

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 16, 1983

The forty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 16, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 741: Representative Addy, District 62, stated that this bill was requested by the House Judiciary Committee.

Alec Hansen, representing the League of Cities and Towns, stated that they support this bill. Montana city attorneys would like to be included in the training programs offered by the Attorney General's Office. Mr. Hansen stated that city attorneys should have this training available for good understanding of the laws and on how to prosecute in the courts. He added that it received very strong support on the floor of the House.

There being no further proponents or opponents on this bill the hearing was closed on HB 741.

CONSIDERATION OF HOUSE BILL 774: Representative Addy, District 62, stated that there are two primary benefits to be gained from this bill: First, if attorneys feel a hearing is a serious matter, they would be able to not just look for anyone who is a shorthand reporter but a person who has been certified and has a level of competence. Secondly, the bill provides reciprocity - that is, someone who is certified as a shorthand reporter would be able to go to another state and automatically become certified there. Anyone who has worked as a regular shorthand reporter would be grandfathered in.

PROPONENTS: Jerome Anderson, representing the Montana Shorthand Reporter's Association, stated that he did want to address the fiscal note. It does indicate some fiscal impact.

Julie M. Lake, Secretary-Treasurer of the Montana Shorthand Reporters' Association, stated that the examination required by section 6 (3) requires that to pass you must complete all academic courses satisfactorily and pass at least three speed tests at 225 words per minute with 98 percent accuracy. She stated that Section 6(3) would not require reporters have a level of skill necessary to obtain an NSRA Certificate of Merit, but that they are able to meet the minimum requirements of graduation and the NSRA RPR test. This is for the public's protection. Ms Lake submitted her testimony in writing (Exhibit No. 1).

Mike Abley, Supreme Court Administrator, said in regard to the fiscal note on the bill, that it appears now there will be no cost to the state.

QUESTIONS FROM COMMITTEE: Senator Mazurek questioned why the grandfather clause was necessary.

Mr. Anderson answered that there are a number of reporters who have been practicing in Montana for a number of years who will be able to be grandfathered into the system. The grandfather clause was amended in - it was omitted when the bill was drawn up.

Senator Crippen said there are some reporters who are not competent and they could be grandfathered in.

Mr. Anderson replied that's why the six-month clause is in there. There have been some people moving into Montana that have not passed a certification test.

There being no further proponents or opponents or questions from the committee, hearing on HB 774 was closed.

CONSIDERATION OF HOUSE BILL 705: Representative Spaeth, House District 71, sponsored the bill by request of the Public Employees' Retirement System. This bill will accomplish four main things:

1. Increases certain district court fees. The reason for increasing the fees is because the judges retirement system is not actuarially sound.
2. In order to have those fees transferred into the judges retirement system, the change has been made on Page 4 reducing the amount of the fees deposited into the county general fund from 40 to 32 percent.
3. Increases from 6% to 7% the contribution of judges elected or appointed to office after July 1, 1983.
4. At the present time, a judges retirement benefit is based upon his current salary. The retirement of future judges coming into the system would not be based on current salary, but on salary at the time he retires.

The first proponent of the bill was Steve Brown, Lobbyist for the Montana Judges Association. He asked: "Why do we need this bill? We need a 12% increase to make the system solvent. He then handed out a fact sheet concerning House Bill 705 (Exhibit 2). He also proposed an amendment to House Bill 705 (Exhibit No. 3). For the Committee's information, Mr. Brown also handed out a fact sheet comparing several Judicial retirement systems (Exhibit 4).

Larry Nachtsheim, Administrator of the Public Employees Retirement System, stated that he thought Representative Spaeth and Steve Brown explained the bill well and he would support the bill.

Ward Shanahan representing the Executive Commission of the Bar Association, stated that the Association authorized him to support this bill.

Paul Keller, Chairman of the Judicial Committee of the State Bar of Montana, said the Committee supported this bill to give judges something to look forward to in retirement. The judges don't make that much money and they need a retirement plan.

