

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 19, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Scott McCulloch

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Louise Sullivan, Substitute Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: HB 570, HB 638, HB 547, HB 624, HB 590
HB 582, HB 346, HB 370, HB 267, HB 602

EXECUTIVE ACTION ON HB 570

Motion: REP. BILL TASH MOVED HB 570 DO PASS.

Discussion:

REP. LARRY GRINDE offered amendments: **EXHIBIT 1**, Statement of

Intent; **EXHIBIT 2**, a comparison of State Legislation Protecting Property Rights; **EXHIBIT 3**, a memo concerning the fiscal note to the bill; and **EXHIBIT 4**, discussing the misunderstanding by state agencies to the proposed legislation. He stated that the agencies were looking beyond the scope of the legislation. With the proposed amendments the fiscal note would largely be moot. **REP. GRINDE** also handed out amendments proposed by the Department of Justice. **EXHIBIT 5**

In answer to a question from **REP. JIM RICE**, **REP. GRINDE** stated it was his intention to keep the local government subsection in the bill and simply add the justice amendments. He said the amendments were intended to remove some of the "glitches" in the legislation. **Mr. Bloomquist** of the Montana Stockgrowers Association was also present to answer questions.

Motion/Vote: **REP. DAVE BROWN** moved the adoption of the amendments. Motion carried with **REPS. TOOLE, WYATT, BROOKE** and **RUSSELL** voting no.

Motion: **REP. BROWN** also proposed amending page 2, line 16 and 17, following "property" by striking the balance of line 16 and 17 and page 4, lines 8 and 9, following "either" on page 7, striking lines 8 and 9 through "property."

Discussion:

REPS. DUANE GRIMES and **BILL TASH** opposed the amendments. **REP. GRINDE** felt they were going too far and were taking a lot of the teeth out of the legislation. **REP. RICE** asked if the bill wasn't defining "take" more narrowly than present law.

Motion: **REP. BROWN** made a substitute motion to adopt the page 2 amendment and withdrew the page 4 amendment. **REP. RANDY VOGEL** asked how this would affect the legislation as a whole, and **REP. GRINDE** replied there was no problem. **REP. HOWARD TOOLE** believed the bill was trying to amend constitutional language to which **REP. GRINDE** replied that the reason for the constitutional language is so people will know the parameters.

Motion/Vote: **REP. BROWN** withdrew his motion in deference to **REP. TOOLE** who proposed to amend the bill on page 4, line 23 by striking "or value" and on page 6, line 21. Motion carried unanimously.

Motion/Vote: **REP. RICE** moved to amend page 5, subsection 2, by striking lines 15-18 as this creates a burden on the legislative process to require a fiscal note each time. **REP. VOGEL** asked if it would help to put "may" instead of "shall." **REP. BROOKE** stated she was in favor of the amendment. Motion carried with **REPS. WINSLOW, TASH, GRIMES, CLARK** and **VOGEL** voting no.

Motion/Vote: REP. TOOLE moved to amend page 6, line 4-7, subsection (b) by striking subsection (b) in its entirety. Motion carried unanimously.

Motion/Vote: REP. BROOKE moved to amend section 4, page 5 by striking lines 12-14, subsection (f) as this was one more burden that would be placed on state agencies. REP. GRINDE stated that this was a vital part of the bill and resisted the motion. Motion failed.

Motion/Vote: REP. TOOLE moved to amend page 4, line 24 by striking "and whether a taking will result." Motion failed.

Motion/Vote: REP. TASH MOVED HB 570 DO PASS AS AMENDED. Motion carried 11-7 with REPS. BROWN, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN and WYATT voting no.

EXECUTIVE ACTION ON HB 638

Motion: REP. GRIMES MOVED HB 638 DO PASS.

Motion/Vote: REP. BROWN moved adoption of amendments submitted by the Department of Family Services (DFS). EXHIBIT 6 Motion carried unanimously.

Discussion:

Jim Smith, Montana Juvenile Probation Officers, felt it was a good bill with the amendments.

REP. WINSLOW pointed out there was no fiscal note for the bill but there definitely would be a fiscal impact. This bill would take authority from the courts and give it to the department.

Motion/Vote: REP. GRIMES MOVED HB 638 DO PASS AS AMENDED. Motion carried 15-2 with REPS. WINSLOW and BROWN voting no.

EXECUTIVE ACTION ON HB 547

BY UNANIMOUS AGREEMENT, ALL COMMITTEE MEMBERS AGREED TO RECONSIDER THEIR ACTION ON HB 547 TO TAKE IT FROM THE TABLE.

