap on Social Security taxes. I think those are two drastically different approaches to this. I heard testimony from a number of people that indicated removing that cap was the way we were going to make this system continue to be solid. I would like you to comment on that. **SEN. DOHERTY** replied, I don't know by removing the cap we ensure the solvency of the system. If I was writing the tax code, I might remove the cap or have some type of graduated movement above sixty-eight thousand dollars. I agree with your observation. It may be one of the ways to deal with the solvency in the future. I don't have enough information it would ensure the solvency of the system without doing anything else.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 147 - 161}

SEN. DOHERTY stated, on an issue of importance the Federal Government is now paying attention to resolutions. It is worth our time to look at, discuss, and pass a resolution. It says don't mess with Social Security in this way, we know you're going to have to do something, we know there are going to have to be some mid-course corrections in order to ensure the stability of the fund. I have that vested self-interest to make sure, around 2032, that one hundred percent of the benefits are paid out. That is why I think it is a legitimate response to a current issue that is before people. It would be a good way to let our Congressional Delegation and let the President know what the people in Montana are thinking about this proposal to privatize Social Security. I ask for your concurrence.

EXECUTIVE ACTION ON SB 471

David Niss, Legislative Staff, handed out **EXHIBIT(sts41a19).**

Motion: SEN. COLE moved that **SB 471 BE AMENDED.**

Discussion:

Mr. Niss explained the amendments **SEN. COLE** wanted prepared are essentially the amendments passed out during a committee meeting by **Mike Foster, Montana Contractors' Association.** However, these are not all of those amendments as there was a title problem with about half of them, so the amendments I passed out are part of the amendments from the Contractors' Association. The first six paragraphs, down to Subsection 3 in Paragraph 6, is a reinsertion of current language. Subsection 3, in Paragraph 6, addresses the issue of who must sign the bid security and whether the person signing from the contracting company is authorized to sign them. This requires that person to be authorized. In addition, it requires that other specific requirements of the request for bid have to be provided. Paragraph Seven adds a similar requirement for the submission of the bid itself. Paragraph Eight concerns the unit price for which there is a definition in the bill. It says the unit price has to be specifically stated in the bid and it cannot be a price that is arrived at by the state by dividing the total of the total of the unit prices by the number of units specified or required. That has to be calculated by the bidding contractor and submitted with the bid. Paragraphs Nine and Ten address a similar issue and that is the inclusion of some other items for which a unit price can be calculated. With Paragraphs Nine and Ten included in the bill it would read, "unit price means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bid, to be bid on the basis of that item, a linear foot, square foot, square yard, cubic yard, activity, an hour, or other measurement of time, or other standard unit of measurement for that material, item, or activity". It broadens the definition of unit price. Paragraph Eleven is related to Paragraph Nine and Ten. This is the only amendment brought to me and the only ones passed out during the hearing.

Vote: Motion **carried 5-0.**

Motion: SEN. HARGROVE moved that **SB 471 DO PASS AS AMENDED.**

{Tape : 3; Side : A; Approx. Time Counter : 161 - 167}

Discussion:

SEN. WELLS said, I missed the hearing. Were there any opponents and what was their concerns?

SEN. COLE replied there were some opponents but I believe their concerns were addressed in the amendments. Were your concerns addressed in the amendments?

Tom O'Connell, Agricultural Commission, stated yes, they were.

SEN. COLE asked the same question to the witness from Department of Natural Resources (DNRC).

Jack Stults, Water Resources, DNRC, said, these amendments remove contentions that we had.

Vote: Motion **carried 4-1 with SEN. WILSON voting no.**

EXECUTIVE ACTION ON SB 510

Motion/Vote: SEN. HARGROVE moved that **SB 510 BE TABLED. Motion carried 5-0.**

EXECUTIVE ACTION ON SJ 13

Motion: SEN. WILSON moved that **SJ 13 DO PASS.**

Substitute Motion: SEN. HARGROVE made a substitute motion that **SB 510 BE AMENDED** to put a period behind privatization on Line 25 and delete the rest of line 25 and all of line 26, in order to strike the section on removing the cap.

Discussion:

SEN. WELLS said he was contemplating a similar motion. With that in the bill I would not be able to support the resolution.

Vote: Motion **carried 3-2 with SEN. TESTER and SEN. WILSON voting no.**

Motion/Vote: SEN. WILSON moved that **SJ 13 DO PASS AS AMENDED. Motion carried 5-0.**

EXECUTIVE ACTION ON SB 513

Motion/Vote: **SEN. TESTER** moved that **SB 513 BE TABLED. Role call vote was taken. Motion carried 3-2 with SEN. WELLS and SEN. COLE voting no.**

ADJOURNMENT

Adjournment: 12:47 A.M.

_____
SEN. MACK COLE, Chairman

_____
KERI BURKHARDT, Secretary

MC/KB

EXHIBIT(sts41aad)