There being no further proponents or opponents, Senator Turnage asked for questions from the Committee.

Senator Mazurek asked for Mr. Brown to clarify for him whether, if a judge is elected to office and then involuntarily retired, he is immediately eligible for full state retirement benefits.

Mr. Nachtsheim stated he would be after 12 years of service. He also gave the benefit formula for a judge that served a shorter term.

Representative Spaeth closed by saying he had no problems with the amendment proposed by Steve Brown. This bill was heard by both the House Judiciary Committee and the House State Administration Committee shortly before transmittal deadline and this was the reason the bill comes to the Committee in the condition that it is in.

DISPOSITION OF HB 705: A motion was made by Senator Crippen that amendment to HB 705 be adopted but was never acted on or withdrawn.

Senator Mazurek explained an amendment he would like to offer, and asked Mr. Brown what would be accomplished with his amendment.

Steve Brown replied, if you strike the language as proposed a judge simply has to wait until sixty-five or he can take an actuarial reduction.

Senator Turnage suggested that the Committee wait until tomorrow as there is another bill they should look at.

DISPOSITION OF HOUSE BILL 741: A motion was made by Senator Halligan that House Bill 741 BE CONCURRED IN. The motion carried with Senator Daniels voting no.

DISPOSITION OF HOUSE BILL 774: Senator Turnage offered a suggested amendment to House Bill 774. This amendment would be on Page 2, line 24, Following "writing" by inserting: "or electronic means, if the reporter is certified in shorthand or machine writing,".

Senator Berg moved the adoption of the amendment. Motion carried unanimously.

Senator Mazurek said he wanted the Committee to discuss the "grandmother" provision. His understanding was that the reporters are asking for something that elevates them above the normal reporter.

A motion was made by Senator Crippen that the bill be amended on Page 5, lines 3 through 11, by striking subsection (5) in its entirety. Upon roll call vote the motion carried with Senator Turnage voting no.

A motion was then made by Senator Crippen that House Bill 774 As Amended Be Concurred In. Upon a 7 to 3 roll call vote, the motion carried.

A motion was then made by Senator Crippen that House Bill 331 be Taken from the Table. The motion carried unanimously.

A motion was then made by Senator Crippen that House Bill 376 be TAKEN FROM THE TABLE. The motion carried unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 825: Ward Shanahan, representing Northern Tier Pipeline, said that there should not be a substantive change in the law of eminent domain. Therefore, if the bill can be amended on Page 4 by striking line 13 and the attached amendment for page 5, line 2, of the bill can be inserted, Northern Tier Pipeline Company can fully support this legislation, because it will then give the landowners great protection and provide for a more orderly procedure before the court. He submitted written testimony and amendments (Exhibit 5)

Patrick L. Smith, representing Northern Plains Resource Council, said that in the existing law there is no cut-off date for pre-trial legal activity. He sees the cut off period as a weakening of the existing law.

A motion was made by Senator Berg that House Bill 825 be amended on page 4, line 4 by inserting the language recommended by Ward Shanahan and by striking page 4, line 13. The motion carried unanimously.

It was decided that Mr. Shanahan and Mr. Smith should caucus together and come up with further amendments acceptable to both of them. Tomorrow the Committee will vote on the bill.

DISPOSITION OF HOUSE BILL 808: A motion was made by Senator Berg to Table House Bill 808. The motion carried unanimously.

ADJOURNMENT: Meeting was adjourned at 11:50 a.m.