Motion/Vote: MOTION THAT HB 547 REMAIN TABLED. Motion carried 12-6 with REPS. BROWN, BROOKE, MCCULLOCH, TOOLE AND WYATT voting no.

EXECUTIVE ACTION ON HB 624

Motion/Vote: REP. BROWN MOVED TO TABLE. Motion carried unanimously.

EXECUTIVE ACTION ON HB 590

Motion: REP. TOOLE MOVED HB 590 DO PASS.

Motion/Vote: REP. TOOLE moved amendments which were suggested by Mr. Ben Havdahl. EXHIBIT 7 Motion carried unanimously.

Motion/Vote: REP. TOOLE moved amendments. EXHIBIT 8 Motion carried unanimously.

CHAIRMAN FAGG inquired why the bill is necessary if it is already in federal statute. REP. TOOLE responded that the reason was so the federal government would not have to tell Montana how to comply and it would enforce our law, not the federal law.

Bruce W. Moerer, Montana School Boards Association (MSBA) provided testimony. EXHIBIT 9

Motion/Vote: CHAIRMAN FAGG MOVED TO TABLE HB 590. Motion carried 10-8. Those voting no were REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN and WYATT.

EXECUTIVE ACTION ON HB 582

Motion: REP. BROWN MOVED HB 582 DO PASS.

Motion/Vote: REP. BROWN moved to strike section 3 from the bill. Motion carried 16-2.

Motion: REP. CLARK moved to reinsert section 3 back into the bill.

Discussion:

REP. CLARK stated that the bill only gives the Governor the ability to negotiate with other states with concealed weapons laws, and he had no problem with the reciprocity agreement. REP. VOGEL felt the legislature has been weakening this law for the last two sessions. As amended this would not weaken it too much more but he would not support the bill without the amendment.

Vote: REP. CLARK's substitute motion failed on a tie vote 9-9, with CHAIRMAN FAGG AND REPS. VOGEL, BROOKE, GRIMES, RICE, RUSSELL, SAYLES, SMITH AND WHALEN voting no.

Vote: HB 582 DO PASS AS AMENDED. Motion carried 15-3 with REPS. BROOKE, RUSSELL and CHAIRMAN FAGG voting no.

EXECUTIVE ACTION ON HB 346

Motion/Vote: REP. RICE MOVED THAT THE COMMITTEE RECONSIDER ITS ACTION ON HB 346. Motion carried 10-8 with REPS. BROWN, BROOKE,

MCCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW AND WYATT voting no.

Motion/Vote: REP. RICE moved to segregate amendments 5 and 6. and to adopt technical amendments 1-4 and 7-9. Motion carried unanimously.

Motion/Vote: REP. RICE moved amendments 5 and 6. Motion carried 10-8 with REPS. BROWN, BERGMAN, MCCULLOCH, RUSSELL, SMITH, TOOLE, WHALEN AND WYATT voting no.

Motion/Vote: REP. BROWN moved an amendment on page 13, line 4. Motion failed on a tie vote 9-9 with CHAIRMAN FAGG AND REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH AND TASH voting no.

Vote: HB 346 DO PASS AS AMENDED. Motion carried 10-8 with REPS. BROWN, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW, and WYATT voting no.

EXECUTIVE ACTION ON HB 370

Motion: REP. TASH MOVED TO RECONSIDER ACTION ON HB 370.

Discussion:

REP. BROWN stated there many unconstitutional flaws with the bill and hoped to keep the bill on the table.

Vote: Motion to reconsider action failed on a tie vote of 9-9 with REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW AND WYATT voting no.

EXECUTIVE ACTION ON HB 267

Motion: REP. TASH MOVED TO RECONSIDER ACTION ON HB 267. Motion failed on a tie vote 9-9 with REPS. BROWN, BIRD, BROOKE, GRIMES, MCCULLOCH, RUSSELL, WHALEN, WINSLOW AND WYATT voting no.

EXECUTIVE ACTION ON HB 602

Motion/Vote: REP. VOGEL MOVED TO RECONSIDER ACTION HB 602. Motion carried 10-8 with REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN, and WINSLOW voting no.

Discussion:

With many members of the committee leaving the room and a quorum not being present, reconsideration of House Bill 602 could not be continued.

ADJOURNMENT

Adjournment: 12:00 p.m.

Russell Fagg

REP. RUSSELL FAGG, Chairman

Beth Miksche

BETH MIKSCHÉ, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE

2-19-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch			✓
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HOUSE STANDING COMMITTEE REPORT

February 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 346 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 7 and 8.