DATE ( 3-16-83

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<del>Norm Anderson</del>	Mont. Shorthand Reporters Ass.	HB 774	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Martine B. Jordan	Mont. Shorthand Reporters' Assoc.	HB 774	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Nieboer	Mont. Shorthand Reporters Ass.	HB 774	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marydessa Petroff	Mont. Shorthand Reporters Ass.	HB 774	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Shirley J. Galambos	Mont. Shorthand Rep. Assn.	HB 774	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Julio M. Jaki	MT Shorthand Rep. Assn.	HB 774	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Steve Brown	MT Judges Assoc.	H.B. 705	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul E. Keller	State Bar Judiciary Committee	HB 705	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Emlyn McNeil				
Audrey Kelly				
Joni Kelly		HB 825	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Stearns	Northern Plains Resource Council	HB 825	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick L. Smith	NPRC	"	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larry Spaltshain	PERD	HB 705	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alec Hansen	League of Cities	HB 74	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pat Wilson	Thermal Energy			

SENATE COMMITTEE JUDICIARY

Date \_\_\_\_\_ House Bill No. 774 Time 11:10 a.m.

NAME	YES	NO
Berg, Harry K.	✓	
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.		✓
Galt, Jack E.		✓
Halligan, Mike	✓	
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.	✓	
Shaw, James N.		✓
Turnage, Jean A.	✓	

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: Made by Senator Crippen that H B 774  
as amended Be Concurred in, Upon  
roll call vote of 7 to 3 motion carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3-16

Bill No. 774

Time 11:05

NAME	YES	NO
Berg, Harry K.	✓	
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Daniels, M.K.	✓	
Galt, Jack E.	✓	
Halligan, Mike	✓	
Hazelbaker, Frank W.	✓	
Mazurek, Joseph P.	✓	
Shaw, James N.	✓	
Turnage, Jean A.		✓

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: By Senator Crippen that  
Lines 3 thru 4 on Page 5 be stricken  
Motion carried

(include enough information on motion--put with yellow copy of committee report.)



Exhibit 1,

3/16/83

ORAL TESTIMONY

of

JULIE M. LAKE  
Montana Shorthand Reporters Association  
Secretary-Treasurer

Mr. Chairman and Members of the Committee. I am Julie Lake, an official reporter for Judge Douglas Harkin. I also have a private freelance firm consisting of five reporters. I have been practicing for seven years, am a Registered Professional Reporter with the National Shorthand Reporters Association and hold their Certificate of Merit. I also hold the Idaho Certified Shorthand Reporter's designation. I have been the State association secretary-treasurer for the past two years, and also represent our state at the national level as Electronic Recording Chairman.

Through this bill we are seeking to establish minimum guidelines for reporters in this state. Since it is necessary to include a Grandfather Clause, these guidelines obviously will only apply to newcomers. But you have to start someplace and, unfortunately, we didn't start many years ago when we should have.

I feel minimum competency requirements, and I mean competency, are absolutely essential. Many states will not allow you to even practice unless you have passed their state CSR test. The result is obvious. States who don't require certification are becoming the training ground for reporters who have not graduated from school, who cannot meet the speeds required to graduate, but feel they have "paid their dues" and want to get out and start earning some money.

Some of you may be worried that we are trying to freeze out new reporters through this legislation. Wrong. We are trying to protect the integrity of our profession and the rights of every person that walks into a courtroom that he can be assured that that reporter is competent and has the necessary skills and speed to make an accurate record. Competition is necessary in every field. It is the incentive to become better. It is necessary and we are not trying to eliminate it.

But here's the big question. How do you know if that reporter is competent or not? You say, Well, the judge hired him; he has to be competent. No, he doesn't. That judge can't read this piece of paper any better than you can. Can any of you read this? It says, "When your life or future is depending on a trial transcript, would you prefer a reporter who has passed minimum requirements or one who hasn't?" I know what my answer would be.

Certification is the only guideline that judges and/or lawyers have in finding a competent reporter. It gives you something tangible to compare. I won't go into all the horror stories lawyers have come to me with of their experiences with finding out that the reporter they used was incompetent. The job's done, their time and their client's time and money is wasted.

Our national organization has a conditional membership, and that condition is to pass their RPR test, which stands for Registered Professional Reporter. The American Council on Education is recommending that colleges and universities award 21 semester hours of undergraduate degree credit to persons passing the RPR examination. This action follows evaluations conducted by the University of Alabama of NSRA's RPR testing procedures. The evaluators judged the written knowledge and skill tests to be very sound. As you will note in Section 6, Paragraph 3, the test that would be given in this situation would be the same or equivalent to NSRA's RPR test.

I would like to give you a brief synopsis of the education required to become a court reporter. It now takes an average of two and a half years to complete your training. This is 30 continuous months - no breaks. You have academic courses, as well as your speed classes. To graduate you must complete all academic courses satisfactorily and pass at least three speed tests at 225 words per minute with 98 percent accuracy.

The certification that we are seeking requires that same speed attainment. We are not asking that reporters be required to have a level of skill necessary to obtain a Certificate of Merit, but that they are at least able to meet the minimum requirements of graduation and the NSRA RPR test. This is for the public's protection.

I sincerely urge you, Mr. Chairman and Members of the Committee, to give this bill a Do Pass Recommendation. Thank you.

FACT SHEET CONCERNING HOUSE BILL 705  
MONTANA JUDGES' RETIREMENT SYSTEM  
(REVISED 3/1/83)

TOTAL CASES FILED IN MONTANA DISTRICT COURTS

	<u>1980</u>	<u>1981</u>	<u>1982</u>
	31,345	32,393	30,000 (est.)
Less Criminal Cases	<u>2,771</u> (8.8%)	<u>3,238</u> (9.9%)	<u>2,700</u> (9% est.)
	28,574	29,155	27,300

- (A) 20% of cases filed in 1st Judicial District involve political subdivisions and no fee collected from governmental entity;
- (B) Assume 10% of civil cases filed statewide involve political subdivisions;
- (C) Average case filings for last 3 years = 28,343;
- (D) Less cases involving political subdivisions (10% statewide average) = 25,509 fee cases;
- (E) If filing fees in §25-1-201(a) and (b) are raised by \$5;
- (F) Increased fee of \$10 per case would generate \$255,090 in additional revenue.

ALLOCATION OF DISTRICT COURT FEES UNDER PRESENT LAW

	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>
TOTAL FEES	\$840,747.03	\$803,703.77	\$788,359.07
STATE SHARE	504,448.22 (60%)	482,222.26 (60%)	473,015.44 (60%)
CO. SHARE	336,298.81 (40%)	321,148.51 (40%)	315,343.63 (40%)

INCOME & ALLOCATION WITH FEE INCREASE

- ASSUME:
- (A) \$800,000 fee income under existing fee structure; plus
  - (B) Additional fee income of \$255,090; and
  - (C) New allocation formula of 32% to counties and 68% to state.

\$	800,000		
+	<u>255,090</u>	32% to Counties =	\$337,628.80
TOTAL	\$1,055,090	68% to State =	\$717,461.20

DISTRIBUTION OF STATE SHARE

Present formula: 20% of judges' salaries contributed to Judges' Retirement System from state share, remainder to state general fund.

	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>
Retirement System	\$261,418.34	\$268,473.25	\$299,704.94
General Fund	243,029.88	213,749.01	173,310.50

Proposed formula: 31% of judges' salaries contributed to Judges' Retirement System from state share, remainder to state general fund.