Strike: "LIMITING" on line 7 through "LIMITATIONS" on line 8

Insert: "PROVIDING FOR PERIODIC PAYMENT OF FUTURE DAMAGES UNDER
CERTAIN CONDITIONS"

2. Title, line 8.

Strike: ", "

Insert: "AND"

3. Title, line 9.

Strike: "27-1-714" through "27-2-401,"

4. Page 1, line 18.

Page 2, lines 1 (two places), 5, 7, 8, and 18.

Strike: "\$250,000"

Insert: "\$500,000"

5. Page 3, line 5.

Following: "27-6-103"

Insert: ", or a nurse licensed under Title 37, chapter 8"

6. Page 3, line 19.

Following: "27-6-103,"

Insert: "or against a nurse licensed under Title 37, chapter 8,"

7. Page 7, line 16 through line 24 of page 12.

Strike: sections 5 through 8 in their entirety

Renumber: subsequent sections

-END-

Committee Vote:
Yes 10, No 8.

4116193C.Hbf

HOUSE STANDING COMMITTEE REPORT

February 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 582 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 10 through 12.
Strike: "ALLOWING" on line 10 through "STATES;"
on line 12
2. Page 5, line 15 through line 7 of page 6.
Strike: sections 3 and 4 in their entirety

-END-

Committee Vote:
Yes No

411634SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 20, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 638 (first reading copy -- white) do pass as amended.

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 5 through 7.

Strike: "PROHIBITING" on line 5 through "PERIOD;" on line 7

2. Page 2, lines 13 through 15.

Strike: "The" on line 13 through "time" on line 15

Insert: "The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility"

3. Page 4, lines 6 and 7.

Strike: "to a more appropriate placement within a reasonable time"

Insert: ", pursuant to 53-21-127, to an appropriate mental health placement in which the youth's mental illness will be treated"

-END-

HOUSE STANDING COMMITTEE REPORT

February 20, 1993

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that House Bill 570 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 10.

Insert:

"STATEMENT OF INTENT

It is the intent of the legislature that government entities prepare assessments of government actions that affect private property interests. The assessments must use tests and guidelines established by the supreme court of the United States and the supreme court of the state of Montana when the assessments analyze constitutional principles.

It is not the intent of the legislature to expand the law relating to the taking or damaging of private property, as contained in opinions of the supreme court of the United States and the supreme court of the state of Montana, by the state or a local government."

2. Page 1, lines 13, 20, and 24.

Page 2, lines 5, 8, and 14

Strike: "6"

Insert: "5"

3. Page 2, line 12.

Following: "rights."

Insert: "Nothing in [sections 1 through 5] may be construed to impair a property owner's right to appear in court on an eminent domain or inverse condemnation claim."

4. Page 2, line 21.

Strike: ", "

Strike: "or may"

5. Page 3, line 11.

Strike: "or"

Committee Vote:

yes 11/ no 1/

40131000, 001

6. Page 3, line 14.

Strike: "."

Insert: ";

(vii) statutes, rules, regulations, license requirements, and permit requirements relating to building construction standards, fire safety standards, and life safety standards;

(viii) professional and occupational license requirements, gambling licenses, and liquor licenses;

(ix) statutes, rules, regulations, license requirements, and permit requirements relating to driver's licenses, motor vehicle registrations, and dealer licenses under Title 61, chapter 4; or

(x) actions by the department of public service regulation in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities."

7. Page 4, line 13.

Strike: "(1)"

8. Page 4, line 17.

Strike: "(a)"

Insert: "(1)"

9. Page 4, line 21.

Strike: "(b)"

Insert: "(2)"

10. Page 4, line 23.

Page 6, line 21.

Strike: "or value"

11. Page 4, line 24.

Page 5, lines 7 and 10.

Page 6, line 11.