TOTAL JUDICIAL SALARIES	\$1,525,150
	<u>x .31%</u>
	\$472,796.50

\$717,461.20	(state share w/increased fees)
<u>-472,796.50</u>	(to Judges' Retirement System)
\$244,644.70	(to state general fund)

COMPARISON OF FILING FEES IN OTHER JURISDICTIONS

	<u>FILE COMPLAINT</u>	<u>ANSWER BY DEFENDANT</u>
MONTANA (Present)	\$20.00	\$10.00
MONTANA (Proposed)	\$25.00	\$15.00
NORTH DAKOTA		
Civil	\$13.00	-----
Divorce	\$28.00	-----
SOUTH DAKOTA		
Civil	\$15.00	-----
Divorce	\$35.00	-----
WYOMING	\$25.00	-----
IDAHO		
Civil	\$41.00	\$21.00
Divorce	\$61.50	
WASHINGTON	\$70.00	-----
FEDERAL	\$60.00	-----

ADDITIONAL CONTRIBUTIONS BY MEMBERS AFTER JULY 1, 1983

Any judge elected, reelected or appointed after July 1, 1983 would contribute 7% of his or her salary to the Judges' Retirement System. Judges presently serving would continue to contribute 6% of their salaries to the Judges' Retirement System until reelected to a new term.

PROPOSED AMENDMENT TO H.B. 705

H.B. 705, third reading copy, is hereby amended to read as follows:

1. Page 1, lines 5 and 6:

Following: "ACT"  
Delete: "REDEFINING FINAL SALARY FOR FUTURE MEMBERS  
OF THE JUDGES' RETIREMENT SYSTEM"

2. Page 1, line 12:

Following: "SECTIONS"  
Delete: "19-5-101"

3. Page 1, line 16 through page 2, line 3:

Delete: Section 1 in its entirety and renumber all subsequent sections.

COMPARISON OF JUDICIAL RETIREMENT SYSTEMS  
HOUSE BILL 705

The following comparison of salary and retirement benefits for supreme court and district court judges was compiled from "Judicial Retirement Plans", a project of the American Judicature Society (1980).

GENERAL CONCLUSIONS

1. Nine states fund judicial retirement plans entirely from state revenues and filing fees (Maine, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, Rhode Island, Utah and Wyoming). The remaining states fund judicial retirement systems through a combination of member contributions and state and court filing fee revenues. The percentage contribution by judges ranges from 11% of salary in Louisiana to 1/2% of salary in Ohio. Montana's judges currently contribute 6% of their salaries to the Judges' Retirement System. House Bill 705 raises member contributions to 7%.

2. Three states in the Western region (Wyoming, Nevada and Utah) pay 100% of the retirement system costs for their judges. Only three states in the region (Arizona, New Mexico and South Dakota) require greater contributions from members than Montana.

3. Thirty-one states, including Montana, require judges to participate in the judicial retirement plan. Participation is voluntary in the other states.

4. In addition to Montana, three states (Idaho, North Dakota and Wyoming) base retirement benefits on the current salary of the judicial office. Utah and South Dakota also provide for a limited annual percentage increase in retirement benefits for judges.

5. For the four states which base retirement benefits on final salaries and do not provide for automatic annual increases in benefits, the percentage of salary figure for retirement benefits is substantially higher. A judge who serves 20 years in Arizona, Kansas, Nevada and New Mexico receives the following percentage of final salary:

Arizona	66%
Kansas	65%
Nevada	66%
New Mexico	75%

A judge who serves for 20 years in Montana can retire at 55% of salary but does receive an "automatic" increase in retirement benefits in that the 55% figure is tied to the current salary of the office.

6. A higher retirement figure based on final salary provides a much greater and more immediate retirement benefit for a judge, as illustrated by a comparison of the retirement systems in Montana and Kansas. Assume an Associate Justice of the Supreme Court retires based on 1982 salaries after 20 years of service in both states.

	<u>MONTANA</u>	<u>KANSAS</u>
1982 Salary	\$47,023.00	\$50,558.00
% of salary	.55	.65
Retirement Salary	\$25,862.65	\$32,862.70

The Kansas Associate Justice retires at a salary \$7,000.05 higher than the Montana Justice. The current salaries of Montana's Associate Justices would have to be raised to \$60,000 annually before a retired Associate Justice would receive the same retirement benefits as a Kansas Associate Judge.