Following: "taking"

Insert: "or damaging"

12. Page 4, line 25.

Strike: "(c)"

Insert: "(3)"

13. Page 5, line 1.

Strike: "or potentially affected"

14. Page 5, line 2.

Strike: "(d)"

Insert: "(4)"

15. Page 5, line 4.
Strike: "(i)"
Insert: "(a)"

16. Page 5, line 5.
Strike: "(ii)"
Insert: "(b)"

17. Page 5, line 7.
Strike: "(iii)"
Insert: "(c)"

18. Page 5, line 8.
Strike: "(e)"
Insert: "(5)"

19. Page 5, line 12.
Strike: "(f)"
Insert: "(6)"
Strike: "evaluation"
Insert: "estimate"

20. Page 5, lines 15 through 18.
Strike: subsection (2) in its entirety

21. Page 6, lines 4 through 7.
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

22. Page 6, line 24.
Following: "owner,"
Insert: "if identifiable,"

23. Page 7, lines 5 through 19.
Strike: section 6 in its entirety
Renumber: subsequent section

-END-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 570 NUMBER 18

MOTION: HB 570 DO Pass as Amended 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	11	7

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 547 NUMBER 18

MOTION: HB 547 Be Tabled. Motion carried 12-6

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 590 NUMBER 18

MOTION: HB 590 be Tabled, Motion Carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 582 NUMBER 18

MOTION: Rep. Clark's amendment Failed 9-9

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell		✓
Rep. Tim Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	9	9

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 582 NUMBER 18

MOTION: HB 582 be reconsidered carried 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 346 NUMBER 18

MOTION: HB 346 Be Reconsidered carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 346 NUMBER 18

MOTION: Rep. Rice's amendments #5, 6 carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 346 NUMBER 18

MOTION: Rep. Brown's amendment Failed 9-9

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	9	9

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 346 NUMBER 18

MOTION: HB 346 to Pass as Amended
Motion carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 370 NUMBER 18

MOTION: HB 370 be reconsidered off table failed 9-9

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 267 NUMBER 18

MOTION: HB 267 to be reconsidered off table
failed 9-9

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/19/93 BILL NO. HB 602 NUMBER 18

MOTION: HB 602 be reconsidered off the table
Motion carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	10	8

Amendment to House Bill 570

Requested by Rep. Grinde

1. Page 2, line 12
Following: "rights."
Insert: "Nothing in this Act shall be construed to impair a property owners right from proceeding judicially under eminent domain or inverse condemnation law."
2. Page 2, line 21.
Following: "will"
Strike: "or may"
3. Page 4, line 23.
Following: "use"
Strike: "or value"
4. Page 5, line 1.
Following: "affected"
Strike: "or potentially affected"
5. Page 5, line 12
Following: "an"
Strike: "evaluation"
Insert: "estimate"
6. Page 5, line 21.
Following: "agency"
Insert: "not otherwise exempted in [Section 3]"
7. Page 6, line 24.
Following: "owner"
Insert: "if identifiable"
8. Page 7, lines 5-19.
Strike: Section 6 in its entirety.
9. Page 7, line 20.
Following: "Section."
Strike: "Section 7."
Insert: "Section 6."

EXHIBIT 2
DATE 2-19-95
~~SB~~ HB 570

Amendment H.B. 570
Requested by Rep. Grinde

Statement of Intent

It is the intent of the legislature that government entities prepare assessments on government actions which affect private property interests. Such assessments shall use tests and guidelines established by the United States Supreme Court and the Montana Supreme Court in analyzing the constitutional principles to be considered.

Nothing in this Act is intended to expand the law on takings or the damaging of private property by government action as set forth by the United States Supreme Court or the Montana Supreme Court.

State Legislation Protecting Property Rights

Side by Side Comparison

EXHIBIT V

DATE 2-19-93
 SB HB 570

	Idaho - SB 1439 (1992)	Arizona - SB 1005 (1992)	Maryland - SB 289 (1991)	Vermont - SB 120 (1990)
Short Title:	Idaho Regulatory Takings Act	None	Maryland Private Land Rights Protection Act	Vermont Private Property Protection Statute
Agencies Covered:	State Executive Branch	State Executive Branch	State Legislative and Executive Branches	All "governmental units" within the State
Private Property Defined:	Real Property protected by Constitution	Real or Personal Property protected by Constitution	Real Property protected by Constitution	Real Property
How "Takings" Determined:	Attorney General develops guidelines	Attorney General develops guidelines with the following statutory guidance: <ul style="list-style-type: none"> burden-of-proof lies with State agencies, all physical invasions or diminutions in property value are suspect takings can be "partial" or "temporary" public health and safety regulations are given latitude, but must meet minimum requirements delays in "normal government processes" may constitute a taking takings are "inadvertent" and are not contingent on an agency's prior intent to acquire property 	Attorney General develops guidelines	Defined in statute as any regulation producing a 50% diminution in "fair market value."
Annual Review?	Yes	Yes	Yes	No
Who makes determination:	An employee appointed within each Agency	An Assistant Attorney General appointed for each agency	An Assistant Attorney General who is counsel for each agency	State Courts
Alternatives to taking:	Must consider if State's "legal obligations" would be satisfied, but impact on property owner and risk of taking are reduced	Must consider if "legal obligations" would still be satisfied, impact on property owner and the risk of taking are reduced	Must consider if State's "legal obligations" would be satisfied, but impact on land owner and risk of taking are reduced	"Regulatory rollback", or relaxing of regulations allowed for governmental units unwilling to pay takings claim

Disposition of determination:	Submitted to Agency Director and appropriate financial management authority before new regulation can take effect	Submitted to Governor and Joint Budget Committee before new regulations can take effect	Legislative: Attached to any bill under consideration, without which no committee vote may be taken, Executive: Submitted to the Secretary or Director of the State Agency and the Secretary of Budget and Fiscal Planning before new regulation is implemented	If a taking is found, proof of claim is established; if no taking found, plaintiffs claim is dismissed
Is determination requirement retroactive to previously issued regulations?	No	No, with regard to rule-making generally, Possible application to existing licensing and permitting activities, as well as any existing dedications or exactions from owners of private property	No	Yes
Emergency Clause?	No	Yes, determination may be made subsequent to the effective date of an emergency rule-making if there is an immediate threat to health and safety	No	No
Source of funding identified:	By regulating agency making determination, out of own budget	By Assistant Attorney General making determination, out of regulating agency's budget	By regulating agency in budget submissions to the Governor, and by the Governor in annual budget for the State	None
Other:	Effect of takings should be reflected in value assessments for property taxes, etc.	Statutory criteria governing all rule-makings generally: <ul style="list-style-type: none"> ● permit conditions must relate to reason for permit ● penalties must be proportionate to harm or damage ● the length of time in governmental processes should be kept to a minimum ● health and safety regulations should meet minimum risk avoidance justification 	None	Governmental units are prohibited from seeking conditional waivers of rights to compensation under the Act The statute of limitations for rights under the Act is the same as for ordinary actions resulting from equivalent injuries to real property

TO: House Judiciary Committee
FROM: Larry Grinde
RE: Fiscal Note H.B. 570

Response

The Fiscal Note for H.B. 570 reflects certain agencies misunderstanding of the bill and the law. These can be summarized as follows:

1. Not all rules or rule making is covered by this bill. Only those rules which would result in a taking or reduce the value of private property will be subject to an assessment. Therefore, any assumptions that all rules will require assessments is incorrect.
2. DHES: The need for "economists, lawyers, appraisers, budget specialists, researchers and clerical support" as set forth by DHES requires response. Initially, it is apparent that DHES enacts many permits and rules which may be construed to require compensation. See paragraph 7, Fiscal Note. It appears as though DHES should be subjected to this bill more than most.

It is doubtful that all the support staff described above will be necessary. DHES has on-hand staff attorneys to provide the "takings" analysis and determine whether an action will in fact require an analysis by "economists and appraisers." Should this legal check indicate a takings issue, then the Department should estimate the compensation which may result should an action for a takings by the private property owner prevail.

Concerning assumption number 8, the language referring to a "deviance from legally established standards" for a "taking" is incorrect. The definitions of "taking" and "damaging" are direct from United States and Montana Supreme Court interpretations. If there is any doubt, the offered Statement of Intent should clarify.

3. DSL: Much the same as DHES the DSL makes some incorrect assumptions. This is reflected in their assumptions, as well as the perceived need to hire additional appraisers or economists.

Conclusion

In Arizona, much the same response was expressed by state agencies when their bill was considered. After discussions with agency directors in that state, none of these fears has played out.

Amendments to House Bill 570

Prepared by Department of Justice

1. Page 3, line 11.
Following: "1993;"
Strike: "or"

2. Page 3, line 12.
Following: "(vi)"

Insert: "statutes, rules, regulations, licensing requirements or permitting requirements concerning building construction standards, fire safety standards, or life safety standards;

"(vii) licensing requirements for professional and occupational licenses, gambling licenses, or liquor licenses;

"(viii) statutes, rules, regulations, licensing requirements or permitting requirements concerning dealer licenses under title 61, chapter 4, driver's licenses, and motor vehicle registration;

"(ix) actions by the department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities;

EXHIBIT 6
DATE 2-19-93
SB 638

Proposed Amendment to HB 638

Prepared by Ann Gilkey
Department of Family Services

1. Page 2, line 13.

Following: "public~~+~~."

Strike: "The court may not commit a youth to a youth correctional facility for a determinate length of time."