7. Montana's Supreme Court and District Judges are paid substantially less than their counterparts in the 9 adjoining states. The average salaries for the 9 neighboring states surveyed are approximately \$5,000 higher than Montana's judicial salaries. North Dakota's judicial salaries are \$5000 to \$7000 higher than Montana's. Wyoming's judicial salaries are at least \$15,000 higher than Montana's.

8. The Legislature has traditionally recognized that Montana's judges are paid less than their counterparts in the adjoining states. The legislative justification for lower salaries has been that Montana's judges have a better retirement system than judges in the region. The attached comparison of retirement systems indicates that is not the case.

9. Montana's Supreme Court Justices have a substantially higher caseload than the highest courts in Idaho, North Dakota, South Dakota and Wyoming, as illustrated by the following:

<u>STATE</u>	<u>CASE FILINGS - 1981</u>
Montana	574
Idaho	455
North Dakota	382
South Dakota	343
Wyoming	205

Despite the greater workload, Montana's justices are paid substantially less than their counterparts in North Dakota and Wyoming (see paragraph 7). Montana's justices are paid \$100 to \$200 more than their colleagues on the South Dakota Supreme Court and \$250 to \$900 more than their colleagues in Idaho.

COMPARISON OF SALARY AND RETIREMENT BENEFITS FOR SUPREME COURT AND DISTRICT COURT JUDGES WHO SERVE 20 YEARS

*Salaries: Chief Justice Assoc. Justice District Judge	**Retirement Benefit (20 Years of Service)	When Retirement Vests	Member Contributions	State Contributions	Death Benefits	Disability Benefits	Automotic Cost of Living Increase
Nevada N/A \$61,500 56,000	66% of final salary	12 years of service and age 60	None	100% of total system cost	Yes	No	No
New Mexico \$50,500 49,500 45,000	75% of final salary	16 years of service and age 60 or 5 years of service and age 64	10% of salary	All remaining system costs	Yes	Yes, after five years of service	No
North Dakota \$55,400 53,900 50,600	50% of current salary of office	Age 65, 20 years; Age 66, 18 years; Age 70, 10 years	5% of salary	Not available	Yes	Yes, compen- sated for remainder of term and then receives retirement benefits	Yes
South Dakota \$48,000 46,900 43,750	60% of final salary	Age 55 (reduced benefits)	8% of salary	State matches member contributions	Yes	Yes, if 3 years of service and not eligible for early retirement	Yes (2% per year)

\* Salary figures are 1982 calendar year salaries

\*\* The retirement system comparisons are based on a 1980 publication entitled Judicial Retirement Plans, by Timothy Pyne, published by American Judicature Society



Exhibit 5

M E M O R A N D U M

To: Members of Senate Judiciary Committee  
From: Ward A. Shanahan  
Re: HB 825 (Eminent Domain Revisions)  
Date: March 16, 1983

Gentlemen:

The purpose of this memorandum is to clarify the position of Northern Tier Pipeline Company on HB 825 following a memorandum submitted to you on behalf of the Northern Plains Resource Council by Patrick L. Smith.

It is noteworthy that in his memorandum Mr. Smith stated the amendments he offered were to "clarify and advance what appears to be the primary purpose of HB 825: to give landowners a reasonable opportunity to defend their private property from condemnation actions." Mr. Smith also stated there was an "amendment" which came out of the House which occurred on page 5, lines 2-6, of the bill which created a problem. This statement is misleading because the statement which Mr. Smith objected to is already a part of the existing law which the Northern Plains Resource Council intended to rewrite in this bill. It is also inaccurate to state that the purpose of this bill was to give the landowners a "reasonable opportunity to defend." As originally introduced in the House, HB 825 would have removed all rights of railroads, pipeline companies, and mining companies to obtain necessary lands or easements to conduct their business.

If we presume, however, that the principal purpose of HB 825 as it now exists in the Senate is to "give landowners a reasonable opportunity to defend," then we are compelled to point out that the amendment suggested by the Northern Plains Resource Council and largely concurred in by this committee goes far beyond that objective.

EXPRESS CHANGE IN THE BURDEN OF PROOF:

The Northern Plains Resource Council has stated it wants to be sure that the burden of proof is on the condemnor. Standing alone, we have no objection to this proposition. However, as rewritten in the House, the bill imposes an additional burden of proof upon the condemnor that does not exist in present law. This additional burden is set forth on page 4, line 13, of the bill, which creates a new subsection (5) to section 70-30-111, as follows:

(5) That the public interest requires the taking.

The present law requires in section 70-30-206(2):

(2) If the court or judge is satisfied from the evidence presented at the hearing provided for in 70-30-204 that the public interests require the taking of such lands and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order . . . .

The provision of section 70-30-206(2) is what is known as a conclusion of law drawn from the statutes of this state. In effect, if the judge is satisfied that the use sought by the condemnor is a "public use," then the "public interest" has been found and the only factual determination for the court is a question of whether or not property interest sought to be taken is "necessary to such use."

However, as now written, the question of "public interest" is a new fact question for which you have just shifted the complete "burden of proof" to the condemnor. But in doing so you have not defined what you mean by "public interest." Therefore, this provision is a substantive change in the law of eminent domain and creates the following problems:

1. The court must make an entirely subjective determination of what it thinks the "public interest" is; and

NAME Ward A. Shanahan BILL NO. HB 825  
ADDRESS P.O. Box 1715, Helena, MT 59624 DATE 031683  
WHOM DO YOU REPRESENT Northern Tier Pipeline Company  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 4, line 4. (Senate Standing Committee Report # 3)  
Following: "evidence"  
Insert: "that the public interest requires the taking  
based on the following findings:"
2. Page 5, line 2.  
Following: "thereon"  
Insert: "A summons served under this chapter must  
contain a notice to the defendant to file and  
serve an answer. Within 40 days from the date the  
answer is required to be filed, the court shall  
commence its hearing on whether a preliminary  
condemnation order should issue."

1815S





March 12, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 825 be amended as follows:

1. Page 3, line 21.

Following: "or"

Strike: "license"

Insert: "other interest"

2. Page 4, line 4.

Following: "taken,"

Strike: "it must appear"

Insert: "the plaintiff must show by a preponderance of the evidence"

3. Page 4, line 11.

Following: "(4)"

Strike: remainder of subsection.

Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected; and"

4. Page 5, line 2.

Following: "thereon."

Strike: the remainder of line 2 through line 6.

5. Page 7, line 22.

Following: "er-judge"

Strike: "is satisfied"

Insert: "finds and concludes"

6. Page 8, line 1.

Strike: line 1 through "appear"

Insert: "plaintiff has met his burden of proof under 70-30-111"

7. Page 9.

Following: line 6.

Insert: "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration.

8. Page 13, line 25.

Following: line 24.

Strike: "answer"

Insert: "statement of claim of just compensation"

9. Page 14, line 11.

Following: line 10.

Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

# STANDING COMMITTEE REPORT

March 16

19 83

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **741**

**Addy (Halligan)**

Respectfully report as follows: That **HOUSE** Bill No. **741**

**BE CONCURRED IN**

~~XXXXXX~~

*Jm*

# STANDING COMMITTEE REPORT

March 16

19 83

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **774**

**Addy (VanValkenburg)**

Respectfully report as follows: That **HOUSE** Bill No. **774**

**Third reading bill (blue copy) be amended as follows:**

- 1. Page 2, line 24.  
Following: "writing"  
Insert: "or electronic means, if the reporter is certified  
in shorthand or machine writing,"**
- 2. Page 5, lines 3 through 11.  
Strike: subsection (5) in its entirety.**

**And, as so amended,  
~~DO PASS~~ BE CONCURRED IN**