Insert: "The committing youth court may order the department to notify it within 5 days prior to the release of a youth from a youth correctional facility."

pg 11

2. Page 4, line 6.

Strike: "more appropriate placement within a reasonable time."

Insert: "mental health placement which addresses the youth's serious mental illness pursuant to 53-21-127."

Admission

Amendments to House Bill No. 590
First Reading Copy

EXHIBIT 7
DATE 2-14-93
SB HB 590

Requested by Rep. Toole
For the Committee on the Judiciary

Prepared by John MacMaster
February 18, 1993

1. Title, line 8.

Following: "ACCOMMODATION;"

Insert: "PROVIDING EXCEPTIONS;"

2. Page 16, line 4.

Following: line 3

Insert: "(8) The prohibition against discrimination in this section does not prohibit an employer from requiring as a condition to employment that a person not pose a direct threat to the health or safety of other persons in the workplace and does not include a refusal to employ or retain:

(a) (i) in a food handling position, a person who has an infectious or communicable disease that can be transmitted to others through the handling of food if the risk cannot be eliminated by reasonable accommodation; and

(ii) the prohibition does not preempt a federal, state, or local law relating to food handling designed to protect the public from persons with infectious or communicable diseases who pose a significant risk to the health of others through their handling of food if the risk cannot be eliminated by reasonable accommodation;

(b) a person engaging in the illegal use of drugs or an alcoholic who is unable to satisfactorily perform the duties of the position;

(c) a compulsive gambler, kleptomaniac, or pyromaniac;
or

(d) a person engaging in transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, having a gender identity disorder not resulting from physical impairment, or with another sexual behaviour disorder.

3. Page 25, line 8.

Following: line 7

Insert: "(9) The prohibition against discrimination in this section does not include a refusal to employ or retain a person referred to in 49-2-303(8).

NEW SECTION. Section 6. Insurance risks and benefit plans. Nothing in this chapter prohibits:

(1) an insurer, hospital, medical service company, health maintenance organization, entity administering benefit plans, or similar organization from underwriting, classifying, or administering risks if the practice is based

on and not inconsistent with the law of this state;

(2) a person or entity covered by this chapter from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan if the terms are not subject to the laws of this state or are based on underwriting, classifying, or administering risks based on and not inconsistent with the law of this state.

NEW SECTION. Section 7. {standard} Codification instruction. [Section 6] is intended to be codified as an integral part of both chapter 2 and 3 of Title 49, and the provisions of the respective chapter apply to [section 6]."

Renumber: subsequent section

Amendments to House Bill No. 590
First Reading Copy

Requested by Rep. Toole
For the Committee on the Judiciary

Prepared by John MacMaster
February 19, 1993

1. Page 2, line 23.

Following: line 22

Insert: "(2) "Auxiliary aids and services" means:

(a) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) acquisition or modification of equipment or devices; and

(d) other similar services and actions."

Renumber: subsequent subsections

2. Page 8, line 19.

Strike: "(20) (b)"

Insert: "(21) (b)"



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Robert L. Anderson, Executive Director

MONTANA SCHOOL BOARDS ASSOCIATION

MEMORANDUM

EXHIBIT 9
DATE 2-19-93
SB 590

TO: Bruce W. Moerer
FROM: Janice Frankino Doggett
DATE: February 18, 1993
RE: ANALYSIS OF HB 590

Any representation that this bill parallels the American's With Disabilities Act is inaccurate.

The bill excludes many provisions which are contained in the ADA. In my review of the bill I have discovered several omissions.

The bill excludes ADA defenses, including a qualification standard defense and the defense that an employee poses a direct threat to himself or others (Section 103 attached).

The bill does not include an exemption for religious entities or define the responsibilities of employees with regard to individuals with communicable diseases (Section 103).

The bill includes all employers, whereas the ADA covers only employers with 15 or more employees. The bill includes all hotels and other places of lodging, the ADA only covers those with more than 5 rooms for rent or hire.*

The bill does not exclude as disabilities; homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania or psychoactive substance abuse disorders resulting from current illegal use of drugs (Section 511, attached). These may not be considered as disabilities in any event but they are included in the ADA and not in this bill.

The bill leaves out the defenses in relation to insurance and the section concerning alternative dispute resolution (Sections 501(c) and 513 attached).

The bill does not exclude those who are currently using alcohol or illegal drugs (Section 512 attached).

* The Human Rights Act and Governmental Code of Fair Practices has covered all employees and all public accommodations since 1974